



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

HB6813

Introduced 2/9/2004, by James D. Brosnahan

SYNOPSIS AS INTRODUCED:

105 ILCS 5/14-8.02a

Amends the Children with Disabilities Article of the School Code. Provides that a parent or guardian who is a prevailing party in an impartial due process hearing or a civil action may recover reasonable attorney's fees and costs from an opposing party (now, the school district is liable for attorney's fees only if the district willfully disregards applicable regulations or statutes and that disregard is detrimental to the child). Effective immediately.

LRB093 18073 NHT 43760 b

FISCAL NOTE ACT
MAY APPLY

HOUSING
AFFORDABILITY
IMPACT NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The School Code is amended by changing Section
5 14-8.02a as follows:

6 (105 ILCS 5/14-8.02a)

7 Sec. 14-8.02a. Impartial due process hearing; civil
8 action.

9 (a) This Section (rather than the impartial due process
10 procedures of subsections (h) through (o) of Section 14-8.02,
11 which shall continue to apply only to those impartial due
12 process hearings that are requested under this Article before
13 July 1, 1997) shall apply to all impartial due process hearings
14 requested on or after July 1, 1997.

15 (b) The State Board of Education shall establish an
16 impartial due process hearing system, including a corps of
17 hearing officers, in accordance with this Section and shall,
18 with the advice and approval of the Advisory Council on
19 Education of Children with Disabilities, promulgate rules and
20 regulations consistent with this Section to establish the
21 qualifications of hearing officers and the rules and procedures
22 for due process hearings. The State Board of Education shall
23 recruit candidates for due process hearing officers who meet
24 the criteria set forth in this Section. Candidates shall be
25 screened by a 7-member Screening Committee consisting of the
26 following: the Attorney General, or his or her designee; the
27 State Superintendent of Education, or his or her designee; 3
28 members appointed by the State Superintendent of Education, one
29 of whom shall be a parent of a student eligible for special
30 education, another of whom shall be a director of special
31 education for an Illinois school district or special education
32 joint agreement, and the other of whom shall be an adult with a

1 disability; and 2 members appointed by the Attorney General,
2 one of whom shall be a parent of a student eligible for special
3 education and the other of whom shall be an experienced special
4 education hearing officer who is not a candidate for
5 appointment under this Section. The members of the Screening
6 Committee shall be appointed no later than 60 days following
7 the effective date of this amendatory Act of 1996. The
8 chairperson of the Advisory Council on Education of Children
9 with Disabilities or his or her designee shall serve on the
10 Screening Committee as an ex-officio non-voting member. Three
11 members of the Screening Committee shall be appointed for
12 initial terms of 2 years, and 4 members shall be appointed for
13 initial terms of 3 years, by using a lottery system. Subsequent
14 appointments and reappointments shall be for terms for 3 years.
15 The Screening Committee shall elect a chairperson from among
16 its voting members. Members of the Screening Committee shall
17 serve without compensation but shall be reimbursed by the State
18 Board of Education for their expenses. The Screening Committee
19 shall review applications and supporting information,
20 interview candidates, and recommend applicants to the Advisory
21 Council on Education of Children with Disabilities based upon
22 objective criteria it develops and makes available to the
23 public. The number of candidates recommended shall equal 150%
24 of the number deemed necessary by the State Board of Education.

25 (c) The application process shall require each applicant to
26 provide a comprehensive disclosure of his or her professional
27 background and work experience. Applicants must hold at least a
28 masters level degree, a juris doctor degree, or a bachelors
29 degree with relevant experience. Current employees of the State
30 Board of Education, local school districts, special education
31 cooperatives, regional service areas or centers, regional
32 educational cooperatives, state-operated elementary and
33 secondary schools, or private providers of special education
34 facilities or programs shall be disqualified from serving as
35 impartial due process hearing officers. Nothing in this Section
36 shall be construed to prohibit retired school personnel and

1 part-time contractual school personnel who serve in a
2 consulting capacity from serving as hearing officers.
3 Applications by individuals on the State Board of Education's
4 list of eligible Level I due process hearing officers or Level
5 II review officers when the initial recruitment of due process
6 hearing officers is conducted under this Section shall be
7 considered if they meet the qualifications under this
8 subsection.

9 (d) The State Board of Education shall, through a
10 competitive application process, enter into a contract with an
11 outside entity to establish and conduct mandatory training
12 programs for impartial due process hearing officers and an
13 annual evaluation of each impartial due process hearing officer
14 that shall include a written evaluation report. The invitation
15 for applications shall set forth minimum qualifications for
16 eligible applicants. Each contract under this subsection may be
17 renewed on an annual basis subject to appropriations. The State
18 Board of Education shall conduct a new competitive application
19 process at least once every 3 years after the initial contract
20 is granted. The Screening Committee established pursuant to
21 subsection (b) of this Section shall review the training
22 proposals and forward them, with recommendations in rank order,
23 to the State Board of Education. All impartial hearing officer
24 candidates recommended to the Advisory Council on Education of
25 Children with Disabilities shall successfully complete initial
26 and all follow-up trainings, as established by the contract
27 between the State Board of Education and the training entity,
28 in order to be eligible to serve as an impartial due process
29 hearing officer. The training curriculum shall include, at a
30 minimum, instruction in federal and State law, rules, and
31 regulations, federal regulatory interpretations and court
32 decisions regarding special education and relevant general
33 education issues, diagnostic procedures, information about
34 disabilities, and techniques for conducting effective and
35 impartial hearings, including order of presentation. The
36 training shall be conducted in an unbiased manner by education

1 and legal experts, including qualified individuals from
2 outside the public education system. Upon the completion of
3 initial impartial due process hearing officer training, the
4 Advisory Council on Education of Children with Disabilities,
5 applying objective selection criteria it has developed and made
6 available to the public, shall go into executive session and
7 select the number of active impartial due process hearing
8 officers deemed necessary by the State Board of Education from
9 those candidates who have successfully completed the initial
10 training. Fifty percent of the impartial due process hearing
11 officers appointed shall serve initial terms of 2 years, and
12 the remaining 50% shall serve initial terms of one year, such
13 terms to be determined by using a lottery system. After the
14 initial term all reappointments shall be for a term of 2 years.
15 The Screening Committee, based on its objective selection
16 criteria and the annual evaluation reports prepared by the
17 training entity, shall recommend whether the hearing officers
18 whose terms are expiring should be reappointed and shall
19 transmit its recommendations to the State Board of Education.
20 If, at any time, the State Board of Education, with the advice
21 of the Advisory Council on Education of Children with
22 Disabilities, determines that additional hearing officers are
23 needed, the hearing officer selection process described in this
24 Section shall be reopened to select the number of additional
25 hearing officers deemed necessary by the State Board of
26 Education.

27 Impartial due process hearing officers shall receive a base
28 annual stipend and per diem allowance for each hearing at a
29 rate established by the State Board of Education.

30 The State Board of Education shall provide impartial due
31 process hearing officers with access to relevant court
32 decisions, impartial hearing officer decisions with
33 child-specific identifying information deleted, statutory and
34 regulatory changes, and federal regulatory interpretations.
35 The State Board of Education shall index and maintain a
36 reporting system of impartial due process hearing decisions and

1 shall make such decisions available for review by the public
2 after deleting child-specific identifying information.

3 (e) An impartial due process hearing officer shall be
4 terminated by the State Board of Education for just cause if,
5 after written notice is provided, appropriate timely
6 corrective action is not taken. For purposes of this subsection
7 just cause shall be (1) failure or refusal to accept assigned
8 cases without good cause; (2) failure or refusal to fulfill
9 duties as a hearing officer in a timely manner; (3) consistent
10 disregard for applicable laws and regulations in the conduct of
11 hearings; (4) consistent failure to conduct himself or herself
12 in a patient, dignified, and courteous manner to parties,
13 witnesses, counsel, and other participants in hearings; (5)
14 failure to accord parties or their representatives a full and
15 fair opportunity to be heard in matters coming before him or
16 her; (6) violating applicable laws regarding privacy and
17 confidentiality of records or information; (7) manifesting, by
18 words or conduct, bias or prejudice based upon race, sex,
19 religion, disability, or national origin; (8) failure to recuse
20 himself or herself from a hearing in which he or she has a
21 personal, professional, or financial conflict of interest
22 which he or she knew or should have known existed at any time
23 prior to or during the hearing; (9) conviction in any
24 jurisdiction of any felony or of a misdemeanor involving moral
25 turpitude; and (10) falsification of a material fact on his or
26 her application to serve as a due process hearing officer. In
27 addition, an impartial hearing officer who, as a result of
28 events occurring after appointment, no longer meets the minimum
29 requirements set forth in this Section, shall be disqualified
30 to complete the balance of his or her contract term.

31 The State Board of Education shall monitor, review, and
32 evaluate the impartial due process hearing system on a regular
33 basis by a process that includes a review of written decisions
34 and evaluations by participants in impartial due process
35 hearings and their representatives. The State Board of
36 Education shall prepare an annual written report no later than

1 July 1 of each year, beginning in 1998, evaluating the
2 impartial due process hearing system. The reports shall be
3 submitted to the members of the State Board of Education, the
4 State Superintendent of Education, the Advisory Council on
5 Education of Children with Disabilities, and the Screening
6 Committee and shall be made available to the public.

7 The training entity under subsection (d) shall conduct
8 annual evaluations of each hearing officer and shall prepare
9 written evaluation reports to be provided to the Screening
10 Committee for its consideration in the reappointment process.
11 The evaluation process shall include a review of written
12 decisions and evaluations by participants in impartial due
13 process hearings and their representatives. Each hearing
14 officer shall be provided with a copy of his or her evaluation
15 report and shall have an opportunity to review the report with
16 the training entity and submit written comments.

17 (f) An impartial due process hearing shall be convened upon
18 the request of a parent or guardian, student if at least 18
19 years of age or emancipated, or a school district. A school
20 district shall make a request in writing to the State Board of
21 Education and promptly mail a copy of the request to the
22 parents or guardian of the student at their last known address.
23 A request made by the parent, guardian, or student shall be
24 made in writing to the superintendent of the school district in
25 which the student resides, who shall forward the request to the
26 State Board of Education within 5 days of receipt of the
27 request. Within 5 days after receipt of the request the State
28 Board of Education shall appoint a due process hearing officer
29 using a rotating appointment system and shall notify the
30 hearing officer of his or her appointment. No person who is an
31 employee of a school district that is involved in the education
32 or care of the student shall conduct the hearing. A hearing
33 officer having a personal or professional interest that would
34 conflict with his or her objectivity in the hearing shall so
35 notify the State Board of Education and shall be replaced by
36 the next scheduled impartial due process hearing officer under

1 the rotation system. For purposes of this subsection an
2 assigned hearing officer shall be considered to have a conflict
3 of interest if, at any time prior to the issuance of his or her
4 written decision, he or she knows or should know that he or she
5 may receive remuneration from a party to the hearing within 3
6 years following the conclusion of the due process hearing. A
7 party to a due process hearing shall be permitted one
8 substitution of hearing officer as a matter of right, in
9 accordance with procedures established by the rules adopted by
10 the State Board of Education under this Section. The State
11 Board of Education shall randomly select and appoint another
12 hearing officer within 5 days after receiving notice that the
13 appointed hearing officer is ineligible to serve or upon
14 receiving a proper request for substitution of hearing officer.
15 If a party withdraws its request for a due process hearing
16 after a hearing officer has been appointed, that hearing
17 officer shall retain jurisdiction over a subsequent hearing
18 that involves the same parties and is requested within one year
19 from the date of withdrawal of the previous request, unless
20 that hearing officer is unavailable.

21 A former employee or current resident of the school
22 district, special education cooperative, or other public
23 entity involved in the due process hearing shall recuse himself
24 or herself. A hearing officer shall disclose any actual or
25 potential conflicts of interests to the parties upon learning
26 of those conflicts. Any party may raise facts that constitute a
27 conflict of interest for the hearing officer at any time before
28 or during the hearing and may move for recusal.

29 For purposes of this Section, "days" shall be computed in
30 accordance with Section 1.11 of the Statute on Statutes.

31 (g) Impartial due process hearings shall be conducted
32 pursuant to this Section and rules and regulations promulgated
33 by the State Board of Education consistent with this Section
34 and other governing laws and regulations. The hearing shall be
35 closed to the public unless the parents or guardian request
36 that the hearing be open to the public. The parents or guardian

1 involved in the hearing shall have the right to have the
2 student who is the subject of the hearing present. The hearing
3 shall be held at a time and place which are reasonably
4 convenient to the parties involved. Upon the request of a
5 party, the hearing officer shall hold the hearing at a location
6 neutral to the parties if the hearing officer determines that
7 there is no cost for securing the use of the neutral location.
8 Once appointed, the impartial due process hearing officer shall
9 not communicate with the State Board of Education or its
10 employees concerning the hearing, except that, where
11 circumstances require, communications for administrative
12 purposes that do not deal with substantive or procedural
13 matters or issues on the merits are authorized, provided that
14 the hearing officer promptly notifies all parties of the
15 substance of the communication as a matter of record.

16 The hearing officer shall convene a prehearing conference
17 no later than 14 days before the scheduled date for the due
18 process hearing for the general purpose of aiding in the fair,
19 orderly, and expeditious conduct of the hearing. The hearing
20 officer shall provide the parties with written notice of the
21 prehearing conference at least 10 days in advance of the
22 conference. The written notice shall require the parties to
23 notify the hearing officer by a date certain whether they
24 intend to participate in the prehearing conference. The hearing
25 officer may conduct the prehearing conference in person or by
26 telephone. Each party shall disclose at the prehearing
27 conference (1) whether it is represented by legal counsel or
28 intends to retain legal counsel; (2) the matters it believes to
29 be in dispute in the case and the specific relief being sought;
30 (3) whether there are any additional evaluations for the
31 student that it intends to introduce into the hearing record
32 that have not been previously disclosed to the other parties;
33 (4) a list of all documents it intends to introduce into the
34 hearing record, including the date and a brief description of
35 each document; and (5) the names of all witnesses it intends to
36 call to testify at the hearing. The hearing officer shall

1 specify the order of presentation to be used at the hearing. If
2 the prehearing conference is held by telephone, the parties
3 shall transmit the information required in this paragraph in
4 such a manner that it is available to all parties at the time
5 of the prehearing conference. The State Board of Education
6 shall, by rule, establish additional procedures for the conduct
7 of prehearing conferences. The impartial due process hearing
8 officer shall not initiate or participate in any ex parte
9 communications with the parties, except to arrange the date,
10 time, and location of the prehearing conference and due process
11 hearing and to receive confirmation of whether a party intends
12 to participate in the prehearing conference. The parties shall
13 disclose and provide to each other any evidence which they
14 intend to submit into the hearing record no later than 5 days
15 before the hearing. Any party to a hearing has the right to
16 prohibit the introduction of any evidence at the hearing that
17 has not been disclosed to that party at least 5 days before the
18 hearing.

19 The school district shall present evidence that the special
20 education needs of the child have been appropriately identified
21 and that the special education program and related services
22 proposed to meet the needs of the child are adequate,
23 appropriate, and available. Any party to the hearing shall have
24 the right to (1) be represented by counsel and be accompanied
25 and advised by individuals with special knowledge or training
26 with respect to the problems of children with disabilities, at
27 the party's own expense; (2) present evidence and confront and
28 cross-examine witnesses; (3) move for the exclusion of
29 witnesses from the hearing until they are called to testify,
30 provided, however, that this provision may not be invoked to
31 exclude the individual designated by a party to assist that
32 party or its representative in the presentation of the case;
33 (4) obtain a written or electronic verbatim record of the
34 proceedings within 30 days of receipt of a written request from
35 the parents by the school district; and (5) obtain a written
36 decision, including findings of fact and conclusions of law,

1 within 10 days after the conclusion of the hearing. If at
2 issue, the school district shall present evidence that it has
3 properly identified and evaluated the nature and severity of
4 the student's suspected or identified disability and that, if
5 the student has been or should have been determined eligible
6 for special education and related services, that it is
7 providing or has offered a free appropriate public education to
8 the student in the least restrictive environment, consistent
9 with procedural safeguards and in accordance with an
10 individualized educational program. At any time prior to the
11 conclusion of the hearing, the impartial due process hearing
12 officer shall have the authority to require additional
13 information and order independent evaluations for the student
14 at the expense of the school district. The State Board of
15 Education and the school district shall share equally the costs
16 of providing a written or electronic verbatim record of the
17 proceedings. Any party may request that the due process hearing
18 officer issue a subpoena to compel the testimony of witnesses
19 or the production of documents relevant to the resolution of
20 the hearing. Whenever a person refuses to comply with any
21 subpoena issued under this Section, the circuit court of the
22 county in which that hearing is pending, on application of the
23 impartial hearing officer or the party requesting the issuance
24 of the subpoena, may compel compliance through the contempt
25 powers of the court in the same manner as if the requirements
26 of a subpoena issued by the court had been disobeyed.

27 (h) The impartial hearing officer shall issue a written
28 decision, including findings of fact and conclusions of law,
29 within 10 days after the conclusion of the hearing and mail a
30 copy of the decision to the parents, guardian, or student (if
31 the student requests the hearing), the school district, the
32 director of special education, legal representatives of the
33 parties, and the State Board of Education. Unless the hearing
34 officer has granted specific extensions of time at the request
35 of a party, a final decision, including the clarification of a
36 decision requested under this subsection, shall be reached and

1 mailed to the parties named above not later than 45 days after
2 the request for hearing is received by the school district,
3 public agency, or the State Board of Education, whichever is
4 sooner. The decision shall specify the educational and related
5 services that shall be provided to the student in accordance
6 with the student's needs. The hearing officer shall retain
7 jurisdiction for the sole purpose of considering a request for
8 clarification of the final decision submitted in writing by a
9 party to the impartial hearing officer within 5 days after
10 receipt of the decision. A copy of the request for
11 clarification shall specify the portions of the decision for
12 which clarification is sought and shall be mailed to all
13 parties of record and to the State Board of Education. The
14 request shall operate to stay implementation of those portions
15 of the decision for which clarification is sought, pending
16 action on the request by the hearing officer, unless the
17 parties otherwise agree. The hearing officer shall issue a
18 clarification of the specified portion of the decision or issue
19 a partial or full denial of the request in writing within 10
20 days of receipt of the request and mail copies to all parties
21 to whom the decision was mailed. This subsection does not
22 permit a party to request, or authorize a hearing officer to
23 entertain, reconsideration of the decision itself. The statute
24 of limitations for seeking review of the decision shall be
25 tolled from the date the request is submitted until the date
26 the hearing officer acts upon the request. Upon the filing of a
27 civil action pursuant to subsection (i) of this Section, the
28 hearing officer shall no longer exercise jurisdiction over the
29 case. The hearing officer's decision shall be binding upon the
30 school district and the parents or guardian unless a civil
31 action is commenced.

32 (i) Any party to an impartial due process hearing aggrieved
33 by the final written decision of the impartial due process
34 hearing officer shall have the right to commence a civil action
35 with respect to the issues presented in the impartial due
36 process hearing. That civil action shall be brought in any

1 court of competent jurisdiction within 120 days after a copy of
2 the decision of the impartial due process hearing officer is
3 mailed to the party as provided in subsection (h). The civil
4 action authorized by this subsection shall not be exclusive of
5 any rights or causes of action otherwise available. The
6 commencement of a civil action under this subsection shall
7 operate as a supersedeas. In any action brought under this
8 subsection the Court shall receive the records of the impartial
9 due process hearing, shall hear additional evidence at the
10 request of a party, and, basing its decision on the
11 preponderance of the evidence, shall grant such relief as the
12 court determines is appropriate. A parent or guardian who is a
13 prevailing party in an impartial due process hearing, including
14 an expedited due process hearing under Section 14-8.02b, or in
15 a civil action under this subsection may recover from an
16 opposing party reasonable attorney's fees and costs, including
17 expert witness fees if the expert's opinion is a significant
18 factor in the parent's or guardian's success. For purposes of
19 this subsection the term "prevailing party" includes a parent
20 or guardian who obtains significant relief in a private
21 settlement of a pending impartial due process hearing or civil
22 action if it is determined that the commencement of proceedings
23 under this subsection was the catalyst for the settlement. An
24 action to recover reasonable attorney's fees and costs may be
25 brought in any court of competent jurisdiction within 30 days
26 after a final impartial due process hearing decision, judgement
27 of the court in a civil action, or the date a settlement
28 agreement is executed. In any instance where a school district
29 willfully disregards applicable regulations or statutes
30 regarding a child covered by this Article, and which disregard
31 has been detrimental to the child, the school district shall be
32 liable for any reasonable attorney's fees incurred by the
33 parent or guardian in connection with proceedings under this
34 Section.

35 (j) During the pendency of any administrative or judicial
36 proceeding conducted pursuant to this Section, unless the

1 school district and the parents or guardian of the student
2 otherwise agree, the student shall remain in his or her present
3 educational placement and continue in his or her present
4 eligibility status and special education and related services,
5 if any. If the hearing officer orders a change in the
6 eligibility status, educational placement, or special
7 education and related services of the student, that change
8 shall not be implemented until 30 days have elapsed following
9 the date the hearing officer's decision is mailed to the
10 parties in order to allow any party aggrieved by the decision
11 to commence a civil action to stay implementation of the
12 decision. If applying for initial admission to the school
13 district, the student shall, with the consent of the parents or
14 guardian, be placed in the school district program until all
15 such proceedings have been completed. The costs for any special
16 education and related services or placement incurred following
17 60 school days after the initial request for evaluation shall
18 be borne by the school district if the services or placement is
19 in accordance with the final determination as to the special
20 education and related services or placement that must be
21 provided to the child, provided that during that 60 day period
22 there have been no delays caused by the child's parent or
23 guardian.

24 (k) Whenever the parents or guardian of a child of the type
25 described in Section 14-1.02 are not known, are unavailable, or
26 the child is a ward of the State, a person shall be assigned to
27 serve as surrogate parent for the child in matters relating to
28 the identification, evaluation, and educational placement of
29 the child and the provision of a free appropriate public
30 education to the child. Persons shall be assigned as surrogate
31 parents by the State Superintendent of Education. The State
32 Board of Education shall promulgate rules and regulations
33 establishing qualifications of those persons and their
34 responsibilities and the procedures to be followed in making
35 assignments of persons as surrogate parents. Surrogate parents
36 shall not be employees of the school district, an agency

1 created by joint agreement under Section 10-22.31, an agency
2 involved in the education or care of the student, or the State
3 Board of Education. Services of any person assigned as
4 surrogate parent shall terminate if the parent or guardian
5 becomes available unless otherwise requested by the parents or
6 guardian. The assignment of a person as surrogate parent at no
7 time supersedes, terminates, or suspends the parents' or
8 guardians' legal authority relative to the child. Any person
9 participating in good faith as surrogate parent on behalf of
10 the child before school officials or a hearing officer shall
11 have immunity from civil or criminal liability that otherwise
12 might result by reason of that participation, except in cases
13 of willful and wanton misconduct.

14 (l) At all stages of the hearing the hearing officer shall
15 require that interpreters be made available by the school
16 district for persons who are deaf or for persons whose normally
17 spoken language is other than English.

18 (m) If any provision of this Section or its application to
19 any person or circumstance is held invalid, the invalidity of
20 that provision or application does not affect other provisions
21 or applications of the Section that can be given effect without
22 the invalid application or provision, and to this end the
23 provisions of this Section are severable, unless otherwise
24 provided by this Section.

25 (Source: P.A. 89-652, eff. 8-14-96.)

26 Section 99. Effective date. This Act takes effect upon
27 becoming law.