

FIRST REGULAR SESSION

HOUSE BILL NO. 276

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CUNNINGHAM (86).

Read 1st time January 19, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0765L.011

AN ACT

To repeal sections 162.955, 162.959, and 162.961, RSMo, and to enact in lieu thereof three new sections relating to special educational services.

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

Section A. Sections 162.955, 162.959, and 162.961, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 162.955, 162.959, and 162.961, to read as follows:

162.955. 1. Except as otherwise provided in this section, during the pendency of any administrative or judicial proceeding pursuant to sections 162.950, 162.961 and 162.963 no change in the assignment or status of a handicapped or severely handicapped child shall be made except that such change may be made with the written consent of the parent or guardian. If written consent cannot be obtained and the child is endangering himself or others, the assignment or status can be changed pursuant to court order, but without prejudice to any rights that the child and the parent or guardian may have pursuant to sections 162.670 to 162.999 or otherwise pursuant to law.

2. During the pendency of any administrative or judicial proceeding pursuant to sections 162.950, 162.961 and 162.963, to challenge a placement changed because of a disciplinary action to an interim alternative educational setting or to challenge the manifestation determination[, when the child is disciplined for weapons, drugs, or because the child is a danger to himself or others] **in connection with a disciplinary change of placement**, the child shall remain in the interim alternative educational setting pending the due process hearing or until expiration of the time period of the interim alternative educational setting, whichever first occurs, **unless the**

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.

16 **parent and responsible public agency agree otherwise.**

17 3. If during an interim alternative educational setting arranged because of a disciplinary
18 action involving weapons, drugs, **or serious bodily injury**, or because the child is a danger to
19 himself or others, the responsible educational agency proposes to change the child's placement
20 after expiration of the interim placement, and the parents challenge the proposed change by
21 requesting a due process hearing, the child shall remain in his current placement, which is the
22 placement before the interim alternative educational setting, during pending proceedings to
23 challenge the change. The responsible educational agency may request an expedited hearing
24 pursuant to section 162.961, if it is believed it is dangerous for the child to remain in the current
25 placement.

 162.959. 1. As used in this section, "mediation" is the process by which a neutral
2 mediator assists the parties in reaching a mutually acceptable voluntary and consensual
3 agreement in the best interests of the child as to issues contained in the notice pursuant to section
4 162.945. The role of the mediator is to aid the parties in identifying the issues, reducing
5 misunderstandings, clarifying priorities, exploring areas of common interest and finding points
6 of agreement. An agreement reached by the parties shall be based on the decisions of the parties
7 and not the decisions of the mediator. The agreement reached may resolve all or only some of
8 the disputed issues.

9 2. Whenever a hearing has been requested pursuant to section 162.961, on any matter
10 in dispute under section 162.961, and the dispute has not been finally resolved, the parties shall
11 be offered an opportunity for mediation to resolve the dispute. **Mediation shall also be made**
12 **available to parties prior to the request for a hearing.** Use of mediation shall be mutually
13 agreed upon by both parties unless federal law provides to the contrary. The department of
14 elementary and secondary education shall ensure that impartial mediation is provided at no cost
15 to parents or guardians and the participating school district when requested pursuant to this
16 section.

17 3. [No statements made by either party during the mediation pursuant to this section shall
18 be offered or used as evidence in any hearing, review of hearing decision, or civil action.

19 4.] School districts may not use mediation to deny or delay the parents' right to a
20 due-process hearing pursuant to section 162.961, or to deny the parents any other rights afforded
21 pursuant to this chapter.

22 [5.] **4.** Mediation conducted pursuant to this section shall be scheduled within fifteen
23 days of selecting a mediator at a time and place mutually acceptable to all parties engaged in
24 mediation.

25 [6.] **5.** Mediation conducted pursuant to this section shall be completed within thirty days
26 of agreement to mediate and may be terminated by either party at any time.

27 [7.] **6.** Any mediation agreement reached pursuant to this section shall be in writing,
28 **signed by the parties**, and delivered to all parties engaged in the mediation. **The responsible**
29 **public agency or its designee shall sign the agreement. The designee identified by the**
30 **responsible public agency shall have the authority to bind the agency. A local board of**
31 **education, as a responsible public agency, may identify a designee with authority to bind**
32 **the school district. The written agreement is a legally binding agreement that sets forth the**
33 **resolution and must state that all discussions that occurred during the mediation process**
34 **shall be confidential and may not be used as evidence in any subsequent due process**
35 **hearing or civil proceeding. The agreement is enforceable in any state court of competent**
36 **jurisdiction or in a district court of the United States.**

37 [8.] **7.** Mediators shall be selected by mutual agreement of the parents or guardians and
38 the participating school district or responsible educational agency from a list maintained by the
39 department of elementary and secondary education. Any mediator selected shall meet training,
40 impartiality and assessment requirements pursuant to regulations promulgated by the department
41 of elementary and secondary education [pursuant to section 536.034, RSMo].

42 [9.] **8.** No attorney shall attend or participate on behalf of any party at the mediation
43 session although the parent or guardian may be accompanied by a lay advocate. Each party may
44 be accompanied by no more than three persons, with additional participants allowed only by
45 mutual agreement.

46 [10. The representative of the participating school district or responsible educational
47 agency shall have authority to reach an agreement on behalf of the school district.]

162.961. 1. The resolution conference provided for in section 162.950 shall be
2 conducted by the chief administrative officer of the responsible school district or a designee. The
3 conference shall be informal, witnesses need not be sworn and a record of the proceedings need
4 not be made. The school district or the state department of elementary and secondary education
5 shall see that the parent or guardian or his representative is advised of and permitted to review
6 all diagnoses, evaluations and reevaluations obtained by the board of education or the state
7 department of elementary and secondary education which pertain to the child. The school district
8 or state department of elementary and secondary education shall fully advise the parents or
9 guardian or their representative of each reason relied upon by it in taking the proposed action.
10 The parents or guardian or their representative may present any information whether written or
11 oral to the officer which pertains to the recommended action. Questioning of all witnesses shall
12 be permitted.

13 2. The resolution conference may be waived by the parents or guardian. If the parent or
14 guardian waives the resolution conference and requests a three-member panel hearing, the state
15 board of education shall empower such a panel pursuant to subsection 3 of this section. That

16 empowerment shall take place within fifteen days of the request for the three-member panel
17 hearing.

18 3. A parent, guardian or the responsible educational agency may request a due process
19 hearing by the state board of education with respect to any matter relating to identification,
20 evaluation, educational placement, or the provision of a free appropriate public education of the
21 child. Such request shall include the child's name, address, school, issue, and suggested
22 resolution of dispute if known. Except as provided in subsection 6 of this section, the board or
23 its delegated representative shall within fifteen days after receiving notice empower a hearing
24 panel of three persons who are not directly connected with the original decision and who are not
25 employees of the board to which the appeal has been made. All of the panel members shall have
26 some knowledge or training involving children with disabilities, none shall have a personal or
27 professional interest which would conflict with his or her objectivity in the hearing, and all shall
28 meet the department of elementary and secondary education's training and assessment
29 requirements pursuant to state regulations **and federal law and regulation requirements of the**
30 **Individuals With Disabilities Education Act**. One person shall be chosen by the local school
31 district board or its delegated representative or the responsible educational agency, and one
32 person shall be chosen at the recommendation of the parent or guardian. If either party has not
33 chosen a panel member ten days after the receipt by the department of elementary and secondary
34 education of the request for a due process hearing, such panel member shall be chosen instead
35 by the department of elementary and secondary education. Each of these two panel members
36 shall be compensated pursuant to a rate set by the department of elementary and secondary
37 education. The third person shall be appointed by the state board of education and shall serve
38 as the chairperson of the panel. The chairperson shall be an attorney licensed to practice law in
39 this state. During the pendency of any three-member panel hearing, or prior to the empowerment
40 of the panel, the parties may, by mutual agreement, submit their dispute to a mediator pursuant
41 to section 162.959.

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

45 5. After review of all evidence presented and a proper deliberation, the hearing panel,
46 within forty-five days of receipt of the request for a due process hearing, except as provided in
47 subsection 6 of this section relating to expedited hearings, shall by majority vote determine its
48 findings, conclusions, and decision in the matter in question and forward the written decision to
49 the parents or guardian of the child and to the president of the appropriate local board of
50 education or responsible educational agency and to the department of elementary and secondary
51 education. A specific extension of the time line may be made by the chairman at the request of

52 either party, except in the case of an expedited hearing as provided in subsection 6 of this
53 section.

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

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

74 **8. Any due process hearing request and responses to the request shall conform to**
75 **the requirements of the Individuals With Disabilities Education Act (IDEA).**
76 **Determination of the sufficiency shall be made by the chairperson of the three-member**
77 **hearing panel, or in the case of an expedited due process hearing, by the hearing officer.**
78 **The chairperson or hearing officer shall implement the process and procedures, including**
79 **timelines, required by the IDEA, related to sufficiency of notice, response to notice,**
80 **determination of sufficiency dispute, and amendments of the notice.**

81 **9. A preliminary meeting, known as a resolution session, shall be convened by the**
82 **responsible public agency, under the requirements of the IDEA. The process and**
83 **procedures required by the IDEA in connection to the resolution session and any resulting**
84 **written settlement agreement shall be implemented.**