

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

# HOUSE BILL NO. 2023

## 91ST GENERAL ASSEMBLY

3746S.03T

2002

---

### AN ACT

To repeal sections 162.670, 162.675, 162.961 and 162.962, RSMo, and to enact in lieu thereof four new sections relating to the appropriate educational placement of students.

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

Section A. Sections 162.670, 162.675, 162.961 and 162.962, RSMo, are repealed and  
2 four new sections enacted in lieu thereof, to be known as sections 162.670, 162.675, 162.961 and  
3 162.962, to read as follows:

162.670. In order to fully implement section 1(a) of article IX, constitution of Missouri,  
2 1945, providing for the establishment and maintenance of free public schools for gratuitous  
3 instruction of all persons in this state within ages not in excess of twenty-one years as prescribed  
4 by law, it is hereby declared the policy of the state of Missouri to provide or to require public  
5 schools to provide to all handicapped and severely handicapped children within the ages  
6 prescribed herein, as an integral part of Missouri's system of gratuitous education, [special  
7 educational services sufficient to meet the needs and maximize the capabilities of handicapped  
8 and severely handicapped children] **a free appropriate education consistent with the**  
9 **provisions set forth in state and federal regulations implementing the Individuals with**  
10 **Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 et seq. and any amendments**  
11 **thereto.** The need of such children for early recognition, diagnosis and intensive educational  
12 services leading to more successful participation in home, employment and community life is  
13 recognized. The timely implementation of this policy is declared to be an integral part of the  
14 policy of this state.

162.675. As used in sections 162.670 to 162.995, unless the context clearly indicates  
2 otherwise, the following terms mean:

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

3 (1) "Gifted children", children who exhibit precocious development of mental capacity  
4 and learning potential as determined by competent professional evaluation to the extent that  
5 continued educational growth and stimulation could best be served by an academic environment  
6 beyond that offered through a standard grade level curriculum;

7 (2) "Handicapped children", children under the age of twenty-one years who have not  
8 completed an approved high school program and who, because of mental, physical, emotional  
9 or learning problems, require special educational services [in order to develop to their maximum  
10 capacity];

11 (3) "Severely handicapped children", handicapped children under the age of twenty-one  
12 years who, because of the extent of the handicapping condition or conditions, as determined by  
13 competent professional evaluation, are unable to benefit from or meaningfully participate in  
14 programs in the public schools for handicapped children. The term "severely handicapped" is  
15 not confined to a separate and specific category but pertains to the degree of disability which  
16 permeates a variety of handicapping conditions and education programs;

17 (4) "Special educational services", programs designed to meet the needs [and maximize  
18 the capabilities] of handicapped or severely handicapped children and which include, but are not  
19 limited to, the provision of diagnostic and evaluation services, student and parent counseling,  
20 itinerant, homebound and referral assistance, organized instructional and therapeutic programs,  
21 transportation, and corrective and supporting services.

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  
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6 all diagnoses, evaluations and reevaluations obtained by the board of education or the state  
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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. One person shall be chosen by the local school  
30 district board or its delegated representative or the responsible educational agency, and one  
31 person shall be chosen at the recommendation of the parent or guardian. If either party has not  
32 chosen a panel member ten days after the receipt by the department of elementary and secondary  
33 education of the request for a due process hearing, such panel member shall be chosen instead  
34 by the department of elementary and secondary education. Each of these two panel members  
35 shall be compensated pursuant to a rate set by the department of elementary and secondary  
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37 as the chairperson of the panel. The chairperson shall be an attorney licensed to practice law in  
38 this state. During the pendency of any three-member panel hearing, or prior to the empowerment  
39 of the panel, the parties may, by mutual agreement, submit their dispute to a mediator pursuant  
40 to section 162.959.

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

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

53           6. An expedited due process hearing by the state board of education may be requested

54 by a parent to challenge a [discipline] **disciplinary change of** placement [to an interim  
55 alternative educational setting,] or to challenge a manifestation determination in connection with  
56 a disciplinary [action involving a forty-five day placement for weapons, drugs, or because the  
57 child is a danger to himself or others,] **change of placement** or by a responsible educational  
58 agency to seek a forty-five day alternative educational placement for a dangerous or violent  
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68 7. If the responsible public agency requests a due process hearing to seek a forty-five day  
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70 substantial evidence that there is a substantial likelihood the student will injure himself or others  
71 and that the agency made reasonable efforts to minimize that risk, and shall show that the  
72 forty-five day alternative educational placement will provide a free appropriate public education  
73 which includes services and modifications to address the behavior so that it does not reoccur, and  
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162.962. In a case where review of the hearing panel's decision is sought by a school  
2 district or a parent or guardian, either party may appeal as [provided in chapter 536, RSMo.]  
3 **follows:**

- 4 **(1) The court shall hear the case without a jury and except as otherwise provided**  
5 **in subsection 4 of 536.140, RSMo, shall hear it upon the petition and record filed as**  
6 **provided in sections 162.950 to 162.961;**  
7 **(2) The inquiry may extend to a determination of whether the action of the agency:**  
8 **(a) Is in violation of constitutional provisions;**  
9 **(b) Is unsupported by competent and substantial evidence upon the entire record;**  
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162.670. In order to fully implement section 1(a) of article IX, constitution of Missouri,  
2 1945, providing for the establishment and maintenance of free public schools for gratuitous  
3 instruction of all persons in this state within ages not in excess of twenty-one years as prescribed  
4 by law, it is hereby declared the policy of the state of Missouri to provide or to require public  
5 schools to provide to all handicapped and severely handicapped children within the ages  
6 prescribed herein, as an integral part of Missouri's system of gratuitous education, [special  
7 educational services sufficient to meet the needs and maximize the capabilities of handicapped  
8 and severely handicapped children] **a free appropriate education consistent with the**  
9 **provisions set forth in state and federal regulations implementing the Individuals with**  
10 **Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 et seq. and any amendments**  
11 **thereto.** The need of such children for early recognition, diagnosis and intensive educational  
12 services leading to more successful participation in home, employment and community life is  
13 recognized. The timely implementation of this policy is declared to be an integral part of the  
14 policy of this state.

162.675. As used in sections 162.670 to 162.995, unless the context clearly indicates  
2 otherwise, the following terms mean:

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

3 (1) "Gifted children", children who exhibit precocious development of mental capacity  
4 and learning potential as determined by competent professional evaluation to the extent that  
5 continued educational growth and stimulation could best be served by an academic environment  
6 beyond that offered through a standard grade level curriculum;

7 (2) "Handicapped children", children under the age of twenty-one years who have not  
8 completed an approved high school program and who, because of mental, physical, emotional  
9 or learning problems, require special educational services [in order to develop to their maximum  
10 capacity];

11 (3) "Severely handicapped children", handicapped children under the age of twenty-one  
12 years who, because of the extent of the handicapping condition or conditions, as determined by  
13 competent professional evaluation, are unable to benefit from or meaningfully participate in  
14 programs in the public schools for handicapped children. The term "severely handicapped" is  
15 not confined to a separate and specific category but pertains to the degree of disability which  
16 permeates a variety of handicapping conditions and education programs;

17 (4) "Special educational services", programs designed to meet the needs [and maximize  
18 the capabilities] of handicapped or severely handicapped children and which include, but are not  
19 limited to, the provision of diagnostic and evaluation services, student and parent counseling,  
20 itinerant, homebound and referral assistance, organized instructional and therapeutic programs,  
21 transportation, and corrective and supporting services.

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. One person shall be chosen by the local school  
30 district board or its delegated representative or the responsible educational agency, and one  
31 person shall be chosen at the recommendation of the parent or guardian. If either party has not  
32 chosen a panel member ten days after the receipt by the department of elementary and secondary  
33 education of the request for a due process hearing, such panel member shall be chosen instead  
34 by the department of elementary and secondary education. Each of these two panel members  
35 shall be compensated pursuant to a rate set by the department of elementary and secondary  
36 education. The third person shall be appointed by the state board of education and shall serve  
37 as the chairperson of the panel. The chairperson shall be an attorney licensed to practice law in  
38 this state. During the pendency of any three-member panel hearing, or prior to the empowerment  
39 of the panel, the parties may, by mutual agreement, submit their dispute to a mediator pursuant  
40 to section 162.959.

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

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

53           6. An expedited due process hearing by the state board of education may be requested

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

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

162.962. In a case where review of the hearing panel's decision is sought by a school  
2 district or a parent or guardian, either party may appeal as [provided in chapter 536, RSMo.]  
3 **follows:**

- 4 **(1) The court shall hear the case without a jury and except as otherwise provided**  
5 **in subsection 4 of 536.140, RSMo, shall hear it upon the petition and record filed as**  
6 **provided in sections 162.950 to 162.961;**  
7 **(2) The inquiry may extend to a determination of whether the action of the agency:**  
8 **(a) Is in violation of constitutional provisions;**  
9 **(b) Is unsupported by competent and substantial evidence upon the entire record;**  
10 **(c) Is made upon unlawful procedure or without a fair trial;**  
11 **(d) Is arbitrary, capricious, or unreasonable; or**  
12 **(e) Involves an abuse of discretion.**