



Sen. Dan Kotowski

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09800HB1288sam002

LRB098 07623 NHT 45447 a

1 AMENDMENT TO HOUSE BILL 1288

2 AMENDMENT NO. _____. Amend House Bill 1288 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The School Code is amended by changing Section
5 14-8.02a and by adding Section 14-8.02e 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 shall apply to all impartial due process
10 hearings requested on or after July 1, 2005. Impartial due
11 process hearings requested before July 1, 2005 shall be
12 governed by the rules described in Public Act 89-652.

13 (a-5) For purposes of this Section and Section 14-8.02b of
14 this Code, days shall be computed in accordance with Section
15 1.11 of the Statute on Statutes.

16 (b) The State Board of Education shall establish an

1 impartial due process hearing system in accordance with this
2 Section and may, with the advice and approval of the Advisory
3 Council on Education of Children with Disabilities, promulgate
4 rules and regulations consistent with this Section to establish
5 the rules and procedures for due process hearings.

6 (c) (Blank).

7 (d) (Blank).

8 (e) (Blank).

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

24 (1) The name of the student, the address of the
25 student's residence, and the name of the school the student
26 is attending.

1 (2) In the case of homeless children (as defined under
2 the federal McKinney-Vento Homeless Assistance Act (42
3 U.S.C. 11434a(2)), available contact information for the
4 student and the name of the school the student is
5 attending.

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

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

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

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

1 may conflict with his or her objectivity in the hearing shall
2 disclose the conflict to the parties and shall recuse himself
3 or herself unless the parties otherwise agree in writing. For
4 purposes of this subsection an assigned hearing officer shall
5 be considered to have a conflict of interest if, at any time
6 prior to the issuance of his or her written decision, he or she
7 knows or should know that he or she may receive remuneration
8 from a party to the hearing within 3 years following the
9 conclusion of the due process hearing.

10 A party to a due process hearing shall be permitted one
11 substitution of hearing officer as a matter of right, in
12 accordance with procedures established by the rules adopted by
13 the State Board of Education under this Section. The State
14 Board of Education shall randomly select and appoint another
15 hearing officer within 3 days after receiving notice that the
16 appointed hearing officer is ineligible to serve or upon
17 receiving a proper request for substitution of hearing officer.
18 If a party withdraws its request for a due process hearing
19 after a hearing officer has been appointed, that hearing
20 officer shall retain jurisdiction over a subsequent hearing
21 that involves the same parties and is requested within one year
22 from the date of withdrawal of the previous request, unless
23 that hearing officer is unavailable.

24 Any party may raise facts that constitute a conflict of
25 interest for the hearing officer at any time before or during
26 the hearing and may move for recusal.

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

25 (g-5) Unless the school district has previously provided
26 prior written notice to the parent or student (if at least 18

1 years of age or emancipated) regarding the subject matter of
2 the hearing request, the school district shall, within 10 days
3 after receiving a hearing request initiated by a parent or
4 student (if at least 18 years of age or emancipated), provide a
5 written response to the request that shall include all of the
6 following:

7 (1) An explanation of why the school district proposed
8 or refused to take the action or actions described in the
9 hearing request.

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

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

16 (4) A description of the factors that are or were
17 relevant to the school district's proposed or refused
18 action or actions.

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

1 written response. The parent's or student's response may be
2 provided in his or her native language, if other than English.
3 In the event that illiteracy or another disabling condition
4 prevents the parent or student from providing a written
5 response, the school district shall assist the parent or
6 student in providing the written response.

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

1 hearing, including the timeline under subsection (g-20) of this
2 Section, shall recommence.

3 (g-20) Within 15 days after receiving a request for a
4 hearing from a parent or student (if at least 18 years of age
5 or emancipated) or, in the event that the school district
6 requests a hearing, within 15 days after initiating the
7 request, the school district shall convene a resolution meeting
8 with the parent and relevant members of the IEP team who have
9 specific knowledge of the facts contained in the request for
10 the purpose of resolving the problem that resulted in the
11 request. The resolution meeting shall include a representative
12 of the school district who has decision-making authority on
13 behalf of the school district. Unless the parent is accompanied
14 by an attorney at the resolution meeting, the school district
15 may not include an attorney representing the school district.

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

1 or the granting of all relief set forth in the request, as
2 appropriate.

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

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

26 (g-30) If mutually agreed to in writing, the parties to a

1 hearing request may waive the resolution process described in
2 subsection (g-20) of this Section. Upon signing a written
3 agreement to waive the resolution process, the parties shall be
4 required to forward the written waiver to the hearing officer
5 appointed to the case within 2 business days following the
6 signing of the waiver by the parties. The timeline for the
7 impartial due process hearing shall commence on the date of the
8 signing of the waiver by the parties.

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

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

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

18 (g-40) The hearing officer shall convene a prehearing
19 conference no later than 14 days before the scheduled date for
20 the due process hearing for the general purpose of aiding in
21 the fair, orderly, and expeditious conduct of the hearing. The
22 hearing officer shall provide the parties with written notice
23 of the prehearing conference at least 7 days in advance of the
24 conference. The written notice shall require the parties to
25 notify the hearing officer by a date certain whether they
26 intend to participate in the prehearing conference. The hearing

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

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

1 (g-50) The parties shall disclose and provide to each other
2 any evidence which they intend to submit into the hearing
3 record no later than 5 days before the hearing. Any party to a
4 hearing has the right to prohibit the introduction of any
5 evidence at the hearing that has not been disclosed to that
6 party at least 5 days before the hearing. The party requesting
7 a hearing shall not be permitted at the hearing to raise issues
8 that were not raised in the party's initial or amended request,
9 unless otherwise permitted in this Section.

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

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

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

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

1 the initiation of the timeline for conducting the hearing, as
2 described in subsection (g-35) of this Section. The decision
3 shall specify the educational and related services that shall
4 be provided to the student in accordance with the student's
5 needs and the timeline for which the school district shall
6 submit evidence to the State Board of Education to demonstrate
7 compliance with the hearing officer's decision in the event
8 that the decision orders the school district to undertake
9 corrective action. The hearing officer shall retain
10 jurisdiction for the sole purpose of considering a request for
11 clarification of the final decision submitted in writing by a
12 party to the impartial hearing officer within 5 days after
13 receipt of the decision. A copy of the request for
14 clarification shall specify the portions of the decision for
15 which clarification is sought and shall be mailed to all
16 parties of record and to the State Board of Education. The
17 request shall operate to stay implementation of those portions
18 of the decision for which clarification is sought, pending
19 action on the request by the hearing officer, unless the
20 parties otherwise agree. The hearing officer shall issue a
21 clarification of the specified portion of the decision or issue
22 a partial or full denial of the request in writing within 10
23 days of receipt of the request and mail copies to all parties
24 to whom the decision was mailed. This subsection does not
25 permit a party to request, or authorize a hearing officer to
26 entertain, reconsideration of the decision itself. The statute

1 of limitations for seeking review of the decision shall be
2 tolled from the date the request is submitted until the date
3 the hearing officer acts upon the request. The hearing
4 officer's decision shall be binding upon the school district
5 and the parents unless a civil action is commenced.

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

1 all such proceedings have been completed. The costs for any
2 special education and related services or placement incurred
3 following 60 school days after the initial request for
4 evaluation shall be borne by the school district if the
5 services or placement is in accordance with the final
6 determination as to the special education and related services
7 or placement that must be provided to the child, provided that
8 during that 60 day period there have been no delays caused by
9 the child's parent.

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

1 parents . The assignment of a person as surrogate parent at no
2 time supersedes, terminates, or suspends the parents' legal
3 authority relative to the child. Any person participating in
4 good faith as surrogate parent on behalf of the child before
5 school officials or a hearing officer shall have immunity from
6 civil or criminal liability that otherwise might result by
7 reason of that participation, except in cases of willful and
8 wanton misconduct.

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

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

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

21 (105 ILCS 5/14-8.02e new)

22 Sec. 14-8.02e. State complaint procedures. The State Board
23 of Education shall adopt State complaint procedures,
24 consistent with Sections 300.151, 300.152, and 300.153 of Title
25 34 of the Code of Federal Regulations. The State Board of

1 Education, by rule, shall establish State complaint procedures
2 consistent with this Section. A school district or other public
3 entity shall be required to submit a written response to a
4 complaint within the time prescribed by the State Board of
5 Education following receipt of the complaint. A copy of the
6 response and all documentation submitted by the respondent to
7 the State Board of Education must be simultaneously provided by
8 the respondent to the complainant or to the attorney for the
9 complainant. If the complaint was filed by an individual other
10 than a parent of a child who is the subject of the complaint
11 (or the child if the child has reached majority or is
12 emancipated and has assumed responsibility for his or her own
13 educational decisions) and the complaint is about a specific
14 identifiable child or children, then appropriate written
15 signed releases must be obtained prior to the release of any
16 documentation or information to the complainant or the attorney
17 representing the complainant.

18 Section 99. Effective date. This Act takes effect upon
19 becoming law."