

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

4939L.08C

D. ADAM CRUMBLISS, Chief Clerk

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**AN ACT**

To repeal sections 162.961 and 162.962, RSMo, and to enact in lieu thereof four new sections relating to due process hearing panel members, with an emergency clause for certain sections.

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*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Section A. Sections 162.961 and 162.962, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 162.961, 162.962, 621.253, and 621.255, to read as follows:

162.961. 1. A parent, guardian or the responsible educational agency may request a due process hearing [by the state board of education] **before the Administrative Hearing Commission** with respect to any matter relating to identification, evaluation, educational placement, or the provision of a free appropriate public education of the child. Such request shall include the child's name, address, school, issue, and suggested resolution of dispute if known. Except as provided in subsection 4 of this section, the [board or its delegated representative] **the Administrative Hearing Commission** shall within fifteen days after receiving notice [empower] **assign** a [hearing panel of three persons] **commissioner** who [are not directly connected with the original decision and who are] **is not [employees] an employee** of the **state board of education** [to which the appeal has been made] **or department of elementary and secondary education to hear the case.** [All of the panel members] **Commissioners** shall have some knowledge or training involving children with disabilities, [none] shall **not** have a personal or professional interest which would conflict with his or her

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 objectivity in the hearing, and [all] shall meet the [department of elementary and secondary  
15 education's] training and assessment requirements pursuant to state regulations, [and] federal law  
16 and regulation requirements of the Individuals With Disabilities Education Act]. One person  
17 shall be chosen by the local school district board or its delegated representative or the responsible  
18 educational agency, and one person shall be chosen at the recommendation of the parent or  
19 guardian. If either party has not chosen a panel member ten days after the receipt by the  
20 department of elementary and secondary education of the request for a due process hearing, such  
21 panel member shall be chosen instead by the department of elementary and secondary education.  
22 Each of these two panel members shall be compensated pursuant to a rate set by the department  
23 of elementary and secondary education. The third person shall be appointed by the state board  
24 of education and shall serve as the chairperson of the panel. The chairperson shall be an attorney  
25 licensed to practice law in this state] , **and the requirements in section 621.253. No**  
26 **commissioner who conducts a due process hearing shall have been employed within the last**  
27 **five years by a school district or by an organization engaged in special education parent**  
28 **and student advocacy, performed work for a school district or for a parent or student as**  
29 **a special education advocate within the last five years as an independent contractor or**  
30 **consultant, been employed within the last five years by the state board of education or**  
31 **department of elementary and secondary education, or performed work for the state board**  
32 **of education or department of elementary and secondary education within the last five**  
33 **years as an independent contractor or consultant, or been party to a special education**  
34 **proceeding as an attorney, parent, or child.** During the pendency of any [three-member panel]  
35 hearing, or prior to the [empowerment] **assignment** of the [panel] **commissioner**, the parties  
36 may, by mutual agreement, submit their dispute to a mediator pursuant to section 162.959.

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

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

49           4. An expedited due process hearing by the [state board of education] **Administrative**  
50 **Hearing Commission** may be requested by a parent to challenge a disciplinary change of  
51 placement or to challenge a manifestation determination in connection with a disciplinary change  
52 of placement or by a responsible educational agency to seek a forty-five school day alternative  
53 educational placement for a dangerous or violent student. The [board or its delegated  
54 representative] **Administrative Hearing Commission** shall [appoint] **assign** a [hearing officer]  
55 **commissioner** to hear the case and render a decision within the time line required by federal law  
56 and state regulations implementing federal law. [The hearing officer shall be an attorney  
57 licensed to practice law in this state. The hearing officer shall have some knowledge or training  
58 involving children with disabilities, shall not have a personal or professional interest which  
59 would conflict with his or her objectivity in the hearing, and shall meet the department of  
60 elementary and secondary education's training and assessment requirements pursuant to state  
61 regulations and federal law and regulation requirements of the Individuals With Disabilities  
62 Education Act.] A specific extension of the time line is only permissible to the extent consistent  
63 with federal law and pursuant to state regulations.

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

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

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

85 **8. Notwithstanding any provision of law to the contrary, when conducting a due**  
86 **process hearing, the Administrative Hearing Commission shall conform all of its practices,**  
87 **procedures, filing deadlines, and response times to the requirements of the Individuals**  
88 **With Disabilities Education Act (IDEA).**

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

- 3 (1) The court shall hear the case without a jury and shall:
  - 4 (a) Receive the records of the administrative proceedings;
  - 5 (b) Hear additional evidence at the request of a party; and
  - 6 (c) Grant the relief that the court determines to be appropriate, basing its decision on the  
7 preponderance of the evidence;
- 8 (2) Appeals may be taken from the judgment of the court as in other civil cases;
- 9 (3) Judicial review of the **Administrative** Hearing [panel's] **Commission's** decision may  
10 be instituted by filing a petition in a state or federal court of competent jurisdiction. Appeals to  
11 state court shall be filed within forty-five days after the receipt of the notice of the agency's final  
12 decision;
- 13 (4) Except when provided otherwise within this chapter or Part 300 of Title 34 of the  
14 Code of Federal Regulations, the provisions of chapter 536 are applicable to special education  
15 due process hearings and appeal of same;
- 16 (5) **When a commissioner renders a final decision, such decision shall not be**  
17 **amended or modified by the commissioner or Administrative Hearing Commission.**

**621.253. 1. At least three of the commissioners shall receive at least ten hours of**  
2 **initial training in special education matters and shall be the only commissioners who are**  
3 **assigned to special education due process hearings. The initial training shall be selected**  
4 **by the Administrative Hearing Commission in consultation with the department of**  
5 **elementary and secondary education and the IDEA-funded parent training and**  
6 **information center located in this state. The training shall ensure that the commissioners**  
7 **receive knowledge of educational and legal matters sufficient for them to possess**  
8 **knowledge of the matters brought before them. If allowed by the policies of the training**  
9 **provider, materials from the training, including any available audio or video, shall be**  
10 **posted to the Administrative Hearing Commission's website within ten business days from**  
11 **the date of the training.**

12 **2. Each commissioner assigned to special education due process hearings shall**  
13 **annually complete a minimum of five hours of training selected by the Administrative**  
14 **Hearing Commission in consultation with the department of elementary and secondary**  
15 **education and the IDEA-funded parent training and information center located in this**

16 state. The training shall ensure that the commissioners receive updated knowledge of  
17 educational and legal matters sufficient for them to possess knowledge of the matters  
18 brought before them. If allowed by the rules and regulations of the training provider,  
19 materials from the training, including any available audio or video, shall be posted to the  
20 Administrative Hearing Commission's website within ten business days from the date of  
21 the training.

22 3. If any special education training is provided directly by the department of  
23 elementary and secondary education, the IDEA-funded parent training and information  
24 center located in this state, or a provider working directly on behalf of either group, the  
25 group shall provide materials from the training, including any available audio or video, on  
26 its website within ten business days from the date of the training.

621.255. 1. There is hereby established in the state treasury the "Administrative  
2 Hearing Commission Educational Due Process Hearing Fund". The fund shall be  
3 administered by the Administrative Hearing Commission. The state treasurer shall be  
4 custodian of the fund. The fund shall consist of all moneys that may be appropriated to  
5 it by the general assembly and may also include any gifts, contributions, grants, or  
6 bequests received from federal, state private, or other sources. In accordance with sections  
7 30.170 and 30.180, the state treasurer may approve disbursements. The fund shall be a  
8 dedicated fund and moneys in the fund shall be used solely for the payment of expenditures  
9 actually incurred by the Administrative Hearing Commission and attributable to due  
10 process hearings and state and federal legislation and regulations.

11 2. Notwithstanding the provisions of section 33.080 to the contrary, any moneys  
12 remaining in the fund at the end of the biennium shall not revert to the credit of the  
13 general revenue fund.

14 3. The state treasurer shall invest moneys in the fund in the same manner as other  
15 funds are invested. Any interest and moneys earned on such investments shall be credited  
16 to the fund.

Section B. Because of the importance of providing special education training to the  
2 administrative hearing commissioners in a timely manner, the enactment of sections 621.253 and  
3 621.255 of this act are deemed necessary for the immediate preservation of the public health,  
4 welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of  
5 the constitution, and the enactment of sections 621.253 and 621.255 of this act shall be in full  
6 force and effect upon its passage and approval.

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