

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 595
96TH GENERAL ASSEMBLY

Reported from the Committee on Education, March 22, 2012, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

4939S.05C

AN ACT

To repeal sections 162.961 and 162.962, RSMo, and to enact in lieu thereof two new sections relating to due process hearing panel members.

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

Section A. Sections 162.961 and 162.962, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 162.961 and 162.962, to
3 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] **before the**
3 **administrative hearing commission** with respect to any matter relating to
4 identification, evaluation, educational placement, or the provision of a free
5 appropriate public education of the child. Such request shall include the child's
6 name, address, school, issue, and suggested resolution of dispute if
7 known. Except as provided in subsection 4 of this section, the [board or its
8 delegated representative] **the administrative hearing commission** shall
9 within fifteen days after receiving notice [empower] **assign** a [hearing panel of
10 three persons] **commissioner** who [are not directly connected with the original
11 decision and who are] **is not [employees] an employee** of the **state board of**
12 **education [to which the appeal has been made] or department of elementary**
13 **and secondary education to hear the case.** [All of the panel members]
14 **Commissioners** shall have some knowledge or training involving children with
15 disabilities, [none] shall **not** have a personal or professional interest which would
16 conflict with his or her objectivity in the hearing, and [all] shall meet the
17 [department of elementary and secondary education's] training and assessment

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

18 requirements pursuant to state regulations, [and] federal law and regulation
19 requirements of the Individuals With Disabilities Education Act[. One person
20 shall be chosen by the local school district board or its delegated representative
21 or the responsible educational agency, and one person shall be chosen at the
22 recommendation of the parent or guardian. If either party has not chosen a panel
23 member ten days after the receipt by the department of elementary and
24 secondary education of the request for a due process hearing, such panel member
25 shall be chosen instead by the department of elementary and secondary
26 education. Each of these two panel members shall be compensated pursuant to
27 a rate set by the department of elementary and secondary education. The third
28 person shall be appointed by the state board of education and shall serve as the
29 chairperson of the panel. The chairperson shall be an attorney licensed to
30 practice law in this state], **and the requirements in subsections 9 and 10**
31 **of this section. No commissioner who conducts a due process hearing**
32 **shall have been employed within the last five years by a school district**
33 **or by an organization engaged in special education parent and student**
34 **advocacy, performed work for a school district or as a special**
35 **education advocate within the last five years as an independent**
36 **contractor or consultant, been employed within the last five years by**
37 **the state board of education or department of elementary and**
38 **secondary education, or performed work for the state board of**
39 **education or department of elementary and secondary education within**
40 **the last five years as an independent contractor or consultant, or been**
41 **party to a special education proceeding as a parent or child. During the**
42 pendency of any [three-member panel] hearing, or prior to the [empowerment]
43 **assignment** of the [panel] **commissioner**, the parties may, by mutual
44 agreement, submit their dispute to a mediator pursuant to section 162.959.

45 2. The parent or guardian, school official, and other persons affected by
46 the action in question shall present [to] **at** the hearing [panel] all pertinent
47 evidence relative to the matter under appeal. All rights and privileges as
48 described in section 162.963 shall be permitted.

49 3. After review of all evidence presented and a proper deliberation, the
50 [hearing panel] **commissioner**, within the time lines required by the Individuals
51 With Disabilities Education Act, 20 U.S.C. Section 1415 and any amendments
52 thereto, shall [by majority vote] determine its findings, conclusions, and decision

53 in the matter in question and forward the written decision to the parents or
54 guardian of the child and to the president of the appropriate local board of
55 education or responsible educational agency and to the department of elementary
56 and secondary education. A specific extension of the time line may be made by
57 the [chairman] **commissioner assigned to the matter** at the request of either
58 party, except in the case of an expedited hearing as provided in subsection 4 of
59 this section.

60 4. An expedited due process hearing by the [state board of education]
61 **administrative hearing commission** may be requested by a parent to
62 challenge a disciplinary change of placement or to challenge a manifestation
63 determination in connection with a disciplinary change of placement or by a
64 responsible educational agency to seek a forty-five school day alternative
65 educational placement for a dangerous or violent student. The [board or its
66 delegated representative] **administrative hearing commission** shall [appoint]
67 **assign** a [hearing officer] **commissioner** to hear the case and render a decision
68 within the time line required by federal law and state regulations implementing
69 federal law. [The hearing officer shall be an attorney licensed to practice law in
70 this state. The hearing officer shall have some knowledge or training involving
71 children with disabilities, shall not have a personal or professional interest which
72 would conflict with his or her objectivity in the hearing, and shall meet the
73 department of elementary and secondary education's training and assessment
74 requirements pursuant to state regulations and federal law and regulation
75 requirements of the Individuals With Disabilities Education Act.] A specific
76 extension of the time line is only permissible to the extent consistent with federal
77 law and pursuant to state regulations.

78 5. If the responsible public agency requests a due process hearing to seek
79 a forty-five school day alternative educational placement for a dangerous or
80 violent student, the agency shall show by substantial evidence that there is a
81 substantial likelihood the student will injure himself or others and that the
82 agency made reasonable efforts to minimize that risk, and shall show that the
83 forty-five school day alternative educational placement will provide a free
84 appropriate public education which includes services and modifications to address
85 the behavior so that it does not reoccur, and continue to allow progress in the
86 general education curriculum.

87 6. Any due process hearing request and responses to the request shall

88 conform to the requirements of the Individuals With Disabilities Education Act
89 (IDEA). Determination of the sufficiency shall be made by the [chairperson of the
90 three-member hearing panel, or in the case of an expedited due process hearing,
91 by the hearing officer] **commissioner**. The [chairperson or hearing officer]
92 **commissioner** shall [implement] **enforce** the process and procedures, including
93 time lines, required by the IDEA, related to sufficiency of notice, response to
94 notice, determination of sufficiency dispute, and amendments of the notice.

95 7. A preliminary meeting, known as a resolution session, shall be
96 convened by the responsible public agency, under the requirements of the
97 IDEA. The process and procedures required by the IDEA in connection to the
98 resolution session and any resulting written settlement agreement shall be
99 implemented. The responsible public agency or its designee shall sign the
100 agreement. The designee identified by the responsible public agency shall have
101 the authority to bind the agency. A local board of education, as a responsible
102 public agency, shall identify a designee with authority to bind the school district.

103 **8. Notwithstanding any provision of law to the contrary, no rule**
104 **or regulation promulgated by the administrative hearing commission**
105 **regarding disposition of a complaint through the use of summary**
106 **judgment shall be applicable or used by the commission or a**
107 **commissioner for purposes of special education administrative hearings**
108 **or special education due process hearings. Notwithstanding any**
109 **provision of law to the contrary, when conducting a due process**
110 **hearing, the administrative hearing commission shall conform all of its**
111 **practices, procedures, filing deadlines, and response times to the**
112 **requirements of the Individuals With Disabilities Education Act (IDEA).**

113 **9. At least three of the commissioners shall receive initial**
114 **training in special education matters and shall be the only**
115 **commissioners who are assigned to special education due process**
116 **hearings. The initial training shall be selected by the administrative**
117 **hearing commission in consultation with the department of elementary**
118 **and secondary education and the IDEA-funded parent training and**
119 **information center located in this state. The training shall ensure that**
120 **the commissioners receive knowledge of educational and legal matters**
121 **sufficient for them to possess knowledge of the matters brought before**
122 **them. If allowed by the policies of the training provider, materials**

123 from the training, including any available audio or video, shall be
124 posted to the administrative hearing commission's website within ten
125 business days from the date of the training.

126 10. Each commissioner assigned to special education due process
127 hearings shall annually complete a minimum of five hours of training
128 selected by the administrative hearing commission in consultation with
129 the department of elementary and secondary education and the IDEA-
130 funded parent training and information center located in this
131 state. The training shall ensure that the commissioners receive
132 updated knowledge of educational and legal matters sufficient for them
133 to possess knowledge of the matters brought before them. If allowed by
134 the rules and regulations of the training provider, materials from the
135 training, including any available audio or video, shall be posted to the
136 administrative hearing commission's website within ten business days
137 from the date of the training.

138 11. If any special education training is provided directly by the
139 department of elementary and secondary education, the IDEA-funded
140 parent training and information center located in this state, or a
141 provider working directly on behalf of either group, the group shall
142 provide materials from the training, including any available audio or
143 video, on its website within ten business days from the date of the
144 training.

162.962. In a case where review of the **administrative** hearing [panel's]
2 **commission's** decision is sought by a school district or a parent or guardian,
3 either party may appeal as follows:

4 (1) The court shall hear the case without a jury and shall:

5 (a) Receive the records of the administrative proceedings;

6 (b) Hear additional evidence at the request of a party; and

7 (c) Grant the relief that the court determines to be appropriate, basing its
8 decision on the preponderance of the evidence;

9 (2) Appeals may be taken from the judgment of the court as in other civil
10 cases;

11 (3) Judicial review of the **administrative** hearing [panel's]
12 **commission's** decision may be instituted by filing a petition in a state or federal
13 court of competent jurisdiction. Appeals to state court shall be filed within

14 forty-five days after the receipt of the notice of the agency's final decision;

15 (4) Except when provided otherwise within this chapter or Part 300 of
16 Title 34 of the Code of Federal Regulations, the provisions of chapter 536 are
17 applicable to special education due process hearings and appeal of same;

18 (5) **When a commissioner renders a final decision, such decision**
19 **shall not be amended or modified by the commissioner or**
20 **administrative hearing commission.**

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