

SECOND REGULAR SESSION  
[ P E R F E C T E D ]  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 595**  
96TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR KRAUS.

Offered March 28, 2012.

Senate Substitute adopted, March 28, 2012.

Taken up for Perfection March 28, 2012. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

4939S.07P

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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Section A. Sections 162.961 and 162.962, RSMo, are repealed and four  
2 new sections enacted in lieu thereof, to be known as sections 162.961, 162.962,  
3 621.253, and 621.255, 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] **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**

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

13 **and secondary education to hear the case.** [All of the panel  
14 members] **Commissioners** shall have some knowledge or training involving  
15 children with disabilities, [none] shall **not** have a personal or professional  
16 interest which would conflict with his or her objectivity in the hearing, and [all]  
17 shall meet the [department of elementary and secondary education's] training  
18 and assessment requirements pursuant to state regulations, [and] federal law  
19 and regulation requirements of the Individuals With Disabilities Education  
20 Act]. One person shall be chosen by the local school district board or its  
21 delegated representative or the responsible educational agency, and one person  
22 shall be chosen at the recommendation of the parent or guardian. If either party  
23 has not chosen a panel member ten days after the receipt by the department of  
24 elementary and secondary education of the request for a due process hearing,  
25 such panel member shall be chosen instead by the department of elementary and  
26 secondary education. Each of these two panel members shall be compensated  
27 pursuant to a rate set by the department of elementary and secondary  
28 education. The third person shall be appointed by the state board of education  
29 and shall serve as the chairperson of the panel. The chairperson shall be an  
30 attorney licensed to practice law in this state], **and the requirements in**  
31 **section 621.253. 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 for a parent or**  
35 **student as a special education advocate within the last five years as an**  
36 **independent contractor or consultant, been employed within the last**  
37 **five years by the state board of education or department of elementary**  
38 **and 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 an attorney, parent, or**  
42 **child.** During the pendency of any [three-member panel] hearing, or prior to the  
43 [empowerment] **assignment** of the [panel] **commissioner**, the parties may, by  
44 mutual agreement, submit their dispute to a mediator pursuant to section  
45 162.959.

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

49 described in section 162.963 shall be permitted.

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

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

79           5. If the responsible public agency requests a due process hearing to seek  
80 a forty-five school day alternative educational placement for a dangerous or  
81 violent student, the agency shall show by substantial evidence that there is a  
82 substantial likelihood the student will injure himself or others and that the  
83 agency made reasonable efforts to minimize that risk, and shall show that the  
84 forty-five school day alternative educational placement will provide a free

85 appropriate public education which includes services and modifications to address  
86 the behavior so that it does not reoccur, and continue to allow progress in the  
87 general education curriculum.

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

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

104 **8. Notwithstanding any provision of law to the contrary, when**  
105 **conducting a due process hearing, the administrative hearing**  
106 **commission shall conform all of its practices, procedures, filing**  
107 **deadlines, and response times to the requirements of the Individuals**  
108 **With Disabilities Education Act (IDEA).**

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.**

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

14 2. **Each commissioner assigned to special education due process**  
15 **hearings shall annually complete a minimum of five hours of training**  
16 **selected by the administrative hearing commission in consultation with**  
17 **the department of elementary and secondary education and the IDEA-**  
18 **funded parent training and information center located in this**  
19 **state. The training shall ensure that the commissioners receive**  
20 **updated knowledge of educational and legal matters sufficient for them**  
21 **to possess knowledge of the matters brought before them. If allowed by**  
22 **the rules and regulations of the training provider, materials from the**  
23 **training, including any available audio or video, shall be posted to the**  
24 **administrative hearing commission's website within ten business days**  
25 **from the date of the training.**

26 3. **If any special education training is provided directly by the**  
27 **department of elementary and secondary education, the IDEA-funded**  
28 **parent training and information center located in this state, or a**  
29 **provider working directly on behalf of either group, the group shall**

30 provide materials from the training, including any available audio or  
31 video, on its website within ten business days from the date of the  
32 training.

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

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

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

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

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