

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 834
93RD GENERAL ASSEMBLY

Reported from the Committee on Elementary and Secondary Education April 12, 2006 with recommendation that House Committee Substitute for Senate Bill No. 834 Do Pass by Consent. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

4258L.02C

AN ACT

To repeal sections 162.700, 162.950, 162.955, 162.961, and 167.020, RSMo, and to enact in lieu thereof four new sections relating to special education, with penalty provisions.

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

Section A. Sections 162.700, 162.950, 162.955, 162.961, and 167.020, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections 162.700,
3 162.955, 162.961, and 167.020, to read as follows:

162.700. 1. The board of education of each school district in this state, except school
2 districts which are part of a special school district, and the board of education of each special
3 school district shall provide special educational services for handicapped children three years of
4 age or more residing in the district as required by P.L. 99-457, as codified and as may be
5 amended. Any child, determined to be handicapped, shall be eligible for such services upon
6 reaching his or her third birthday and state school funds shall be apportioned accordingly. This
7 subsection shall apply to each full school year beginning on or after July 1, 1991. In the event
8 that federal funding fails to be appropriated at the authorized level as described in 20 U.S.C.
9 1419(b)(2), the implementation of this subsection relating to services for handicapped children
10 three and four years of age may be delayed until such time as funds are appropriated to meet such
11 level. Each local school district and each special school district shall be responsible to engage
12 in a planning process to design the service delivery system necessary to provide special education
13 and related services for children three and four years of age with handicaps. The planning

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 process shall include public, private and private not-for-profit agencies which have provided
15 such services for this population. The school district, or school districts, or special school
16 district, shall be responsible for designing an efficient service delivery system which uses the
17 present resources of the local community which may be funded by the department of elementary
18 and secondary education or the department of mental health. School districts may coordinate
19 with public, private and private not-for-profit agencies presently in existence. The service
20 delivery system shall be consistent with the requirements of the department of elementary and
21 secondary education to provide appropriate special education services in the least restrictive
22 environment.

23 2. Every local school district or, if a special district is in operation, every special school
24 district shall obtain current appropriate diagnostic reports for each handicapped child prior to
25 assignment in a special program. These records may be obtained with parental permission from
26 previous medical or psychological evaluation, may be provided by competent personnel of such
27 district or special district, or may be secured by such district from competent and qualified
28 medical, psychological or other professional personnel.

29 **3. Evaluations of private school students suspected of having a disability under the**
30 **Individuals With Disabilities Education Act will be conducted as appropriate by the school**
31 **district in which the private school is located or its contractor.**

32 **4.** Where special districts have been formed to serve handicapped children under the
33 provisions of sections 162.670 to 162.995, such children shall be educated in programs of the
34 special district, except that component districts may provide education programs for handicapped
35 children ages three and four inclusive in accordance with regulations and standards adopted by
36 the state board of education.

37 [4.] **5.** For the purposes of this act, remedial reading programs are not a special
38 education service as defined by subdivision (4) of section 162.675 [but shall be funded in
39 accordance with the provisions of section 162.975].

40 [5.] **6.** Any and all state costs required to fund special education services for three- and
41 four-year-old children pursuant to this section shall be provided for by a specific, separate
42 appropriation and shall not be funded by a reallocation of money appropriated for the public
43 school foundation program.

44 [6.] **7.** School districts providing early childhood special education shall give
45 consideration to the value of continuing services with Part C early intervention system providers
46 for the remainder of the school year when developing an individualized education program for
47 a student who has received services pursuant to Part C of the Individuals With Disabilities
48 Education Act and reaches the age of three years during a regular school year. Services provided

49 shall be only those permissible according to Section 619 of the Individuals with Disabilities
50 Education Act.

51 [7.] 8. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,
52 that is created under the authority delegated in this section shall become effective only if it
53 complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable,
54 section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of
55 the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay
56 the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then
57 the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall
58 be invalid and void.

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

9 2. During the pendency of any administrative or judicial proceeding pursuant to sections
10 [162.950,] 162.961 and 162.963, to challenge a placement changed because of a disciplinary
11 action to an interim alternative educational setting or to challenge the manifestation
12 determination in connection with a disciplinary change of placement, the child shall remain in
13 the interim alternative educational setting pending the due process hearing or until expiration of
14 the time period of the interim alternative educational setting, whichever first occurs, unless the
15 parent and responsible public agency agree otherwise.

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

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] 4 of this section, the board
23 or 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.] 2. The parent or guardian, school official, and other persons affected by the action
43 in 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.] 3. After review of all evidence presented and a proper deliberation, the hearing
46 panel, within [forty-five days of receipt of the request for a due process hearing, except as
47 provided in subsection 6 of this section relating to expedited hearings] **the timelines required**
48 **by the Individuals With Disabilities Education Act, 20 U.S.C. Section 1415 and any**
49 **amendments thereto**, shall by majority vote determine its findings, conclusions, and decision
50 in the matter in question and forward the written decision to the parents or guardian of the child
51 and to the president of the appropriate local board of education or responsible educational agency
52 and to the department of elementary and secondary education. A specific extension of the time
53 line may be made by the chairman at the request of either party, except in the case of an
54 expedited hearing as provided in subsection [6] 4 of this section.

55 [6.] 4. An expedited due process hearing by the state board of education may be
56 requested by a parent to challenge a disciplinary change of placement or to challenge a
57 manifestation determination in connection with a disciplinary change of placement or by a
58 responsible educational agency to seek a forty-five school day alternative educational placement
59 for a dangerous or violent student. The board or its delegated representative shall appoint a
60 hearing officer to hear the case and render a decision within the time line required by federal law
61 and state regulations implementing federal law. The hearing officer shall be an attorney licensed
62 to practice law in this state. The hearing officer shall have some knowledge or training involving
63 children with disabilities, shall not have a personal or professional interest which would conflict
64 with his or her objectivity in the hearing, and shall meet the department of elementary and
65 secondary education's training and assessment requirements pursuant to state regulations and
66 federal law and regulation requirements of the Individuals With Disabilities Education Act. A
67 specific extension of the time line is only permissible to the extent consistent with federal law
68 and pursuant to state regulations.

69 [7.] 5. If the responsible public agency requests a due process hearing to seek a
70 forty-five school day alternative educational placement for a dangerous or violent student, the
71 agency shall show by substantial evidence that there is a substantial likelihood the student will
72 injure himself or others and that the agency made reasonable efforts to minimize that risk, and
73 shall show that the forty-five school day alternative educational placement will provide a free
74 appropriate public education which includes services and modifications to address the behavior

75 so that it does not reoccur, and continue to allow progress in the general education curriculum.

76 [8.] 6. Any due process hearing request and responses to the request shall conform to
77 the requirements of the Individuals With Disabilities Education Act (IDEA). Determination of
78 the sufficiency shall be made by the chairperson of the three-member hearing panel, or in the
79 case of an expedited due process hearing, by the hearing officer. The chairperson or hearing
80 officer shall implement the process and procedures, including time lines, required by the IDEA,
81 related to sufficiency of notice, response to notice, determination of sufficiency dispute, and
82 amendments of the notice.

83 [9.] 7. A preliminary meeting, known as a resolution session, shall be convened by the
84 responsible public agency, under the requirements of the IDEA. The process and procedures
85 required by the IDEA in connection to the resolution session and any resulting written settlement
86 agreement shall be implemented.

167.020. 1. As used in this section, the term "homeless child" or "homeless youth" shall
2 mean a person less than twenty-one years of age who lacks a fixed, regular and adequate
3 nighttime residence, including a child or youth who:

4 (1) Is sharing the housing of other persons due to loss of housing, economic hardship,
5 or a similar reason; is living in motels, hotels, or camping grounds due to lack of alternative
6 adequate accommodations; is living in emergency or transitional shelters; is abandoned in
7 hospitals; or is awaiting foster care placement;

8 (2) Has a primary nighttime residence that is a public or private place not designed for
9 or ordinarily used as a regular sleeping accommodation for human beings;

10 (3) Is living in cars, parks, public spaces, abandoned buildings, substandard housing, bus
11 or train stations, or similar settings; and

12 (4) Is a migratory child or youth who qualifies as homeless because the child or youth
13 is living in circumstances described in subdivisions (1) to (3) of this subsection.

14 2. In order to register a pupil, the parent or legal guardian of the pupil or the pupil
15 himself or herself shall provide, at the time of registration, one of the following:

16 (1) Proof of residency in the district. Except as otherwise provided in section 167.151,
17 the term "residency" shall mean that a person both physically resides within a school district and
18 is domiciled within that district **or, in the case of a private school student suspected of having**
19 **a disability under the Individuals With Disabilities Education Act, 20 U.S.C. Section 1412**
20 **et seq, that the student attends private school within that district.** The domicile of a minor
21 child shall be the domicile of a parent, military guardian pursuant to a military-issued
22 guardianship or court-appointed legal guardian; or

23 (2) Proof that the person registering the student has requested a waiver under subsection
24 3 of this section within the last forty-five days. In instances where there is reason to suspect that

25 admission of the pupil will create an immediate danger to the safety of other pupils and
26 employees of the district, the superintendent or the superintendent's designee may convene a
27 hearing within five working days of the request to register and determine whether or not the pupil
28 may register.

29 3. Any person subject to the requirements of subsection 2 of this section may request a
30 waiver from the district board of any of those requirements on the basis of hardship or good
31 cause. Under no circumstances shall athletic ability be a valid basis of hardship or good cause
32 for the issuance of a waiver of the requirements of subsection 2 of this section. The district
33 board or committee of the board appointed by the president and which shall have full authority
34 to act in lieu of the board shall convene a hearing as soon as possible, but no later than forty-five
35 days after receipt of the waiver request made under this subsection or the waiver request shall
36 be granted. The district board or committee of the board may grant the request for a waiver of
37 any requirement of subsection 2 of this section. The district board or committee of the board
38 may also reject the request for a waiver in which case the pupil shall not be allowed to register.
39 Any person aggrieved by a decision of a district board or committee of the board on a request
40 for a waiver under this subsection may appeal such decision to the circuit court in the county
41 where the school district is located.

42 4. Any person who knowingly submits false information to satisfy any requirement of
43 subsection 2 of this section is guilty of a class A misdemeanor.

44 5. In addition to any other penalties authorized by law, a district board may file a civil
45 action to recover, from the parent, military guardian or legal guardian of the pupil, the costs of
46 school attendance for any pupil who was enrolled at a school in the district and whose parent,
47 military guardian or legal guardian filed false information to satisfy any requirement of
48 subsection 2 of this section.

49 6. Subsection 2 of this section shall not apply to a pupil who is a homeless child or
50 youth, or a pupil attending a school not in the pupil's district of residence as a participant in an
51 interdistrict transfer program established under a court-ordered desegregation program, a pupil
52 who is a ward of the state and has been placed in a residential care facility by state officials, a
53 pupil who has been placed in a residential care facility due to a mental illness or developmental
54 disability, a pupil attending a school pursuant to sections 167.121 and 167.151, a pupil placed
55 in a residential facility by a juvenile court, a pupil with a disability identified under state
56 eligibility criteria if the student is in the district for reasons other than accessing the district's
57 educational program, or a pupil attending a regional or cooperative alternative education program
58 or an alternative education program on a contractual basis.

59 7. Within two business days of enrolling a pupil, the school official enrolling a pupil,
60 including any special education pupil, shall request those records required by district policy for

61 student transfer and those discipline records required by subsection 9 of section 160.261, RSMo,
62 from all schools previously attended by the pupil within the last twelve months. Any school
63 district that receives a request for such records from another school district enrolling a pupil that
64 had previously attended a school in such district shall respond to such request within five
65 business days of receiving the request. School districts may report or disclose education records
66 to law enforcement and juvenile justice authorities if the disclosure concerns law enforcement's
67 or juvenile justice authorities' ability to effectively serve, prior to adjudication, the student whose
68 records are released. The officials and authorities to whom such information is disclosed must
69 comply with applicable restrictions set forth in 20 U.S.C. Section 1232g (b)(1)(E).

2 [162.950. 1. The notification shall contain the information that upon
3 written request to the board of education or to the state department of elementary
4 and secondary education the parent or guardian will be entitled to a resolution
5 conference to review the action advised of in the notice. Such a conference, if
6 requested, shall be held not more than ten days after receipt of the request unless
7 the parent or guardian agrees to a later time. If no request for a resolution
8 conference is made, the assignment or other action shall be made.
9 2. The notification shall also contain the information that upon written
10 request by the parent or guardian to the board of education or to the state
11 department of elementary and secondary education, whatever the case may be,
12 the board of education or the state department of elementary and secondary
education shall cause a reevaluation to be made.]

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