



## 97TH GENERAL ASSEMBLY

### State of Illinois

#### 2011 and 2012

##### HB5076

Introduced 2/7/2012, by Rep. Robyn Gabel

#### SYNOPSIS AS INTRODUCED:

105 ILCS 5/14-6.01	from Ch. 122, par. 14-6.01
105 ILCS 5/14-8.02	from Ch. 122, par. 14-8.02
105 ILCS 5/14-8.02a	

Amends the Children with Disabilities Article of the School Code. Replaces provisions that specify when special education services shall be provided or the child must be placed in the appropriate program with provisions that require that special education and related services shall be provided in accordance with the student's IEP no later than 10 days after notice is provided to the parents pursuant to specified provisions of the Code of Federal Regulations and implementing rules adopted by the State Board of Education. Requires the State Board to adopt State complaint procedures that allow a parent, individual, organization, or advocate to file a signed, written complaint with the State Board alleging that a school district, cooperative service unit, or this State has violated the rights of one or more children with disabilities. Requires the school district or other public entity to submit a written response to the complaint within 10 days following receipt of the complaint. Contains provisions concerning documentation related to the complaint. Provides that State complaint procedures may be used to allege non-compliance by a school district or other public entity with a decision of a due process hearing officer. Makes changes concerning a student remaining in his or her present educational placement and continuing in his or her present eligibility status and special education services during the pendency of an administrative or judicial proceeding. Effective immediately.

LRB097 19068 NHT 64307 b

FISCAL 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 Sections  
5 14-6.01, 14-8.02, and 14-8.02a as follows:

6 (105 ILCS 5/14-6.01) (from Ch. 122, par. 14-6.01)

7 Sec. 14-6.01. Powers and duties of school boards. School  
8 boards of one or more school districts establishing and  
9 maintaining any of the educational facilities described in this  
10 Article shall, in connection therewith, exercise similar  
11 powers and duties as are prescribed by law for the  
12 establishment, maintenance and management of other recognized  
13 educational facilities. Such school boards shall include only  
14 eligible children in the program and shall comply with all the  
15 requirements of this Article and all rules and regulations  
16 established by the State Board of Education. Such school boards  
17 shall accept in part-time attendance children with  
18 disabilities of the types described in Sections 14-1.02 through  
19 14-1.07 who are enrolled in nonpublic schools. A request for  
20 part-time attendance must be submitted by a parent or guardian  
21 of the disabled child and may be made only to those public  
22 schools located in the district where the child attending the  
23 nonpublic school resides; however, nothing in this Section

1 shall be construed as prohibiting an agreement between the  
2 district where the child resides and another public school  
3 district to provide special educational services if such an  
4 arrangement is deemed more convenient and economical. Special  
5 education and related services must be provided in accordance  
6 with the student's IEP no later than 10 days after notice is  
7 provided to the parents pursuant to Section 300.503 of Title 34  
8 of the Code of Federal Regulations and implementing rules  
9 adopted by the State Board of Education. ~~Special educational~~  
10 ~~services shall be provided to such students as soon as possible~~  
11 ~~after the identification, evaluation and placement procedures~~  
12 ~~provided in Section 14-8.02, but no later than the beginning of~~  
13 ~~the next school semester following the completion of such~~  
14 ~~procedures.~~ Transportation for students in part time  
15 attendance shall be provided only if required in the child's  
16 individualized educational program on the basis of the child's  
17 disabling condition or as the special education program  
18 location may require.

19 A school board shall publish a public notice in its  
20 newsletter of general circulation or in the newsletter of  
21 another governmental entity of general circulation in the  
22 district or if neither is available in the district, then in a  
23 newspaper of general circulation in the district, the right of  
24 all children with disabilities to a free appropriate public  
25 education as provided under this Code. Such notice shall  
26 identify the location and phone number of the office or agent

1 of the school district to whom inquiries should be directed  
2 regarding the identification, assessment and placement of such  
3 children.

4 School boards shall immediately provide upon request by any  
5 person written materials and other information that indicates  
6 the specific policies, procedures, rules and regulations  
7 regarding the identification, evaluation or educational  
8 placement of children with disabilities under Section 14-8.02  
9 of the School Code. Such information shall include information  
10 regarding all rights and entitlements of such children under  
11 this Code, and of the opportunity to present complaints with  
12 respect to any matter relating to educational placement of the  
13 student, or the provision of a free appropriate public  
14 education and to have an impartial due process hearing on the  
15 complaint. The notice shall inform the parents or guardian in  
16 the parents' or guardian's native language, unless it is  
17 clearly not feasible to do so, of their rights and all  
18 procedures available pursuant to this Act and federal Public  
19 Law 94-142; it shall be the responsibility of the State  
20 Superintendent to develop uniform notices setting forth the  
21 procedures available under this Act and federal Public Law  
22 94-142, as amended, to be used by all school boards. The notice  
23 shall also inform the parents or guardian of the availability  
24 upon request of a list of free or low-cost legal and other  
25 relevant services available locally to assist parents or  
26 guardians in exercising rights or entitlements under this Code.

1 Any parent or guardian who is deaf, or does not normally  
2 communicate using spoken English, who participates in a meeting  
3 with a representative of a local educational agency for the  
4 purposes of developing an individualized educational program  
5 shall be entitled to the services of an interpreter.

6 No disabled student may be denied promotion, graduation or  
7 a general diploma on the basis of failing a minimal competency  
8 test when such failure can be directly related to the disabling  
9 condition of the student. For the purpose of this Act, "minimal  
10 competency testing" is defined as tests which are constructed  
11 to measure the acquisition of skills to or beyond a certain  
12 defined standard.

13 Effective July 1, 1966, high school districts are  
14 financially responsible for the education of pupils with  
15 disabilities who are residents in their districts when such  
16 pupils have reached age 15 but may admit children with  
17 disabilities into special educational facilities without  
18 regard to graduation from the eighth grade after such pupils  
19 have reached the age of 14 1/2 years. Upon a disabled pupil's  
20 attaining the age of 14 1/2 years, it shall be the duty of the  
21 elementary school district in which the pupil resides to notify  
22 the high school district in which the pupil resides of the  
23 pupil's current eligibility for special education services, of  
24 the pupil's current program, and of all evaluation data upon  
25 which the current program is based. After an examination of  
26 that information the high school district may accept the

1 current placement and all subsequent timelines shall be  
2 governed by the current individualized educational program; or  
3 the high school district may elect to conduct its own  
4 evaluation and multidisciplinary staff conference and  
5 formulate its own individualized educational program, in which  
6 case the procedures and timelines contained in Section 14-8.02  
7 shall apply.

8 (Source: P.A. 89-397, eff. 8-20-95.)

9 (105 ILCS 5/14-8.02) (from Ch. 122, par. 14-8.02)

10 Sec. 14-8.02. Identification, Evaluation and Placement of  
11 Children.

12 (a) The State Board of Education shall make rules under  
13 which local school boards shall determine the eligibility of  
14 children to receive special education. Such rules shall ensure  
15 that a free appropriate public education be available to all  
16 children with disabilities as defined in Section 14-1.02. The  
17 State Board of Education shall require local school districts  
18 to administer non-discriminatory procedures or tests to  
19 limited English proficiency students coming from homes in which  
20 a language other than English is used to determine their  
21 eligibility to receive special education. The placement of low  
22 English proficiency students in special education programs and  
23 facilities shall be made in accordance with the test results  
24 reflecting the student's linguistic, cultural and special  
25 education needs. For purposes of determining the eligibility of

1 children the State Board of Education shall include in the  
2 rules definitions of "case study", "staff conference",  
3 "individualized educational program", and "qualified  
4 specialist" appropriate to each category of children with  
5 disabilities as defined in this Article. For purposes of  
6 determining the eligibility of children from homes in which a  
7 language other than English is used, the State Board of  
8 Education shall include in the rules definitions for "qualified  
9 bilingual specialists" and "linguistically and culturally  
10 appropriate individualized educational programs". For purposes  
11 of this Section, as well as Sections 14-8.02a, 14-8.02b, and  
12 14-8.02c of this Code, "parent" means a parent as defined in  
13 the federal Individuals with Disabilities Education Act (20  
14 U.S.C. 1401(23)).

15 (b) No child shall be eligible for special education  
16 facilities except with a carefully completed case study fully  
17 reviewed by professional personnel in a multidisciplinary  
18 staff conference and only upon the recommendation of qualified  
19 specialists or a qualified bilingual specialist, if available.  
20 At the conclusion of the multidisciplinary staff conference,  
21 the parent of the child shall be given a copy of the  
22 multidisciplinary conference summary report and  
23 recommendations, which includes options considered, and be  
24 informed of their right to obtain an independent educational  
25 evaluation if they disagree with the evaluation findings  
26 conducted or obtained by the school district. If the school

1 district's evaluation is shown to be inappropriate, the school  
2 district shall reimburse the parent for the cost of the  
3 independent evaluation. The State Board of Education shall,  
4 with advice from the State Advisory Council on Education of  
5 Children with Disabilities on the inclusion of specific  
6 independent educational evaluators, prepare a list of  
7 suggested independent educational evaluators. The State Board  
8 of Education shall include on the list clinical psychologists  
9 licensed pursuant to the Clinical Psychologist Licensing Act.  
10 Such psychologists shall not be paid fees in excess of the  
11 amount that would be received by a school psychologist for  
12 performing the same services. The State Board of Education  
13 shall supply school districts with such list and make the list  
14 available to parents at their request. School districts shall  
15 make the list available to parents at the time they are  
16 informed of their right to obtain an independent educational  
17 evaluation. However, the school district may initiate an  
18 impartial due process hearing under this Section within 5 days  
19 of any written parent request for an independent educational  
20 evaluation to show that its evaluation is appropriate. If the  
21 final decision is that the evaluation is appropriate, the  
22 parent still has a right to an independent educational  
23 evaluation, but not at public expense. An independent  
24 educational evaluation at public expense must be completed  
25 within 30 days of a parent written request unless the school  
26 district initiates an impartial due process hearing or the



1 parent or school district offers reasonable grounds to show  
2 that such 30 day time period should be extended. If the due  
3 process hearing decision indicates that the parent is entitled  
4 to an independent educational evaluation, it must be completed  
5 within 30 days of the decision unless the parent or the school  
6 district offers reasonable grounds to show that such 30 day  
7 period should be extended. If a parent disagrees with the  
8 summary report or recommendations of the multidisciplinary  
9 conference or the findings of any educational evaluation which  
10 results therefrom, the school district shall not proceed with a  
11 placement based upon such evaluation and the child shall remain  
12 in his or her regular classroom setting. No child shall be  
13 eligible for admission to a special class for the educable  
14 mentally disabled or for the trainable mentally disabled except  
15 with a psychological evaluation and recommendation by a school  
16 psychologist. Consent shall be obtained from the parent of a  
17 child before any evaluation is conducted. If consent is not  
18 given by the parent or if the parent disagrees with the  
19 findings of the evaluation, then the school district may  
20 initiate an impartial due process hearing under this Section.  
21 The school district may evaluate the child if that is the  
22 decision resulting from the impartial due process hearing and  
23 the decision is not appealed or if the decision is affirmed on  
24 appeal. The determination of eligibility shall be made and the  
25 IEP meeting shall be completed within 60 school days from the  
26 date of written parental consent. In those instances when

1 written parental consent is obtained with fewer than 60 pupil  
2 attendance days left in the school year, the eligibility  
3 determination shall be made and the IEP meeting shall be  
4 completed prior to the first day of the following school year.  
5 Special education and related services must be provided in  
6 accordance with the student's IEP no later than 10 days after  
7 notice is provided to the parents pursuant to Section 300.503  
8 of Title 34 of the Code of Federal Regulations and implementing  
9 rules adopted by the State Board of Education. ~~After a child~~  
10 ~~has been determined to be eligible for a special education~~  
11 ~~class, such child must be placed in the appropriate program~~  
12 ~~pursuant to the individualized educational program by or no~~  
13 ~~later than the beginning of the next school semester.~~ The  
14 appropriate program pursuant to the individualized educational  
15 program of students whose native tongue is a language other  
16 than English shall reflect the special education, cultural and  
17 linguistic needs. No later than September 1, 1993, the State  
18 Board of Education shall establish standards for the  
19 development, implementation and monitoring of appropriate  
20 bilingual special individualized educational programs. The  
21 State Board of Education shall further incorporate appropriate  
22 monitoring procedures to verify implementation of these  
23 standards. The district shall indicate to the parent and the  
24 State Board of Education the nature of the services the child  
25 will receive for the regular school term while waiting  
26 placement in the appropriate special education class.

1           If the child is deaf, hard of hearing, blind, or visually  
2 impaired and he or she might be eligible to receive services  
3 from the Illinois School for the Deaf or the Illinois School  
4 for the Visually Impaired, the school district shall notify the  
5 parents, in writing, of the existence of these schools and the  
6 services they provide and shall make a reasonable effort to  
7 inform the parents of the existence of other, local schools  
8 that provide similar services and the services that these other  
9 schools provide. This notification shall include without  
10 limitation information on school services, school admissions  
11 criteria, and school contact information.

12           In the development of the individualized education program  
13 for a student who has a disability on the autism spectrum  
14 (which includes autistic disorder, Asperger's disorder,  
15 pervasive developmental disorder not otherwise specified,  
16 childhood disintegrative disorder, and Rett Syndrome, as  
17 defined in the Diagnostic and Statistical Manual of Mental  
18 Disorders, fourth edition (DSM-IV, 2000)), the IEP team shall  
19 consider all of the following factors:

20           (1) The verbal and nonverbal communication needs of the  
21 child.

22           (2) The need to develop social interaction skills and  
23 proficiencies.

24           (3) The needs resulting from the child's unusual  
25 responses to sensory experiences.

26           (4) The needs resulting from resistance to

1 environmental change or change in daily routines.

2 (5) The needs resulting from engagement in repetitive  
3 activities and stereotyped movements.

4 (6) The need for any positive behavioral  
5 interventions, strategies, and supports to address any  
6 behavioral difficulties resulting from autism spectrum  
7 disorder.

8 (7) Other needs resulting from the child's disability  
9 that impact progress in the general curriculum, including  
10 social and emotional development.

11 Public Act 95-257 does not create any new entitlement to a  
12 service, program, or benefit, but must not affect any  
13 entitlement to a service, program, or benefit created by any  
14 other law.

15 If the student may be eligible to participate in the  
16 Home-Based Support Services Program for Mentally Disabled  
17 Adults authorized under the Developmental Disability and  
18 Mental Disability Services Act upon becoming an adult, the  
19 student's individualized education program shall include plans  
20 for (i) determining the student's eligibility for those  
21 home-based services, (ii) enrolling the student in the program  
22 of home-based services, and (iii) developing a plan for the  
23 student's most effective use of the home-based services after  
24 the student becomes an adult and no longer receives special  
25 educational services under this Article. The plans developed  
26 under this paragraph shall include specific actions to be taken

1 by specified individuals, agencies, or officials.

2 (c) In the development of the individualized education  
3 program for a student who is functionally blind, it shall be  
4 presumed that proficiency in Braille reading and writing is  
5 essential for the student's satisfactory educational progress.  
6 For purposes of this subsection, the State Board of Education  
7 shall determine the criteria for a student to be classified as  
8 functionally blind. Students who are not currently identified  
9 as functionally blind who are also entitled to Braille  
10 instruction include: (i) those whose vision loss is so severe  
11 that they are unable to read and write at a level comparable to  
12 their peers solely through the use of vision, and (ii) those  
13 who show evidence of progressive vision loss that may result in  
14 functional blindness. Each student who is functionally blind  
15 shall be entitled to Braille reading and writing instruction  
16 that is sufficient to enable the student to communicate with  
17 the same level of proficiency as other students of comparable  
18 ability. Instruction should be provided to the extent that the  
19 student is physically and cognitively able to use Braille.  
20 Braille instruction may be used in combination with other  
21 special education services appropriate to the student's  
22 educational needs. The assessment of each student who is  
23 functionally blind for the purpose of developing the student's  
24 individualized education program shall include documentation  
25 of the student's strengths and weaknesses in Braille skills.  
26 Each person assisting in the development of the individualized

1 education program for a student who is functionally blind shall  
2 receive information describing the benefits of Braille  
3 instruction. The individualized education program for each  
4 student who is functionally blind shall specify the appropriate  
5 learning medium or media based on the assessment report.

6 (d) To the maximum extent appropriate, the placement shall  
7 provide the child with the opportunity to be educated with  
8 children who are not disabled; provided that children with  
9 disabilities who are recommended to be placed into regular  
10 education classrooms are provided with supplementary services  
11 to assist the children with disabilities to benefit from the  
12 regular classroom instruction and are included on the teacher's  
13 regular education class register. Subject to the limitation of  
14 the preceding sentence, placement in special classes, separate  
15 schools or other removal of the disabled child from the regular  
16 educational environment shall occur only when the nature of the  
17 severity of the disability is such that education in the  
18 regular classes with the use of supplementary aids and services  
19 cannot be achieved satisfactorily. The placement of limited  
20 English proficiency students with disabilities shall be in  
21 non-restrictive environments which provide for integration  
22 with non-disabled peers in bilingual classrooms. Annually,  
23 each January, school districts shall report data on students  
24 from non-English speaking backgrounds receiving special  
25 education and related services in public and private facilities  
26 as prescribed in Section 2-3.30. If there is a disagreement

1 between parties involved regarding the special education  
2 placement of any child, either in-state or out-of-state, the  
3 placement is subject to impartial due process procedures  
4 described in Article 10 of the Rules and Regulations to Govern  
5 the Administration and Operation of Special Education.

6 (e) No child who comes from a home in which a language  
7 other than English is the principal language used may be  
8 assigned to any class or program under this Article until he  
9 has been given, in the principal language used by the child and  
10 used in his home, tests reasonably related to his cultural  
11 environment. All testing and evaluation materials and  
12 procedures utilized for evaluation and placement shall not be  
13 linguistically, racially or culturally discriminatory.

14 (f) Nothing in this Article shall be construed to require  
15 any child to undergo any physical examination or medical  
16 treatment whose parents object thereto on the grounds that such  
17 examination or treatment conflicts with his religious beliefs.

18 (g) School boards or their designee shall provide to the  
19 parents of a child prior written notice of any decision (a)  
20 proposing to initiate or change, or (b) refusing to initiate or  
21 change, the identification, evaluation, or educational  
22 placement of the child or the provision of a free appropriate  
23 public education to their child, and the reasons therefor. Such  
24 written notification shall also inform the parent of the  
25 opportunity to present complaints with respect to any matter  
26 relating to the educational placement of the student, or the

1 provision of a free appropriate public education and to have an  
2 impartial due process hearing on the complaint. The notice  
3 shall inform the parents in the parents' native language,  
4 unless it is clearly not feasible to do so, of their rights and  
5 all procedures available pursuant to this Act and the federal  
6 Individuals with Disabilities Education Improvement Act of  
7 2004 (Public Law 108-446); it shall be the responsibility of  
8 the State Superintendent to develop uniform notices setting  
9 forth the procedures available under this Act and the federal  
10 Individuals with Disabilities Education Improvement Act of  
11 2004 (Public Law 108-446) to be used by all school boards. The  
12 notice shall also inform the parents of the availability upon  
13 request of a list of free or low-cost legal and other relevant  
14 services available locally to assist parents in initiating an  
15 impartial due process hearing. Any parent who is deaf, or does  
16 not normally communicate using spoken English, who  
17 participates in a meeting with a representative of a local  
18 educational agency for the purposes of developing an  
19 individualized educational program shall be entitled to the  
20 services of an interpreter.

21 (g-5) For purposes of this subsection (g-5), "qualified  
22 professional" means an individual who holds credentials to  
23 evaluate the child in the domain or domains for which an  
24 evaluation is sought or an intern working under the direct  
25 supervision of a qualified professional, including a master's  
26 or doctoral degree candidate.



1 To ensure that a parent can participate fully and  
2 effectively with school personnel in the development of  
3 appropriate educational and related services for his or her  
4 child, the parent, an independent educational evaluator, or a  
5 qualified professional retained by or on behalf of a parent or  
6 child must be afforded reasonable access to educational  
7 facilities, personnel, classrooms, and buildings and to the  
8 child as provided in this subsection (g-5). The requirements of  
9 this subsection (g-5) apply to any public school facility,  
10 building, or program and to any facility, building, or program  
11 supported in whole or in part by public funds. Prior to  
12 visiting a school, school building, or school facility, the  
13 parent, independent educational evaluator, or qualified  
14 professional may be required by the school district to inform  
15 the building principal or supervisor in writing of the proposed  
16 visit, the purpose of the visit, and the approximate duration  
17 of the visit. The visitor and the school district shall arrange  
18 the visit or visits at times that are mutually agreeable.  
19 Visitors shall comply with school safety, security, and  
20 visitation policies at all times. School district visitation  
21 policies must not conflict with this subsection (g-5). Visitors  
22 shall be required to comply with the requirements of applicable  
23 privacy laws, including those laws protecting the  
24 confidentiality of education records such as the federal Family  
25 Educational Rights and Privacy Act and the Illinois School  
26 Student Records Act. The visitor shall not disrupt the

1 educational process.

2 (1) A parent must be afforded reasonable access of  
3 sufficient duration and scope for the purpose of observing  
4 his or her child in the child's current educational  
5 placement, services, or program or for the purpose of  
6 visiting an educational placement or program proposed for  
7 the child.

8 (2) An independent educational evaluator or a  
9 qualified professional retained by or on behalf of a parent  
10 or child must be afforded reasonable access of sufficient  
11 duration and scope for the purpose of conducting an  
12 evaluation of the child, the child's performance, the  
13 child's current educational program, placement, services,  
14 or environment, or any educational program, placement,  
15 services, or environment proposed for the child, including  
16 interviews of educational personnel, child observations,  
17 assessments, tests or assessments of the child's  
18 educational program, services, or placement or of any  
19 proposed educational program, services, or placement. If  
20 one or more interviews of school personnel are part of the  
21 evaluation, the interviews must be conducted at a mutually  
22 agreed upon time, date, and place that do not interfere  
23 with the school employee's school duties. The school  
24 district may limit interviews to personnel having  
25 information relevant to the child's current educational  
26 services, program, or placement or to a proposed

1 educational service, program, or placement.

2 (h) (Blank).

3 (i) (Blank).

4 (j) (Blank).

5 (k) (Blank).

6 (l) (Blank).

7 (m) (Blank).

8 (n) (Blank).

9 (o) (Blank).

10 (Source: P.A. 95-257, eff. 1-1-08; 95-876, eff. 8-21-08;  
11 96-657, eff. 8-25-09.)

12 (105 ILCS 5/14-8.02a)

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

15 (a) This Section shall apply to all impartial due process  
16 hearings requested on or after July 1, 2005. Impartial due  
17 process hearings requested before July 1, 2005 shall be  
18 governed by the rules described in Public Act 89-652.

19 (a-5) For purposes of this Section and Section 14-8.02b of  
20 this Code, days shall be computed in accordance with Section  
21 1.11 of the Statute on Statutes.

22 (b) The State Board of Education shall establish an  
23 impartial due process hearing system in accordance with this  
24 Section and may, with the advice and approval of the Advisory  
25 Council on Education of Children with Disabilities, promulgate

1 rules and regulations consistent with this Section to establish  
2 the rules and procedures for due process hearings.

3 (c) (Blank).

4 (d) (Blank).

5 (e) (Blank).

6 (f) An impartial due process hearing shall be convened upon  
7 the request of a parent, student if at least 18 years of age or  
8 emancipated, or a school district. A school district shall make  
9 a request in writing to the State Board of Education and  
10 promptly mail a copy of the request to the parents or student  
11 (if at least 18 years of age or emancipated) at the parent's or  
12 student's last known address. A request made by the parent or  
13 student shall be made in writing to the superintendent of the  
14 school district where the student resides. The superintendent  
15 shall forward the request to the State Board of Education  
16 within 5 days after receipt of the request. The request shall  
17 be filed no more than 2 years following the date the person or  
18 school district knew or should have known of the event or  
19 events forming the basis for the request. The request shall, at  
20 a minimum, contain all of the following:

21 (1) The name of the student, the address of the  
22 student's residence, and the name of the school the student  
23 is attending.

24 (2) In the case of homeless children (as defined under  
25 the federal McKinney-Vento Homeless Assistance Act (42  
26 U.S.C. 11434a(2)), available contact information for the

1 student and the name of the school the student is  
2 attending.

3 (3) A description of the nature of the problem relating  
4 to the actual or proposed placement, identification,  
5 services, or evaluation of the student, including facts  
6 relating to the problem.

7 (4) A proposed resolution of the problem to the extent  
8 known and available to the party at the time.

9 (f-5) Within 3 days after receipt of the hearing request,  
10 the State Board of Education shall appoint a due process  
11 hearing officer using a rotating appointment system and shall  
12 notify the hearing officer of his or her appointment.

13 For a school district other than a school district located  
14 in a municipality having a population exceeding 500,000, a  
15 hearing officer who is a current resident of the school  
16 district, special education cooperative, or other public  
17 entity involved in the hearing shall recuse himself or herself.  
18 A hearing officer who is a former employee of the school  
19 district, special education cooperative, or other public  
20 entity involved in the hearing shall immediately disclose the  
21 former employment to the parties and shall recuse himself or  
22 herself, unless the parties otherwise agree in writing. A  
23 hearing officer having a personal or professional interest that  
24 may conflict with his or her objectivity in the hearing shall  
25 disclose the conflict to the parties and shall recuse himself  
26 or herself unless the parties otherwise agree in writing. For

1 purposes of this subsection an assigned hearing officer shall  
2 be considered to have a conflict of interest if, at any time  
3 prior to the issuance of his or her written decision, he or she  
4 knows or should know that he or she may receive remuneration  
5 from a party to the hearing within 3 years following the  
6 conclusion of the due process hearing.

7 A 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 3 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 Any party may raise facts that constitute a conflict of  
22 interest for the hearing officer at any time before or during  
23 the hearing and may move for recusal.

24 (g) Impartial due process hearings shall be conducted  
25 pursuant to this Section and any rules and regulations  
26 promulgated by the State Board of Education consistent with

1 this Section and other governing laws and regulations. The  
2 hearing shall address only those issues properly raised in the  
3 hearing request under subsection (f) of this Section or, if  
4 applicable, in the amended hearing request under subsection  
5 (g-15) of this Section. The hearing shall be closed to the  
6 public unless the parents request that the hearing be open to  
7 the public. The parents involved in the hearing shall have the  
8 right to have the student who is the subject of the hearing  
9 present. The hearing shall be held at a time and place which  
10 are reasonably convenient to the parties involved. Upon the  
11 request of a party, the hearing officer shall hold the hearing  
12 at a location neutral to the parties if the hearing officer  
13 determines that there is no cost for securing the use of the  
14 neutral location. Once appointed, the impartial due process  
15 hearing officer shall not communicate with the State Board of  
16 Education or its employees concerning the hearing, except that,  
17 where circumstances require, communications for administrative  
18 purposes that do not deal with substantive or procedural  
19 matters or issues on the merits are authorized, provided that  
20 the hearing officer promptly notifies all parties of the  
21 substance of the communication as a matter of record.

22 (g-5) Unless the school district has previously provided  
23 prior written notice to the parent or student (if at least 18  
24 years of age or emancipated) regarding the subject matter of  
25 the hearing request, the school district shall, within 10 days  
26 after receiving a hearing request initiated by a parent or

1 student (if at least 18 years of age or emancipated), provide a  
2 written response to the request that shall include all of the  
3 following:

4 (1) An explanation of why the school district proposed  
5 or refused to take the action or actions described in the  
6 hearing request.

7 (2) A description of other options the IEP team  
8 considered and the reasons why those options were rejected.

9 (3) A description of each evaluation procedure,  
10 assessment, record, report, or other evidence the school  
11 district used as the basis for the proposed or refused  
12 action or actions.

13 (4) A description of the factors that are or were  
14 relevant to the school district's proposed or refused  
15 action or actions.

16 (g-10) When the hearing request has been initiated by a  
17 school district, within 10 days after receiving the request,  
18 the parent or student (if at least 18 years of age or  
19 emancipated) shall provide the school district with a response  
20 that specifically addresses the issues raised in the school  
21 district's hearing request. The parent's or student's response  
22 shall be provided in writing, unless he or she is illiterate or  
23 has a disability that prevents him or her from providing a  
24 written response. The parent's or student's response may be  
25 provided in his or her native language, if other than English.  
26 In the event that illiteracy or another disabling condition



1 prevents the parent or student from providing a written  
2 response, the school district shall assist the parent or  
3 student in providing the written response.

4 (g-15) Within 15 days after receiving notice of the hearing  
5 request, the non-requesting party may challenge the  
6 sufficiency of the request by submitting its challenge in  
7 writing to the hearing officer. Within 5 days after receiving  
8 the challenge to the sufficiency of the request, the hearing  
9 officer shall issue a determination of the challenge in writing  
10 to the parties. In the event that the hearing officer upholds  
11 the challenge, the party who requested the hearing may, with  
12 the consent of the non-requesting party or hearing officer,  
13 file an amended request. Amendments are permissible for the  
14 purpose of raising issues beyond those in the initial hearing  
15 request. In addition, the party who requested the hearing may  
16 amend the request once as a matter of right by filing the  
17 amended request within 5 days after filing the initial request.  
18 An amended request, other than an amended request as a matter  
19 of right, shall be filed by the date determined by the hearing  
20 officer, but in no event any later than 5 days prior to the  
21 date of the hearing. If an amended request, other than an  
22 amended request as a matter of right, raises issues that were  
23 not part of the initial request, the applicable timeline for a  
24 hearing, including the timeline under subsection (g-20) of this  
25 Section, shall recommence.

26 (g-20) Within 15 days after receiving a request for a

1 hearing from a parent or student (if at least 18 years of age  
2 or emancipated) or, in the event that the school district  
3 requests a hearing, within 15 days after initiating the  
4 request, the school district shall convene a resolution meeting  
5 with the parent and relevant members of the IEP team who have  
6 specific knowledge of the facts contained in the request for  
7 the purpose of resolving the problem that resulted in the  
8 request. The resolution meeting shall include a representative  
9 of the school district who has decision-making authority on  
10 behalf of the school district. Unless the parent is accompanied  
11 by an attorney at the resolution meeting, the school district  
12 may not include an attorney representing the school district.

13 The resolution meeting may not be waived unless agreed to  
14 in writing by the school district and the parent or student (if  
15 at least 18 years of age or emancipated) or the parent or  
16 student (if at least 18 years of age or emancipated) and the  
17 school district agree in writing to utilize mediation in place  
18 of the resolution meeting. If either party fails to cooperate  
19 in the scheduling or convening of the resolution meeting, the  
20 hearing officer may order an extension of the timeline for  
21 completion of the resolution meeting or, upon the motion of a  
22 party and at least 7 days after ordering the non-cooperating  
23 party to cooperate, order the dismissal of the hearing request  
24 or the granting of all relief set forth in the request, as  
25 appropriate.

26 In the event that the school district and the parent or

1 student (if at least 18 years of age or emancipated) agree to a  
2 resolution of the problem that resulted in the hearing request,  
3 the terms of the resolution shall be committed to writing and  
4 signed by the parent or student (if at least 18 years of age or  
5 emancipated) and the representative of the school district with  
6 decision-making authority. The agreement shall be legally  
7 binding and shall be enforceable in any State or federal court  
8 of competent jurisdiction. In the event that the parties  
9 utilize the resolution meeting process, the process shall  
10 continue until no later than the 30th day following the receipt  
11 of the hearing request by the non-requesting party (or as  
12 properly extended by order of the hearing officer) to resolve  
13 the issues underlying the request, at which time the timeline  
14 for completion of the impartial due process hearing shall  
15 commence. The State Board of Education may, by rule, establish  
16 additional procedures for the conduct of resolution meetings.

17 (g-25) If mutually agreed to in writing, the parties to a  
18 hearing request may request State-sponsored mediation as a  
19 substitute for the resolution process described in subsection  
20 (g-20) of this Section or may utilize mediation at the close of  
21 the resolution process if all issues underlying the hearing  
22 request have not been resolved through the resolution process.

23 (g-30) If mutually agreed to in writing, the parties to a  
24 hearing request may waive the resolution process described in  
25 subsection (g-20) of this Section. Upon signing a written  
26 agreement to waive the resolution process, the parties shall be

1 required to forward the written waiver to the hearing officer  
2 appointed to the case within 2 business days following the  
3 signing of the waiver by the parties. The timeline for the  
4 impartial due process hearing shall commence on the date of the  
5 signing of the waiver by the parties.

6 (g-35) The timeline for completing the impartial due  
7 process hearing, as set forth in subsection (h) of this  
8 Section, shall be initiated upon the occurrence of any one of  
9 the following events:

10 (1) The unsuccessful completion of the resolution  
11 process as described in subsection (g-20) of this Section.

12 (2) The mutual agreement of the parties to waive the  
13 resolution process as described in subsection (g-25) or  
14 (g-30) of this Section.

15 (g-40) The hearing officer shall convene a prehearing  
16 conference no later than 14 days before the scheduled date for  
17 the due process hearing for the general purpose of aiding in  
18 the fair, orderly, and expeditious conduct of the hearing. The  
19 hearing officer shall provide the parties with written notice  
20 of the prehearing conference at least 7 days in advance of the  
21 conference. The written notice shall require the parties to  
22 notify the hearing officer by a date certain whether they  
23 intend to participate in the prehearing conference. The hearing  
24 officer may conduct the prehearing conference in person or by  
25 telephone. Each party shall at the prehearing conference (1)  
26 disclose whether it is represented by legal counsel or intends

1 to retain legal counsel; (2) clarify matters it believes to be  
2 in dispute in the case and the specific relief being sought;  
3 (3) disclose whether there are any additional evaluations for  
4 the student that it intends to introduce into the hearing  
5 record that have not been previously disclosed to the other  
6 parties; (4) disclose a list of all documents it intends to  
7 introduce into the hearing record, including the date and a  
8 brief description of each document; and (5) disclose the names  
9 of all witnesses it intends to call to testify at the hearing.  
10 The hearing officer shall specify the order of presentation to  
11 be used at the hearing. If the prehearing conference is held by  
12 telephone, the parties shall transmit the information required  
13 in this paragraph in such a manner that it is available to all  
14 parties at the time of the prehearing conference. The State  
15 Board of Education may, by rule, establish additional  
16 procedures for the conduct of prehearing conferences.

17 (g-45) The impartial due process hearing officer shall not  
18 initiate or participate in any ex parte communications with the  
19 parties, except to arrange the date, time, and location of the  
20 prehearing conference, due process hearing, or other status  
21 conferences convened at the discretion of the hearing officer  
22 and to receive confirmation of whether a party intends to  
23 participate in the prehearing conference.

24 (g-50) The parties shall disclose and provide to each other  
25 any evidence which they intend to submit into the hearing  
26 record no later than 5 days before the hearing. Any party to a

1 hearing has the right to prohibit the introduction of any  
2 evidence at the hearing that has not been disclosed to that  
3 party at least 5 days before the hearing. The party requesting  
4 a hearing shall not be permitted at the hearing to raise issues  
5 that were not raised in the party's initial or amended request,  
6 unless otherwise permitted in this Section.

7 (g-55) All reasonable efforts must be made by the parties  
8 to present their respective cases at the hearing within a  
9 cumulative period of 7 days. When scheduling hearing dates, the  
10 hearing officer shall schedule the final day of the hearing no  
11 more than 30 calendar days after the first day of the hearing  
12 unless good cause is shown. This subsection (g-55) shall not be  
13 applied in a manner that (i) denies any party to the hearing a  
14 fair and reasonable allocation of time and opportunity to  
15 present its case in its entirety or (ii) deprives any party to  
16 the hearing of the safeguards accorded under the federal  
17 Individuals with Disabilities Education Improvement Act of  
18 2004 (Public Law 108-446), regulations promulgated under the  
19 Individuals with Disabilities Education Improvement Act of  
20 2004, or any other applicable law. The school district shall  
21 present evidence that the special education needs of the child  
22 have been appropriately identified and that the special  
23 education program and related services proposed to meet the  
24 needs of the child are adequate, appropriate, and available.  
25 Any party to the hearing shall have the right to (1) be  
26 represented by counsel and be accompanied and advised by

1 individuals with special knowledge or training with respect to  
2 the problems of children with disabilities, at the party's own  
3 expense; (2) present evidence and confront and cross-examine  
4 witnesses; (3) move for the exclusion of witnesses from the  
5 hearing until they are called to testify, provided, however,  
6 that this provision may not be invoked to exclude the  
7 individual designated by a party to assist that party or its  
8 representative in the presentation of the case; (4) obtain a  
9 written or electronic verbatim record of the proceedings within  
10 30 days of receipt of a written request from the parents by the  
11 school district; and (5) obtain a written decision, including  
12 findings of fact and conclusions of law, within 10 days after  
13 the conclusion of the hearing. If at issue, the school district  
14 shall present evidence that it has properly identified and  
15 evaluated the nature and severity of the student's suspected or  
16 identified disability and that, if the student has been or  
17 should have been determined eligible for special education and  
18 related services, that it is providing or has offered a free  
19 appropriate public education to the student in the least  
20 restrictive environment, consistent with procedural safeguards  
21 and in accordance with an individualized educational program.  
22 At any time prior to the conclusion of the hearing, the  
23 impartial due process hearing officer shall have the authority  
24 to require additional information and order independent  
25 evaluations for the student at the expense of the school  
26 district. The State Board of Education and the school district

1 shall share equally the costs of providing a written or  
2 electronic verbatim record of the proceedings. Any party may  
3 request that the due process hearing officer issue a subpoena  
4 to compel the testimony of witnesses or the production of  
5 documents relevant to the resolution of the hearing. Whenever a  
6 person refuses to comply with any subpoena issued under this  
7 Section, the circuit court of the county in which that hearing  
8 is pending, on application of the impartial hearing officer or  
9 the party requesting the issuance of the subpoena, may compel  
10 compliance through the contempt powers of the court in the same  
11 manner as if the requirements of a subpoena issued by the court  
12 had been disobeyed.

13 (h) The impartial hearing officer shall issue a written  
14 decision, including findings of fact and conclusions of law,  
15 within 10 days after the conclusion of the hearing and send by  
16 certified mail a copy of the decision to the parents or student  
17 (if the student requests the hearing), the school district, the  
18 director of special education, legal representatives of the  
19 parties, and the State Board of Education. Unless the hearing  
20 officer has granted specific extensions of time at the request  
21 of a party, a final decision, including the clarification of a  
22 decision requested under this subsection, shall be reached and  
23 mailed to the parties named above not later than 45 days after  
24 the initiation of the timeline for conducting the hearing, as  
25 described in subsection (g-35) of this Section. The decision  
26 shall specify the educational and related services that shall



1 be provided to the student in accordance with the student's  
2 needs and the timeline for which the school district shall  
3 submit evidence to the State Board of Education to demonstrate  
4 compliance with the hearing officer's decision in the event  
5 that the decision orders the school district to undertake  
6 corrective action. 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. The hearing

1 officer's decision shall be binding upon the school district  
2 and the parents unless a civil action is commenced.

3 (h-5) The State Board of Education shall adopt State  
4 complaint procedures, consistent with Sections 300.151,  
5 300.152, and 300.153 of Title 34 of the Code of Federal  
6 Regulations, that allow a parent, individual, organization, or  
7 advocate to file a signed, written complaint with the State  
8 Board of Education alleging that a school district, cooperative  
9 service unit, or this State has violated the rights of one or  
10 more children with disabilities. The State Board of Education,  
11 by rule, shall establish State complaint procedures consistent  
12 with this Section. The school district or other public entity  
13 shall be required to submit a written response to the complaint  
14 within 10 days following receipt of the complaint. A copy of  
15 the response and all other documentation submitted by the  
16 respondent to the State Board of Education during the course of  
17 the State complaint process must be simultaneously sent by the  
18 respondent to the complainant or to the attorney for the  
19 complainant if the complaint was filed by an attorney  
20 representing a complainant. If the complaint was filed by an  
21 individual other than a parent of a child who is the subject of  
22 the complaint (or the child if the child has reached majority  
23 or is emancipated and has assumed responsibility for his or her  
24 own educational decisions) and the complaint is about a  
25 specific identifiable child or children, then appropriate  
26 written signed releases must be obtained prior to the release

1 of any documentation or information to the complainant or the  
2 attorney representing the complainant. State complaint  
3 procedures may be used to allege non-compliance by a school  
4 district or other public entity with a decision of a due  
5 process hearing officer.

6 (i) Any party to an impartial due process hearing aggrieved  
7 by the final written decision of the impartial due process  
8 hearing officer shall have the right to commence a civil action  
9 with respect to the issues presented in the impartial due  
10 process hearing. That civil action shall be brought in any  
11 court of competent jurisdiction within 120 days after a copy of  
12 the decision of the impartial due process hearing officer is  
13 mailed to the party as provided in subsection (h). The civil  
14 action authorized by this subsection shall not be exclusive of  
15 any rights or causes of action otherwise available. The  
16 commencement of a civil action under this subsection shall  
17 operate as a supersedeas. In any action brought under this  
18 subsection the Court shall receive the records of the impartial  
19 due process hearing, shall hear additional evidence at the  
20 request of a party, and, basing its decision on the  
21 preponderance of the evidence, shall grant such relief as the  
22 court determines is appropriate. In any instance where a school  
23 district willfully disregards applicable regulations or  
24 statutes regarding a child covered by this Article, and which  
25 disregard has been detrimental to the child, the school  
26 district shall be liable for any reasonable attorney's fees

1 incurred by the parent in connection with proceedings under  
2 this Section.

3 (j) During the pendency of any administrative or judicial  
4 proceeding conducted pursuant to this Section, including  
5 mediation (if the school district or other public entity agrees  
6 to participate in mediation) or the filing of a State complaint  
7 with the State Board of Education, unless the school district  
8 and the parents or student (if at least 18 years of age or  
9 emancipated) otherwise agree, the student shall remain in his  
10 or her present educational placement and continue in his or her  
11 present eligibility status and special education and related  
12 services, if any. If mediation or a State complaint fails to  
13 resolve the dispute between the parties, the parent (or student  
14 if 18 years of age or older or emancipated) shall have 10 days  
15 after the mediation concludes or after the written  
16 determination on the State complaint is issued by the State  
17 Board of Education to file a request for a due process hearing  
18 in order to continue to invoke the "stay-put" provisions of  
19 this subsection (j). ~~If the hearing officer orders a change in~~  
20 ~~the eligibility status, educational placement, or special~~  
21 ~~education and related services of the student, that change~~  
22 ~~shall not be implemented until 30 days have elapsed following~~  
23 ~~the date the hearing officer's decision is mailed to the~~  
24 ~~parties in order to allow any party aggrieved by the decision~~  
25 ~~to commence a civil action to stay implementation of the~~  
26 ~~decision. If applying for initial admission to the school~~

1 ~~district, the student shall, with the consent of the parents~~  
2 ~~(if the student is not at least 18 years of age or~~  
3 ~~emancipated), be placed in the school district program until~~  
4 ~~all such proceedings have been completed.~~ The costs for any  
5 special education and related services or placement incurred  
6 following 60 school days after the initial request for  
7 evaluation shall be borne by the school district if the  
8 services or placement is in accordance with the final  
9 determination as to the special education and related services  
10 or placement that must be provided to the child, provided that  
11 during that 60 day period there have been no delays caused by  
12 the child's parent.

13 (k) Whenever the parents of a child of the type described  
14 in Section 14-1.02 are not known, are unavailable, or the child  
15 is a ward of the State, a person shall be assigned to serve as  
16 surrogate parent for the child in matters relating to the  
17 identification, evaluation, and educational placement of the  
18 child and the provision of a free appropriate public education  
19 to the child. Persons shall be assigned as surrogate parents by  
20 the State Superintendent of Education. The State Board of  
21 Education shall promulgate rules and regulations establishing  
22 qualifications of those persons and their responsibilities and  
23 the procedures to be followed in making assignments of persons  
24 as surrogate parents. Surrogate parents shall not be employees  
25 of the school district, an agency created by joint agreement  
26 under Section 10-22.31, an agency involved in the education or

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

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

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

23 (Source: P.A. 94-1100, eff. 2-2-07.)

24 Section 99. Effective date. This Act takes effect upon  
25 becoming law.