

FIRST REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]

# HOUSE BILL NO. 289

## 95TH GENERAL ASSEMBLY

1078L.01T

2009

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### AN ACT

To repeal sections 162.961 and 162.963, RSMo, and to enact in lieu thereof two new sections relating to special education due process hearings.

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

Section A. Sections 162.961 and 162.963, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 162.961 and 162.963, to read as follows:

162.961. 1. A parent, guardian or the responsible educational agency may request a due  
2 process hearing by the state board of education with respect to any matter relating to  
3 identification, evaluation, educational placement, or the provision of a free appropriate public  
4 education of the child. Such request shall include the child's name, address, school, issue, and  
5 suggested resolution of dispute if known. Except as provided in subsection 4 of this section, the  
6 board or its delegated representative shall within fifteen days after receiving notice empower a  
7 hearing panel of three persons who are not directly connected with the original decision and who  
8 are not employees of the board to which the appeal has been made. All of the panel members  
9 shall have some knowledge or training involving children with disabilities, none shall have a  
10 personal or professional interest which would conflict with his or her objectivity in the hearing,  
11 and all shall meet the department of elementary and secondary education's training and  
12 assessment requirements pursuant to state regulations and federal law and regulation  
13 requirements of the Individuals With Disabilities Education Act. One person shall be chosen by  
14 the local school district board or its delegated representative or the responsible educational  
15 agency, and one person shall be chosen at the recommendation of the parent or guardian. If  
16 either party has not chosen a panel member ten days after the receipt by the department of  
17 elementary and secondary education of the request for a due process hearing, such panel member  
18 shall be chosen instead by the department of elementary and secondary education. Each of these

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.

19 two panel members shall be compensated pursuant to a rate set by the department of elementary  
20 and secondary education. The third person shall be appointed by the state board of education and  
21 shall serve as the chairperson of the panel. The chairperson shall be an attorney licensed to  
22 practice law in this state. During the pendency of any three-member panel hearing, or prior to  
23 the empowerment of the panel, the parties may, by mutual agreement, submit their dispute to a  
24 mediator pursuant to section 162.959.

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

28         3. After review of all evidence presented and a proper deliberation, the hearing panel,  
29 within the time lines required by the Individuals With Disabilities Education Act, 20 U.S.C.  
30 Section 1415 and any amendments thereto, shall by majority vote determine its findings,  
31 conclusions, and decision in the matter in question and forward the written decision to the  
32 parents or guardian of the child and to the president of the appropriate local board of education  
33 or responsible educational agency and to the department of elementary and secondary education.  
34 A specific extension of the time line may be made by the chairman at the request of either party,  
35 except in the case of an expedited hearing as provided in subsection 4 of this section.

36         4. An expedited due process hearing by the state board of education may be requested  
37 by a parent to challenge a disciplinary change of placement or to challenge a manifestation  
38 determination in connection with a disciplinary change of placement or by a responsible  
39 educational agency to seek a forty-five school day alternative educational placement for a  
40 dangerous or violent student. The board or its delegated representative shall appoint a hearing  
41 officer to hear the case and render a decision within the time line required by federal law and  
42 state regulations implementing federal law. The hearing officer shall be an attorney licensed to  
43 practice law in this state. The hearing officer shall have some knowledge or training involving  
44 children with disabilities, shall not have a personal or professional interest which would conflict  
45 with his or her objectivity in the hearing, and shall meet the department of elementary and  
46 secondary education's training and assessment requirements pursuant to state regulations and  
47 federal law and regulation requirements of the Individuals With Disabilities Education Act. A  
48 specific extension of the time line is only permissible to the extent consistent with federal law  
49 and pursuant to state regulations.

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

55 education which includes services and modifications to address the behavior so that it does not  
56 reoccur, and continue to allow progress in the general education curriculum.

57         6. Any due process hearing request and responses to the request shall conform to the  
58 requirements of the Individuals With Disabilities Education Act (IDEA). Determination of the  
59 sufficiency shall be made by the chairperson of the three-member hearing panel, or in the case  
60 of an expedited due process hearing, by the hearing officer. The chairperson or hearing officer  
61 shall implement the process and procedures, including time lines, required by the IDEA, related  
62 to sufficiency of notice, response to notice, determination of sufficiency dispute, and  
63 amendments of the notice.

64         7. A preliminary meeting, known as a resolution session, shall be convened by the  
65 responsible public agency, under the requirements of the IDEA. The process and procedures  
66 required by the IDEA in connection to the resolution session and any resulting written settlement  
67 agreement shall be implemented. **The responsible public agency or its designee shall sign the**  
68 **agreement. The designee identified by the responsible public agency shall have the**  
69 **authority to bind the agency. A local board of education, as a responsible public agency,**  
70 **shall identify a designee with authority to bind the school district.**

162.963. 1. At any hearing held pursuant to the provisions of section 162.961, except  
2 as otherwise provided in this section, either party or a representative shall be entitled to:

3         (1) Be accompanied and advised by counsel and by individuals with special knowledge  
4 or training with respect to the problems of children with disabilities;

5         (2) Present evidence and confront, cross-examine, and compel the attendance of  
6 witnesses;

7         (3) Prohibit the introduction of any evidence, including all evaluations and  
8 recommendations based on the offering party's evaluation, at the hearing that has not been  
9 disclosed to that party at least five business days before the hearing[, except this shall not be  
10 applicable in the case of an expedited hearing where no discovery shall take place];

11         (4) Obtain a written or, at the option of the parents, electronic verbatim record of the  
12 hearing; and

13         (5) Obtain written or, at the option of the parents, electronic findings of fact and  
14 decision.

15         2. Parents involved in hearings have the right to have the child who is the subject of the  
16 hearing present and the right to open the hearing to the public.

17         3. Prior to the resolution conference or hearing, the parent or guardian or a representative  
18 of the parent or guardian shall have access to any reports, records, clinical evaluations or other  
19 materials upon which the action to be reviewed was wholly or partially based which could  
20 reasonably have a bearing on the correctness of the determination.

21           4. A complete record shall be made of all proceedings unless otherwise specified by  
22 statute, which records shall include verbatim transcription of all testimony and shall include all  
23 documents, writings, or other evidence presented by any party. Costs incurred during these  
24 proceedings, except those of the parties for purchasing diagnostic services or legal counsel or  
25 other services of a personal nature, shall be the responsibility of the state board of education.

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