

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 834

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR NODLER.

Read 1st time January 10, 2006, and ordered printed.

Read 2nd time January 17, 2006, and referred to the Committee on Education.

Reported from the Committee March 2, 2006, with recommendation that the bill do pass and be placed on the Consent Calendar.

Taken up March 27, 2006. Read 3rd time and placed upon its final passage; bill passed.

TERRY L. SPIELER, Secretary.

4258S.01P

AN ACT

To repeal sections 162.700, 162.950, 162.955, 162.961, and 167.020, RSMo, and to enact in lieu thereof four new sections relating to special education, with penalty provisions.

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

Section A. Sections 162.700, 162.950, 162.955, 162.961, and 167.020, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 162.700, 162.955, 162.961, and 167.020, to read as follows:

162.700. 1. The board of education of each school district in this state, except school districts which are part of a special school district, and the board of education of each special school district shall provide special educational services for handicapped children three years of age or more residing in the district as required by P.L. 99-457, as codified and as may be amended. Any child, determined to be handicapped, shall be eligible for such services upon reaching his or her third birthday and state school funds shall be apportioned accordingly. This subsection shall apply to each full school year beginning on or after July 1, 1991. In the event that federal funding fails to be appropriated at the authorized level as described in 20 U.S.C. 1419(b)(2), the implementation of this subsection relating to services for handicapped children three and four years of age may be delayed until such time as funds are appropriated to meet such level. Each local school district and each special school district shall be responsible to engage in a planning process to design the service delivery system

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

15 necessary to provide special education and related services for children three and
16 four years of age with handicaps. The planning process shall include public,
17 private and private not-for-profit agencies which have provided such services for
18 this population. The school district, or school districts, or special school district,
19 shall be responsible for designing an efficient service delivery system which uses
20 the present resources of the local community which may be funded by the
21 department of elementary and secondary education or the department of mental
22 health. School districts may coordinate with public, private and private
23 not-for-profit agencies presently in existence. The service delivery system shall
24 be consistent with the requirements of the department of elementary and
25 secondary education to provide appropriate special education services in the least
26 restrictive environment.

27 2. Every local school district or, if a special district is in operation, every
28 special school district shall obtain current appropriate diagnostic reports for each
29 handicapped child prior to assignment in a special program. These records may
30 be obtained with parental permission from previous medical or psychological
31 evaluation, may be provided by competent personnel of such district or special
32 district, or may be secured by such district from competent and qualified medical,
33 psychological or other professional personnel.

34 3. **Evaluations of private school students suspected of having a**
35 **disability under the Individuals With Disabilities Education Act will be**
36 **conducted as appropriate by the school district in which the private**
37 **school is located or its contractor.**

38 4. Where special districts have been formed to serve handicapped children
39 under the provisions of sections 162.670 to 162.995, such children shall be
40 educated in programs of the special district, except that component districts may
41 provide education programs for handicapped children ages three and four
42 inclusive in accordance with regulations and standards adopted by the state
43 board of education.

44 [4.] 5. For the purposes of this act, remedial reading programs are not
45 a special education service as defined by subdivision (4) of section 162.675 but
46 shall be funded in accordance with the provisions of section 162.975.

47 [5.] 6. Any and all state costs required to fund special education services
48 for three- and four-year-old children pursuant to this section shall be provided for
49 by a specific, separate appropriation and shall not be funded by a reallocation of
50 money appropriated for the public school foundation program.

51 [6.] 7. School districts providing early childhood special education shall
52 give consideration to the value of continuing services with Part C early
53 intervention system providers for the remainder of the school year when
54 developing an individualized education program for a student who has received
55 services pursuant to Part C of the Individuals With Disabilities Education Act
56 and reaches the age of three years during a regular school year. Services
57 provided shall be only those permissible according to Section 619 of the
58 Individuals with Disabilities Education Act.

59 [7.] 8. Any rule or portion of a rule, as that term is defined in section
60 536.010, RSMo, that is created under the authority delegated in this section shall
61 become effective only if it complies with and is subject to all of the provisions of
62 chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and
63 chapter 536, RSMo, are nonseverable and if any of the powers vested with the
64 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective
65 date or to disapprove and annul a rule are subsequently held unconstitutional,
66 then the grant of rulemaking authority and any rule proposed or adopted after
67 August 28, 2002, shall be invalid and void.

162.955. 1. Except as otherwise provided in this section, during the
2 pendency of any administrative or judicial proceeding pursuant to sections
3 [162.950,] 162.961 and 162.963 no change in the assignment or status of a
4 handicapped or severely handicapped child shall be made except that such change
5 may be made with the written consent of the parent or guardian. If written
6 consent cannot be obtained and the child is endangering himself or others, the
7 assignment or status can be changed pursuant to court order, but without
8 prejudice to any rights that the child and the parent or guardian may have
9 pursuant to sections 162.670 to 162.999 or otherwise pursuant to law.

10 2. During the pendency of any administrative or judicial proceeding
11 pursuant to sections [162.950,] 162.961 and 162.963, to challenge a placement
12 changed because of a disciplinary action to an interim alternative educational
13 setting or to challenge the manifestation determination in connection with a
14 disciplinary change of placement, the child shall remain in the interim
15 alternative educational setting pending the due process hearing or until
16 expiration of the time period of the interim alternative educational setting,
17 whichever first occurs, unless the parent and responsible public agency agree
18 otherwise.

19 3. If during an interim alternative educational setting arranged because

20 of a disciplinary action involving weapons, drugs, or serious bodily injury, or
21 because the child is a danger to himself or others, the responsible educational
22 agency proposes to change the child's placement after expiration of the interim
23 placement, and the parents challenge the proposed change by requesting a due
24 process hearing, the child shall remain in his current placement, which is the
25 placement before the interim alternative educational setting, during pending
26 proceedings to challenge the change. The responsible educational agency may
27 request an expedited hearing pursuant to section 162.961, if it is believed it is
28 dangerous for the child to remain in the current placement.

162.961. 1. [The resolution conference provided for in section 162.950
2 shall be conducted by the chief administrative officer of the responsible school
3 district or a designee. The conference shall be informal, witnesses need not be
4 sworn and a record of the proceedings need not be made. The school district or
5 the state department of elementary and secondary education shall see that the
6 parent or guardian or his representative is advised of and permitted to review all
7 diagnoses, evaluations and reevaluations obtained by the board of education or
8 the state department of elementary and secondary education which pertain to the
9 child. The school district or state department of elementary and secondary
10 education shall fully advise the parents or guardian or their representative of
11 each reason relied upon by it in taking the proposed action. The parents or
12 guardian or their representative may present any information whether written
13 or oral to the officer which pertains to the recommended action. Questioning of
14 all witnesses shall be permitted.

15 2. The resolution conference may be waived by the parents or guardian.
16 If the parent or guardian waives the resolution conference and requests a
17 three-member panel hearing, the state board of education shall empower such a
18 panel pursuant to subsection 3 of this section. That empowerment shall take
19 place within fifteen days of the request for the three-member panel hearing.

20 3.] A parent, guardian or the responsible educational agency may request
21 a due process hearing by the state board of education with respect to any matter
22 relating to identification, evaluation, educational placement, or the provision of
23 a free appropriate public education of the child. Such request shall include the
24 child's name, address, school, issue, and suggested resolution of dispute if
25 known. Except as provided in subsection 6 of this section, the board or its
26 delegated representative shall within fifteen days after receiving notice empower
27 a hearing panel of three persons who are not directly connected with the original

28 decision and who are not employees of the board to which the appeal has been
29 made. All of the panel members shall have some knowledge or training involving
30 children with disabilities, none shall have a personal or professional interest
31 which would conflict with his or her objectivity in the hearing, and all shall meet
32 the department of elementary and secondary education's training and assessment
33 requirements pursuant to state regulations and federal law and regulation
34 requirements of the Individuals With Disabilities Education Act. One person
35 shall be chosen by the local school district board or its delegated representative
36 or the responsible educational agency, and one person shall be chosen at the
37 recommendation of the parent or guardian. If either party has not chosen a panel
38 member ten days after the receipt by the department of elementary and
39 secondary education of the request for a due process hearing, such panel member
40 shall be chosen instead by the department of elementary and secondary
41 education. Each of these two panel members shall be compensated pursuant to
42 a rate set by the department of elementary and secondary education. The third
43 person shall be appointed by the state board of education and shall serve as the
44 chairperson of the panel. The chairperson shall be an attorney licensed to
45 practice law in this state. During the pendency of any three-member panel
46 hearing, or prior to the empowerment of the panel, the parties may, by mutual
47 agreement, submit their dispute to a mediator pursuant to section 162.959.

48 [4.] 2. The parent or guardian, school official, and other persons affected
49 by the action in question shall present to the hearing panel all pertinent evidence
50 relative to the matter under appeal. All rights and privileges as described in
51 section 162.963 shall be permitted.

52 [5.] 3. After review of all evidence presented and a proper deliberation,
53 the hearing panel, within [forty-five days of receipt of the request for a due
54 process hearing, except as provided in subsection 6 of this section relating to
55 expedited hearings] **the timelines required by the Individuals With**
56 **Disabilities Education Act, 20 U.S.C. Section 1415 and any amendments**
57 **thereto**, shall by majority vote determine its findings, conclusions, and decision
58 in the matter in question and forward the written decision to the parents or
59 guardian of the child and to the president of the appropriate local board of
60 education or responsible educational agency and to the department of elementary
61 and secondary education. A specific extension of the time line may be made by
62 the chairman at the request of either party, except in the case of an expedited
63 hearing as provided in subsection 6 of this section.

64 [6.] 4. An expedited due process hearing by the state board of education
65 may be requested by a parent to challenge a disciplinary change of placement or
66 to challenge a manifestation determination in connection with a disciplinary
67 change of placement or by a responsible educational agency to seek a forty-five
68 school day alternative educational placement for a dangerous or violent
69 student. The board or its delegated representative shall appoint a hearing officer
70 to hear the case and render a decision within the time line required by federal
71 law and state regulations implementing federal law. The hearing officer shall be
72 an attorney licensed to practice law in this state. The hearing officer shall have
73 some knowledge or training involving children with disabilities, shall not have a
74 personal or professional interest which would conflict with his or her objectivity
75 in the hearing, and shall meet the department of elementary and secondary
76 education's training and assessment requirements pursuant to state regulations
77 and federal law and regulation requirements of the Individuals With Disabilities
78 Education Act. A specific extension of the time line is only permissible to the
79 extent consistent with federal law and pursuant to state regulations.

80 [7.] 5. If the responsible public agency requests a due process hearing to
81 seek a forty-five school day alternative educational placement for a dangerous or
82 violent student, the agency shall show by substantial evidence that there is a
83 substantial likelihood the student will injure himself or others and that the
84 agency made reasonable efforts to minimize that risk, and shall show that the
85 forty-five school day alternative educational placement will provide a free
86 appropriate public education which includes services and modifications to address
87 the behavior so that it does not reoccur, and continue to allow progress in the
88 general education curriculum.

89 [8.] 6. Any due process hearing request and responses to the request
90 shall conform to the requirements of the Individuals With Disabilities Education
91 Act (IDEA). Determination of the sufficiency shall be made by the chairperson
92 of the three-member hearing panel, or in the case of an expedited due process
93 hearing, by the hearing officer. The chairperson or hearing officer shall
94 implement the process and procedures, including time lines, required by the
95 IDEA, related to sufficiency of notice, response to notice, determination of
96 sufficiency dispute, and amendments of the notice.

97 [9.] 7. A preliminary meeting, known as a resolution session, shall be
98 convened by the responsible public agency, under the requirements of the
99 IDEA. The process and procedures required by the IDEA in connection to the

100 resolution session and any resulting written settlement agreement shall be
101 implemented.

167.020. 1. As used in this section, the term "homeless child" or
2 "homeless youth" shall mean a person less than twenty-one years of age who lacks
3 a fixed, regular and adequate nighttime residence, including a child or youth who:

4 (1) Is sharing the housing of other persons due to loss of housing,
5 economic hardship, or a similar reason; is living in motels, hotels, or camping
6 grounds due to lack of alternative adequate accommodations; is living in
7 emergency or transitional shelters; is abandoned in hospitals; or is awaiting
8 foster care placement;

9 (2) Has a primary nighttime residence that is a public or private place not
10 designed for or ordinarily used as a regular sleeping accommodation for human
11 beings;

12 (3) Is living in cars, parks, public spaces, abandoned buildings,
13 substandard housing, bus or train stations, or similar settings; and

14 (4) Is a migratory child or youth who qualifies as homeless because the
15 child or youth is living in circumstances described in subdivisions (1) to (3) of this
16 subsection.

17 2. In order to register a pupil, the parent or legal guardian of the pupil
18 or the pupil himself or herself shall provide, at the time of registration, one of the
19 following:

20 (1) Proof of residency in the district. Except as otherwise provided in
21 section 167.151, the term "residency" shall mean that a person both physically
22 resides within a school district and is domiciled within that district **or, in the**
23 **case of a private school student suspected of having a disability under**
24 **the Individuals With Disabilities Education Act, 20 U.S.C. Section 1412**
25 **et seq, that the student attends private school within that district.** The
26 domicile of a minor child shall be the domicile of a parent, military guardian
27 pursuant to a military-issued guardianship or court-appointed legal guardian; or

28 (2) Proof that the person registering the student has requested a waiver
29 under subsection 3 of this section within the last forty-five days. In instances
30 where there is reason to suspect that admission of the pupil will create an
31 immediate danger to the safety of other pupils and employees of the district, the
32 superintendent or the superintendent's designee may convene a hearing within
33 five working days of the request to register and determine whether or not the
34 pupil may register.

35 3. Any person subject to the requirements of subsection 2 of this section
36 may request a waiver from the district board of any of those requirements on the
37 basis of hardship or good cause. Under no circumstances shall athletic ability be
38 a valid basis of hardship or good cause for the issuance of a waiver of the
39 requirements of subsection 2 of this section. The district board or committee of
40 the board appointed by the president and which shall have full authority to act
41 in lieu of the board shall convene a hearing as soon as possible, but no later than
42 forty-five days after receipt of the waiver request made under this subsection or
43 the waiver request shall be granted. The district board or committee of the board
44 may grant the request for a waiver of any requirement of subsection 2 of this
45 section. The district board or committee of the board may also reject the request
46 for a waiver in which case the pupil shall not be allowed to register. Any person
47 aggrieved by a decision of a district board or committee of the board on a request
48 for a waiver under this subsection may appeal such decision to the circuit court
49 in the county where the school district is located.

50 4. Any person who knowingly submits false information to satisfy any
51 requirement of subsection 2 of this section is guilty of a class A misdemeanor.

52 5. In addition to any other penalties authorized by law, a district board
53 may file a civil action to recover, from the parent, military guardian or legal
54 guardian of the pupil, the costs of school attendance for any pupil who was
55 enrolled at a school in the district and whose parent, military guardian or legal
56 guardian filed false information to satisfy any requirement of subsection 2 of this
57 section.

58 6. Subsection 2 of this section shall not apply to a pupil who is a homeless
59 child or youth, or a pupil attending a school not in the pupil's district of residence
60 as a participant in an interdistrict transfer program established under a
61 court-ordered desegregation program, a pupil who is a ward of the state and has
62 been placed in a residential care facility by state officials, a pupil who has been
63 placed in a residential care facility due to a mental illness or developmental
64 disability, a pupil attending a school pursuant to sections 167.121 and 167.151,
65 a pupil placed in a residential facility by a juvenile court, a pupil with a disability
66 identified under state eligibility criteria if the student is in the district for
67 reasons other than accessing the district's educational program, or a pupil
68 attending a regional or cooperative alternative education program or an
69 alternative education program on a contractual basis.

70 7. Within two business days of enrolling a pupil, the school official

71 enrolling a pupil, including any special education pupil, shall request those
72 records required by district policy for student transfer and those discipline
73 records required by subsection 9 of section 160.261, RSMo, from all schools
74 previously attended by the pupil within the last twelve months. Any school
75 district that receives a request for such records from another school district
76 enrolling a pupil that had previously attended a school in such district shall
77 respond to such request within five business days of receiving the request. School
78 districts may report or disclose education records to law enforcement and juvenile
79 justice authorities if the disclosure concerns law enforcement's or juvenile justice
80 authorities' ability to effectively serve, prior to adjudication, the student whose
81 records are released. The officials and authorities to whom such information is
82 disclosed must comply with applicable restrictions set forth in 20 U.S.C. Section
83 1232g (b)(1)(E).

[162.950. 1. The notification shall contain the information
2 that upon written request to the board of education or to the state
3 department of elementary and secondary education the parent or
4 guardian will be entitled to a resolution conference to review the
5 action advised of in the notice. Such a conference, if requested,
6 shall be held not more than ten days after receipt of the request
7 unless the parent or guardian agrees to a later time. If no request
8 for a resolution conference is made, the assignment or other action
9 shall be made.

10 2. The notification shall also contain the information that
11 upon written request by the parent or guardian to the board of
12 education or to the state department of elementary and secondary
13 education, whatever the case may be, the board of education or the
14 state department of elementary and secondary education shall
15 cause a reevaluation to be made.]

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