

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 595

96TH GENERAL ASSEMBLY

2012

4939L.08T

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.

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Section A. Sections 162.961 and 162.962, RSMo, are repealed and four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**
13 **and secondary education to hear the case.** [All of the panel members]

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

14 **Commissioners** shall have some knowledge or training involving children with
15 disabilities, [none] shall **not** have a personal or professional interest which would
16 conflict with his or her objectivity in the hearing, and [all] shall meet the
17 [department of elementary and secondary education's] training and assessment
18 requirements pursuant to state regulations, [and] federal law and regulation
19 requirements of the Individuals With Disabilities Education Act[. One person
20 shall be chosen by the local school district board or its delegated representative
21 or the responsible educational agency, and one person shall be chosen at the
22 recommendation of the parent or guardian. If either party has not chosen a panel
23 member ten days after the receipt by the department of elementary and
24 secondary education of the request for a due process hearing, such panel member
25 shall be chosen instead by the department of elementary and secondary
26 education. Each of these two panel members shall be compensated pursuant to
27 a rate set by the department of elementary and secondary education. The third
28 person shall be appointed by the state board of education and shall serve as the
29 chairperson of the panel. The chairperson shall be an attorney licensed to
30 practice law in this state], **and the requirements in section 621.253. No**
31 **commissioner who conducts a due process hearing shall have been**
32 **employed within the last five years by a school district or by an**
33 **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
68 [appoint] **assign** a [hearing officer] **commissioner** to hear the case and render
69 a decision within the time line required by federal law and state regulations
70 implementing federal law. [The hearing officer shall be an attorney licensed to
71 practice law in this state. The hearing officer shall have some knowledge or
72 training involving children with disabilities, shall not have a personal or
73 professional interest which would conflict with his or her objectivity in the
74 hearing, and shall meet the department of elementary and secondary education's
75 training and assessment requirements pursuant to state regulations and federal
76 law and regulation requirements of the Individuals With Disabilities Education
77 Act.] A specific extension of the time line is only permissible to the extent
78 consistent with federal 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 at
2 least ten hours of initial training in special education matters and shall
3 be the only commissioners who are assigned to special education due
4 process hearings. The initial training shall be selected by the
5 Administrative Hearing Commission in consultation with the
6 department of elementary and secondary education and the IDEA-
7 funded parent training and information center located in this
8 state. The training shall ensure that the commissioners receive
9 knowledge of educational and legal matters sufficient for them to
10 possess knowledge of the matters brought before them. If allowed by
11 the policies of the training provider, materials from the training,
12 including any available audio or video, shall be posted to the
13 Administrative Hearing Commission's website within ten business days
14 from the date of the training.

15 2. Each commissioner assigned to special education due process
16 hearings shall annually complete a minimum of five hours of training
17 selected by the Administrative Hearing Commission in consultation
18 with the department of elementary and secondary education and the
19 IDEA-funded parent training and information center located in this
20 state. The training shall ensure that the commissioners receive
21 updated knowledge of educational and legal matters sufficient for them

22 to possess knowledge of the matters brought before them. If allowed by
23 the rules and regulations of the training provider, materials from the
24 training, including any available audio or video, shall be posted to the
25 Administrative Hearing Commission's website within ten business days
26 from the date of the training.

27 3. If any special education training is provided directly by the
28 department of elementary and secondary education, the IDEA-funded
29 parent training and information center located in this state, or a
30 provider working directly on behalf of either group, the group shall
31 provide materials from the training, including any available audio or
32 video, on its website within ten business days from the date of the
33 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 are deemed necessary for

4 the immediate preservation of the public health, welfare, peace and safety, and
5 is 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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