

SECOND REGULAR SESSION

HOUSE BILL NO. 2010

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SMITH (155).

4174H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 162.961, RSMo, and to enact in lieu thereof one new section relating to special education due process hearings.

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

Section A. Section 162.961, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 162.961, to read as follows:

162.961. 1. A parent, guardian or the responsible educational agency may request a due process hearing 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 administrative hearing commission shall within fifteen days after receiving notice assign a commissioner who is not an employee of the state board of education or department of elementary and secondary education to hear the case. Commissioners 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~~ **such commissioner's** objectivity in the hearing, and shall meet the training and assessment requirements pursuant to state regulations, federal law and regulation requirements of the Individuals With Disabilities Education Act, and the requirements in section 621.253. No commissioner who conducts a due process hearing shall have been employed within the last five years by a school district or by an organization engaged in special education parent and student advocacy, performed work for a school district or for a parent or student as a special education advocate within the last five years as an independent contractor or consultant, been

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.

18 employed within the last five years by the state board of education or department of
19 elementary and secondary education, or performed work for the state board of education or
20 department of elementary and secondary education within the last five years as an
21 independent contractor or consultant, or been party to a special education proceeding as an
22 attorney, parent, or child. During the pendency of any hearing, or prior to the assignment of
23 the commissioner, the parties may, by mutual agreement, submit their dispute to a mediator
24 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 at the hearing all pertinent evidence relative to the matter under appeal.
27 All rights and privileges as described in section 162.963 shall be permitted. **In hearings**
28 **relating to a child with a disability that are held under the Individuals with Disabilities**
29 **Act (20 U.S.C. Section 1400 et seq.), applicable state law, or rules or regulations**
30 **promulgated under such federal or state law, the burden of proof and the burden of**
31 **production shall be on the school district in any due process hearing regarding any**
32 **matter related to the identification, evaluation, reevaluation, classification, educational**
33 **placement, disciplinary action, or the provision of a free appropriate public education of**
34 **the child.**

35 3. After review of all evidence presented and a proper deliberation, the commissioner,
36 within the ~~[time-line]~~ **timelines** required by the Individuals With Disabilities Education Act,
37 20 U.S.C. Section 1415 and any amendments thereto, shall determine its findings,
38 conclusions, and decision in the matter in question and forward the written decision to the
39 parents or guardian of the child and to the president of the appropriate local board of
40 education or responsible educational agency and to the department of elementary and
41 secondary education. A specific extension of the ~~[time-line]~~ **timeline** may be made by the
42 commissioner assigned to the matter at the request of either party, except in the case of an
43 expedited hearing as provided in subsection 4 of this section.

44 4. An expedited due process hearing by the administrative hearing commission may
45 be requested by a parent to challenge a disciplinary change of placement or to challenge a
46 manifestation determination in connection with a disciplinary change of placement or by a
47 responsible educational agency to seek a forty-five school day alternative educational
48 placement for a dangerous or violent student. The administrative hearing commission shall
49 assign a commissioner to hear the case and render a decision within the ~~[time-line]~~ **timeline**
50 required by federal law and state regulations implementing federal law. A specific extension
51 of the ~~[time-line]~~ **timeline** is only permissible to the extent consistent with federal law and
52 pursuant to state regulations.

53 5. If the responsible public agency requests a due process hearing to seek a forty-five
54 school day alternative educational placement for a dangerous or violent student, the agency

55 shall show by substantial evidence that there is a substantial likelihood the student will injure
56 ~~himself~~ **the student** or others and that the agency made reasonable efforts to minimize that
57 risk, and shall show that the forty-five school day alternative educational placement will
58 provide a free appropriate public education which includes services and modifications to
59 address the behavior so that ~~it~~ **such behavior** does not reoccur, and continue to allow
60 progress in the general education curriculum.

61 6. Any due process hearing request and responses to the request shall conform to the
62 requirements of the Individuals With Disabilities Education Act (IDEA). Determination of
63 the sufficiency shall be made by the commissioner. The commissioner shall enforce the
64 process and procedures, including ~~time-lines~~ **timelines**, required by the IDEA, related to
65 sufficiency of notice, response to notice, determination of sufficiency dispute, and
66 amendments of the notice.

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

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

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