

1 AN ACT
2 RELATING TO SPECIAL EDUCATION; ENACTING THE SPECIAL EDUCATION
3 OMBUD ACT; ESTABLISHING THE OFFICE OF THE STATE SPECIAL
4 EDUCATION OMBUD; PROVIDING DUTIES; REQUIRING INVESTIGATION
5 AND RESOLUTION OF CONCERNS; PROVIDING ACCESS TO STUDENT
6 EDUCATIONAL RECORDS; PROVIDING FOR THE CONFIDENTIALITY OF
7 RECORDS; PROVIDING POTENTIAL ACTIONS FOR NONCOMPLIANCE;
8 REQUIRING AN ANNUAL REPORT.

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

11 SECTION 1. SHORT TITLE.--Sections 1 through 11 of this
12 act may be cited as the "Special Education Ombud Act".

13 SECTION 2. DEFINITIONS.--As used in the Special
14 Education Ombud Act:

15 A. "council" means the developmental disabilities
16 planning council;

17 B. "office" means the office of the state special
18 education ombud;

19 C. "parent" includes a legal guardian or custodian
20 who has custody and control of a student or an individual who
21 has legal authority to make educational decisions on behalf
22 of the student;

23 D. "state ombud" means the state special education
24 ombud; and

25 E. "student" means a public school student

1 receiving or seeking special education services.

2 SECTION 3. CREATION OF THE OFFICE OF THE STATE SPECIAL
3 EDUCATION OMBUD--GENERAL DUTIES OF THE OFFICE.--

4 A. The "office of the state special education
5 ombud" is created within the council.

6 B. The council shall appoint the "state special
7 education ombud", who shall head the office and supervise the
8 ombuds and other staff of the office. The state ombud may
9 contract for services to assist the office in conducting its
10 duties and may use the services of volunteers.

11 C. The state ombud shall:

12 (1) identify, investigate and resolve
13 concerns pertaining to special education services that are
14 filed with the office by parents;

15 (2) assist students and parents in
16 protecting the educational rights of students, which may
17 include assisting students and parents in individualized
18 education plan meetings or other proceedings pursuant to the
19 federal Individuals with Disabilities Education Act;

20 (3) inform students and parents about
21 special education resources in their community;

22 (4) ensure that students and parents have
23 regular and timely access to the services provided through
24 the office and that students and parents receive timely
25 responses from representatives of the office;

1 (5) identify any patterns of concerns that
2 emerge regarding special education services and educational
3 rights and recommend strategies for improvement to the public
4 education department;

5 (6) collaborate with the public education
6 department to ensure that all dispute resolution processes
7 are available to students and parents, including the special
8 education parent liaison, mediation, facilitated
9 individualized education program meetings, state complaint
10 and investigations and due process hearings;

11 (7) collaborate with the parent training
12 information centers and protection and advocacy agencies
13 within the state to identify and report systemic special
14 education issues to the public education department;

15 (8) ensure that office staff, contractors
16 and volunteers are trained in:

17 (a) federal, state and local laws,
18 rules and policies with respect to special education in the
19 state;

20 (b) investigative techniques;

21 (c) dispute resolution; and

22 (d) such other matters as the office
23 deems appropriate;

24 (9) develop procedures for the certification
25 of ombuds. An employee or contractor shall not investigate a

1 concern filed with the office unless that person is certified
2 by the office;

3 (10) analyze, comment on and monitor the
4 development and implementation of federal and state laws,
5 rules and other governmental policies and actions that
6 pertain to the educational rights of students with respect to
7 the adequacy of special education services in the state;

8 (11) recommend changes to laws, rules,
9 policies and actions pertaining to the special educational
10 rights of students as the office determines to be
11 appropriate;

12 (12) facilitate public comment on proposed
13 laws, rules, policies and actions; and

14 (13) provide information to public and
15 private agencies, legislators and other persons regarding the
16 problems and concerns of special education services and make
17 recommendations related to those problems and concerns.

18 **SECTION 4. ANNUAL REPORT--CONTENTS.--**No later than
19 December 1 of each year, the office shall prepare a report
20 that includes:

21 A. actions taken by the office in the year for
22 which the report is prepared;

23 B. special education concerns identified by or on
24 behalf of students and parents, resolution of the concerns
25 and the effectiveness of the resolution processes;

1 C. recommendations for improving the quality of
2 special education services provided to students and
3 protecting the educational rights of students; and

4 D. policy, regulatory and legislative
5 recommendations to solve identified concerns related to
6 special education, to improve processes of resolutions of
7 concerns, to improve the quality of services provided to
8 students, to protect the educational rights of students and
9 to remove barriers to education and educational services.

10 SECTION 5. INVESTIGATION AND RESOLUTION OF SPECIAL
11 EDUCATION CONCERNS.--The office shall identify, investigate
12 and seek to resolve concerns related to special education
13 communicated by or on behalf of students and parents. If the
14 office does not address a concern, the office shall notify
15 the concerned person of the decision not to address the
16 concern and the reasons for the decision.

17 SECTION 6. ACCESS TO STUDENT EDUCATIONAL RECORDS.--Upon
18 request and with consent from the student or the student's
19 parent, the office shall have access to the student's
20 educational records from the public education department, a
21 school district or a public school as necessary to carry out
22 the office's responsibilities.

23 SECTION 7. CONFIDENTIALITY OF INFORMATION.--

24 A. All files and records maintained by the office
25 that pertain to students are confidential and not subject to

1 the provisions of the Inspection of Public Records Act. The
2 state ombud shall not disclose the identity of a concerned
3 person or student about whom the office maintains files or
4 records unless:

5 (1) the concerned person, student or parent
6 consents in writing to the disclosure;

7 (2) the concerned person, student or parent
8 gives oral consent that is documented immediately in writing
9 by a representative of the office. If the student is unable
10 to give oral consent, the student may give consent in any way
11 that the student is able to, and the consent shall also be
12 documented immediately in writing by a representative of the
13 office; or

14 (3) disclosure is ordered by a court.

15 B. The annual report required pursuant to Section
16 4 of the Special Education Ombud Act may be based on
17 confidential information and may be published or furnished to
18 the public, but the report shall not identify individual
19 students directly or indirectly nor violate the privileged or
20 confidential nature of the relationship and communications
21 between the student and the office.

22 **SECTION 8. CONFLICT OF INTEREST.**--The council shall
23 ensure that:

24 A. a person or an immediate family member of that
25 person involved in the designation of an ombud does not have

1 a conflict of interest;

2 B. an employee or a contractor of the office or an
3 immediate family member of the employee or contractor does
4 not have a conflict of interest; and

5 C. an ombud:

6 (1) does not have an ownership or investment
7 interest, represented by equity, debt or other financial
8 relationship, in a public school providing special education
9 services;

10 (2) is not employed by, or participating in
11 the management of, a public school providing special
12 education services; and

13 (3) does not receive, or have the right to
14 receive, directly or indirectly, remuneration in cash or in
15 kind under a compensation arrangement with a public school
16 providing special education services.

17 **SECTION 9. POSTING AND DISTRIBUTION OF OMBUD**

18 **INFORMATION.**--Every public school providing special education
19 services shall post in a conspicuous location in the public
20 school a notice regarding the office that contains a brief
21 description of the services provided by the office and the
22 name, address and phone number of the office and shall post
23 it online on the public school's website, if applicable. The
24 public school providing special education services shall
25 distribute information regarding the state ombud at the

1 beginning of every school year, in addition to providing the
2 information as part of the annual individual education plan
3 process prior to scheduling the first individual education
4 plan meeting of each school year. The form of the notice
5 shall be approved by the office.

6 SECTION 10. AVAILABILITY OF LEGAL COUNSEL TO THE
7 OFFICE.--The council shall ensure that adequate legal counsel
8 is available and is able, without conflict of interest, to:

9 A. provide advice and consultation to the office
10 needed to protect the educational rights of students; and

11 B. assist the office and contractors in the
12 performance of the official duties of the state ombud and
13 representatives.

14 SECTION 11. INTERFERENCE WITH THE OFFICE AND
15 RETALIATION PROHIBITED--POTENTIAL ACTIONS FOR
16 NONCOMPLIANCE.--

17 A. A person shall not willfully interfere with the
18 lawful actions of the office.

19 B. A person shall not institute discriminatory,
20 disciplinary or retaliatory action against any student or
21 parent for filing a concern with, providing information to or
22 otherwise cooperating with the office.

23 C. If public school personnel or a contractor or
24 volunteer of a school district or charter school fails to
25 comply with the provisions of the Special Education Ombud

1 Act:

2 (1) the council shall report the
3 noncompliance to the public education department;

4 (2) the office shall collaborate with the
5 public education department to access processes and resources
6 to address special education services concerns; and

7 (3) the office shall collaborate with the
8 public education department to identify further appropriate
9 actions to be taken in response to the report, which may
10 include a corrective action plan or any other administrative
11 action that the public education department is authorized to
12 take to ensure that students receive the free and appropriate
13 public education required by the Individuals with
14 Disabilities Education Act and state law. The office shall
15 provide a letter to the concerned person explaining the
16 actions the public education department will take.

17 SECTION 12. Section 28-16A-5 NMSA 1978 (being Laws
18 1993, Chapter 50, Section 5) is amended to read:

19 "28-16A-5. POWERS AND DUTIES.--

20 A. The developmental disabilities planning council
21 shall:

22 (1) act as a planning and coordinating body
23 for persons with developmental disabilities;

24 (2) provide statewide advocacy systems for
25 persons with developmental disabilities;

1 (3) work with appropriate state agencies to
2 develop the developmental disabilities three-year plan as
3 required by the federal Developmental Disabilities Assistance
4 and Bill of Rights Act of 2000;

5 (4) monitor and evaluate the implementation
6 of the developmental disabilities state plan;

7 (5) to the maximum extent feasible, review
8 and comment on all state plans that relate to programs
9 affecting persons with developmental disabilities;

10 (6) submit to the secretary of the United
11 States department of health and human services, through the
12 office of the governor, periodic reports that the secretary
13 may request;

14 (7) advise the governor and the legislature
15 about the needs of persons with developmental disabilities;

16 (8) carry out any other activities
17 authorized or required by the provisions of the federal
18 Developmental Disabilities Assistance and Bill of Rights Act
19 of 2000; and

20 (9) oversee the office of the state special
21 education ombud.

22 B. The developmental disabilities planning council
23 is authorized to:

24 (1) award grants and enter into contracts to
25 carry out its duties;

1 (2) seek funding from sources other than the
2 state;

3 (3) create and support regional county or
4 local advisory councils;

5 (4) provide training to persons with
6 developmental disabilities, their families and providers of
7 support and services through traineeships, sponsoring
8 training opportunities and by other means determined
9 appropriate by the developmental disabilities planning
10 council; and

11 (5) promulgate rules in accordance with the
12 State Rules Act to carry out the provisions of the Special
13 Education Ombud Act."

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