

FIRST REGULAR SESSION

SENATE BILL NO. 422

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR PEARCE.

Read 1st time February 23, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

1784S.011

AN ACT

To repeal sections 162.961 and 162.963, RSMo, and to enact in lieu thereof two new sections relating to special education due process hearings.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 162.961 and 162.963, RSMo, are repealed and two
2 new sections enacted in lieu thereof, to be known as sections 162.961 and
3 162.963, to read as follows:

162.961. 1. A parent, guardian or the responsible educational agency may
2 request a due process hearing by the state board of education with respect to any
3 matter relating to identification, evaluation, educational placement, or the
4 provision of a free appropriate public education of the child. Such request shall
5 include the child's name, address, school, issue, and suggested resolution of
6 dispute if known. Except as provided in subsection 4 of this section, the board
7 or its delegated representative shall within fifteen days after receiving notice
8 empower a hearing panel of three persons who are not directly connected with the
9 original decision and who are not employees of the board to which the appeal has
10 been made. All of the panel members shall have some knowledge or training
11 involving children with disabilities, none shall have a personal or professional
12 interest which would conflict with his or her objectivity in the hearing, and all
13 shall meet the department of elementary and secondary education's training and
14 assessment requirements pursuant to state regulations and federal law and
15 regulation requirements of the Individuals With Disabilities Education Act. One
16 person shall be chosen by the local school district board or its delegated
17 representative or the responsible educational agency, and one person shall be
18 chosen at the recommendation of the parent or guardian. If either party has not

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 chosen a panel member ten days after the receipt by the department of
20 elementary and secondary education of the request for a due process hearing,
21 such panel member shall be chosen instead by the department of elementary and
22 secondary education. Each of these two panel members shall be compensated
23 pursuant to a rate set by the department of elementary and secondary
24 education. The third person shall be appointed by the state board of education
25 and shall serve as the chairperson of the panel. The chairperson shall be an
26 attorney licensed to practice law in this state. During the pendency of any
27 three-member panel hearing, or prior to the empowerment of the panel, the
28 parties may, by mutual agreement, submit their dispute to a mediator pursuant
29 to section 162.959.

30 2. The parent or guardian, school official, and other persons affected by
31 the action in question shall present to the hearing panel all pertinent evidence
32 relative to the matter under appeal. All rights and privileges as described in
33 section 162.963 shall be permitted.

34 3. After review of all evidence presented and a proper deliberation, the
35 hearing panel, within the time lines required by the Individuals With Disabilities
36 Education Act, 20 U.S.C. Section 1415 and any amendments thereto, shall by
37 majority vote determine its findings, conclusions, and decision in the matter in
38 question and forward the written decision to the parents or guardian of the child
39 and to the president of the appropriate local board of education or responsible
40 educational agency and to the department of elementary and secondary education.
41 A specific extension of the time line may be made by the chairman at the request
42 of either party, except in the case of an expedited hearing as provided in
43 subsection 4 of this section.

44 4. An expedited due process hearing by the state board of education may
45 be requested by a parent to challenge a disciplinary change of placement or to
46 challenge a manifestation determination in connection with a disciplinary change
47 of placement or by a responsible educational agency to seek a forty-five school day
48 alternative educational placement for a dangerous or violent student. The board
49 or its delegated representative shall appoint a hearing officer to hear the case and
50 render a decision within the time line required by federal law and state
51 regulations implementing federal law. The hearing officer shall be an attorney
52 licensed to practice law in this state. The hearing officer shall have some
53 knowledge or training involving children with disabilities, shall not have a
54 personal or professional interest which would conflict with his or her objectivity

55 in the hearing, and shall meet the department of elementary and secondary
56 education's training and assessment requirements pursuant to state regulations
57 and federal law and regulation requirements of the Individuals With Disabilities
58 Education Act. A specific extension of the time line is only permissible to the
59 extent consistent with federal law and pursuant to state regulations.

60 5. If the responsible public agency requests a due process hearing to seek
61 a forty-five school day alternative educational placement for a dangerous or
62 violent student, the agency shall show by substantial evidence that there is a
63 substantial likelihood the student will injure himself or others and that the
64 agency made reasonable efforts to minimize that risk, and shall show that the
65 forty-five school day alternative educational placement will provide a free
66 appropriate public education which includes services and modifications to address
67 the behavior so that it does not reoccur, and continue to allow progress in the
68 general education curriculum.

69 6. Any due process hearing request and responses to the request shall
70 conform to the requirements of the Individuals With Disabilities Education Act
71 (IDEA). Determination of the sufficiency shall be made by the chairperson of the
72 three-member hearing panel, or in the case of an expedited due process hearing,
73 by the hearing officer. The chairperson or hearing officer shall implement the
74 process and procedures, including time lines, required by the IDEA, related to
75 sufficiency of notice, response to notice, determination of sufficiency dispute, and
76 amendments of the notice.

77 7. A preliminary meeting, known as a resolution session, shall be
78 convened by the responsible public agency, under the requirements of the
79 IDEA. The process and procedures required by the IDEA in connection to the
80 resolution session and any resulting written settlement agreement shall be
81 implemented. **The responsible public agency or its designee shall sign**
82 **the agreement. The designee identified by the responsible public**
83 **agency shall have the authority to bind the agency. A local board of**
84 **education, as a responsible public agency, shall identify a designee with**
85 **authority to bind the school district.**

162.963. 1. At any hearing held pursuant to the provisions of section
2 162.961, except as otherwise provided in this section, either party or a
3 representative shall be entitled to:

4 (1) Be accompanied and advised by counsel and by individuals with
5 special knowledge or training with respect to the problems of children with

6 disabilities;

7 (2) Present evidence and confront, cross-examine, and compel the
8 attendance of witnesses;

9 (3) Prohibit the introduction of any evidence, including all evaluations and
10 recommendations based on the offering party's evaluation, at the hearing that has
11 not been disclosed to that party at least five business days before the hearing[,
12 except this shall not be applicable in the case of an expedited hearing where no
13 discovery shall take place];

14 (4) Obtain a written or, at the option of the parents, electronic verbatim
15 record of the hearing; and

16 (5) Obtain written or, at the option of the parents, electronic findings of
17 fact and decision.

18 2. Parents involved in hearings have the right to have the child who is the
19 subject of the hearing present and the right to open the hearing to the public.

20 3. Prior to the resolution conference or hearing, the parent or guardian
21 or a representative of the parent or guardian shall have access to any reports,
22 records, clinical evaluations or other materials upon which the action to be
23 reviewed was wholly or partially based which could reasonably have a bearing on
24 the correctness of the determination.

25 4. A complete record shall be made of all proceedings unless otherwise
26 specified by statute, which records shall include verbatim transcription of all
27 testimony and shall include all documents, writings, or other evidence presented
28 by any party. Costs incurred during these proceedings, except those of the
29 parties for purchasing diagnostic services or legal counsel or other services of a
30 personal nature, shall be the responsibility of the state board of education.

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