

SECOND REGULAR SESSION

SENATE BILL NO. 657

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KRAUS.

Pre-filed January 6, 2014, and ordered printed.

TERRY L. SPIELER, Secretary.

4299S.02I

AN ACT

To repeal sections 162.961 and 621.255, 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Section A. Sections 162.961 and 621.255, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 162.961 and 621.255, to
3 read as follows:

162.961. 1. A parent, guardian or the responsible educational agency may
2 request a due process hearing before the administrative hearing commission with
3 respect to any matter relating to identification, evaluation, educational
4 placement, or the provision of a free appropriate public education of the
5 child. Such request shall include the child's name, address, school, issue, and
6 suggested resolution of dispute if known. Except as provided in subsection 4 of
7 this section, the administrative hearing commission shall within fifteen days
8 after receiving notice assign a commissioner who is not an employee of the state
9 board of education or department of elementary and secondary education to hear
10 the case. Commissioners shall have some knowledge or training involving
11 children with disabilities, shall not have a personal or professional interest which
12 would conflict with his or her objectivity in the hearing, and shall meet the
13 training and assessment requirements pursuant to state regulations, federal law
14 and regulation requirements of the Individuals With Disabilities Education Act,
15 and the requirements in section 621.253. No commissioner who conducts a due
16 process hearing shall have been employed within the last five years by a school
17 district or by an organization engaged in special education parent and student
18 advocacy, performed work for a school district or for a parent or student as a
19 special education advocate within the last five years as an independent contractor

20 or consultant, been employed within the last five years by the state board of
21 education or department of elementary and secondary education, or performed
22 work for the state board of education or department of elementary and secondary
23 education within the last five years as an independent contractor or consultant,
24 or been party to a special education proceeding as an attorney, parent, or
25 child. **For the purpose of conducting due process hearings or for the**
26 **purpose of providing assistance for the conducting of due process**
27 **hearings, the commission shall not employ any person, or otherwise use**
28 **the services of any independent contractor or consultant, who has been**
29 **employed within the last five years by a school district or by an**
30 **organization engaged in special education parent and student**
31 **advocacy, performed work for a school district or for a parent or**
32 **student as a special education advocate within the last five years as an**
33 **independent contractor or consultant, been employed within the last**
34 **five years by the state board of education or department of elementary**
35 **and secondary education, or performed work for the state board of**
36 **education or department of elementary and secondary education within**
37 **the last five years as an independent contractor or consultant, or been**
38 **party to a special education proceeding as an attorney, parent, or**
39 **child. Neither the state board of education nor the department of**
40 **elementary and secondary education shall enter into a contract with or**
41 **on behalf of the administrative hearing commission for the purpose of**
42 **conducting due process hearings or to provide assistance for the**
43 **conducting of due process hearings.** During the pendency of any hearing,
44 or prior to the assignment of the commissioner, the parties may, by mutual
45 agreement, submit their dispute to a mediator pursuant to section 162.959.

46 2. The parent or guardian, school official, and other persons affected by
47 the action in question shall present at the hearing all pertinent evidence relative
48 to the matter under appeal. All rights and privileges as described in section
49 162.963 shall be permitted.

50 3. After review of all evidence presented and a proper deliberation, the
51 commissioner, within the time lines required by the Individuals With Disabilities
52 Education Act, 20 U.S.C. Section 1415 and any amendments thereto, shall
53 determine its findings, conclusions, and decision in the matter in question and
54 forward the written decision to the parents or guardian of the child and to the
55 president of the appropriate local board of education or responsible educational

56 agency and to the department of elementary and secondary education. A specific
57 extension of the time line may be made by the commissioner assigned to the
58 matter at the request of either party, except in the case of an expedited hearing
59 as provided in subsection 4 of this section.

60 4. An expedited due process hearing by the administrative hearing
61 commission may be requested by a parent to challenge a disciplinary change of
62 placement or to challenge a manifestation determination in connection with a
63 disciplinary change of placement or by a responsible educational agency to seek
64 a forty-five school day alternative educational placement for a dangerous or
65 violent student. The administrative hearing commission shall assign a
66 commissioner to hear the case and render a decision within the time line required
67 by federal law and state regulations implementing federal law. A specific
68 extension of the time line is only permissible to the extent consistent with federal
69 law and pursuant to state regulations.

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

79 6. Any due process hearing request and responses to the request shall
80 conform to the requirements of the Individuals With Disabilities Education Act
81 (IDEA). Determination of the sufficiency shall be made by the
82 commissioner. The commissioner shall enforce the process and procedures,
83 including time lines, required by the IDEA, related to sufficiency of notice,
84 response to notice, determination of sufficiency dispute, and amendments of the
85 notice.

86 7. A preliminary meeting, known as a resolution session, shall be
87 convened by the responsible public agency, under the requirements of the
88 IDEA. The process and procedures required by the IDEA in connection to the
89 resolution session and any resulting written settlement agreement shall be
90 implemented. The responsible public agency or its designee shall sign the
91 agreement. The designee identified by the responsible public agency shall have

92 the authority to bind the agency. A local board of education, as a responsible
93 public agency, shall identify a designee with authority to bind the school district.

94 8. Notwithstanding any provision of law to the contrary, when conducting
95 a due process hearing, the administrative hearing commission shall conform all
96 of its practices, procedures, filing deadlines, and response times to the
97 requirements of the Individuals With Disabilities Education Act (IDEA).

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 fund shall
5 consist of all moneys that may be appropriated to it by the general assembly and
6 may also include any gifts, contributions, grants, or bequests received from
7 federal, state, private, or other sources. **All funds necessary for the payment
8 of expenditures actually incurred by the administrative hearing
9 commission and attributable to special education due process hearings
10 shall be appropriated to the fund and not to the state board of
11 education or the department of elementary and secondary education.**

12 In accordance with sections 30.170 and 30.180, the state treasurer may approve
13 disbursements. The fund shall be a dedicated fund and moneys in the fund shall
14 be used solely for the payment of expenditures actually incurred by the
15 administrative hearing commission and attributable to due process hearings and
16 state and federal legislation and regulations.

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

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

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