

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 595

AN ACT

To repeal sections 162.961 and 162.962, RSMo, and to enact in lieu thereof two new sections relating to due process hearing panel members.

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Section A. Sections 162.961 and 162.962, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 162.961 and 162.962, to read as follows:

162.961. 1. A parent, guardian or the responsible educational agency may request a due process hearing [by the state board of education] before the administrative hearing commission with respect to any matter relating to identification, evaluation, educational placement, or the provision of a free appropriate public education of the child. Such request shall include the child's name, address, school, issue, and suggested resolution of dispute if known. Except as provided in subsection 4 of this section, the [board or its delegated representative] the administrative hearing commission shall within fifteen days after receiving notice [empower] assign a [hearing panel of three persons] commissioner who [are not directly connected with the original decision and who are] is not [employees] an employee of the state board of education [to which the appeal has been made] or department of elementary and secondary education to hear the

case. [All of the panel members] Commissioners shall have some knowledge or training involving children with disabilities, [none] shall not have a personal or professional interest which would conflict with his or her objectivity in the hearing, and [all] shall meet the [department of elementary and secondary education's] training and assessment requirements pursuant to state regulations, [and] federal law and regulation requirements of the Individuals With Disabilities Education Act[. One person shall be chosen by the local school district board or its delegated representative or the responsible educational agency, and one person shall be chosen at the recommendation of the parent or guardian. If either party has not chosen a panel member ten days after the receipt by the department of elementary and secondary education of the request for a due process hearing, such panel member shall be chosen instead by the department of elementary and secondary education. Each of these two panel members shall be compensated pursuant to a rate set by the department of elementary and secondary education. The third person shall be appointed by the state board of education and shall serve as the chairperson of the panel. The chairperson shall be an attorney licensed to practice law in this state], and the requirements in subsection 9 of this section. No commissioner who conducts a due process hearing shall have been employed within the last five years by a school district, performed work for a school district within the last five years as an independent contractor or consultant, been employed within the last five years by the state board of education or department of elementary and secondary education, or performed work for the

state board of education or department of elementary and secondary education within the last five years as an independent contractor or consultant. During the pendency of any [three-member panel] hearing, or prior to the [empowerment] assignment of the [panel] commissioner, the parties may, by mutual agreement, submit their dispute to a mediator pursuant to section 162.959.

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

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

4. An expedited due process hearing by the [state board of education] administrative hearing commission may be requested by a parent to challenge a disciplinary change of placement or to

challenge a manifestation determination in connection with a disciplinary change of placement or by a responsible educational agency to seek a forty-five school day alternative educational placement for a dangerous or violent student. The [board or its delegated representative] administrative hearing commission shall [appoint] assign a [hearing officer] commissioner to hear the case and render a decision within the time line required by federal law and state regulations implementing federal law. [The hearing officer shall be an attorney licensed to practice law in this state. The hearing officer shall have some knowledge or training involving children with disabilities, shall not have a personal or professional interest which would conflict with his or her objectivity in the hearing, and shall meet the department of elementary and secondary education's training and assessment requirements pursuant to state regulations and federal law and regulation requirements of the Individuals With Disabilities Education Act.] A specific extension of the time line is only permissible to the extent consistent with federal law and pursuant to state regulations.

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

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

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

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

8. Notwithstanding any provision of law to the contrary, no rule or regulation promulgated by the administrative hearing commission regarding disposition of a complaint through the use of a default judgment, a judgment on the pleadings, or summary judgment shall be applicable or used by the commission or a

commissioner for purposes of special education administrative hearings or special education due process hearings.

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

9. At least three of the commissioners shall be trained in special education law. The training shall be conducted by the department of elementary and secondary education and shall include components prepared and presented by a parent training and information center located in this state. The department of elementary and secondary education shall videotape, or record in a digital format, all training sessions and make them available by free electronic record on the department's website within ten business days. Commissioners shall be annually required to complete a minimum of five hours of additional training in special education law. All materials used in the training shall be made available by free electronic record on the administrative hearing commission's website and the department of elementary and secondary education's website five business days prior to the training.

162.962. In a case where review of the administrative hearing [panel's] commission's decision is sought by a school district or a parent or guardian, either party may appeal as follows:

- (1) The court shall hear the case without a jury and shall:
 - (a) Receive the records of the administrative proceedings;

(b) Hear additional evidence at the request of a party; and
(c) Grant the relief that the court determines to be appropriate, basing its decision on the preponderance of the evidence;

(2) Appeals may be taken from the judgment of the court as in other civil cases;

(3) Judicial review of the administrative hearing [panel's] commission's decision may be instituted by filing a petition in a state or federal court of competent jurisdiction. Appeals to state court shall be filed within forty-five days after the receipt of the notice of the agency's final decision;

(4) Except when provided otherwise within this chapter or Part 300 of Title 34 of the Code of Federal Regulations, the provisions of chapter 536 are applicable to special education due process hearings and appeal of same;

(5) When a commissioner renders a final decision, such decision shall not be amended or modified by the commissioner or administrative hearing commission.