

1 HOUSE BILL 222

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO SPECIAL EDUCATION; ENACTING THE SPECIAL EDUCATION  
12 OMBUD ACT; ESTABLISHING THE OFFICE OF THE STATE SPECIAL  
13 EDUCATION OMBUD; PROVIDING DUTIES; REQUIRING INVESTIGATION AND  
14 RESOLUTION OF CONCERNS; PROVIDING ACCESS TO STUDENT EDUCATIONAL  
15 RECORDS; PROVIDING FOR THE CONFIDENTIALITY OF RECORDS;  
16 PROVIDING POTENTIAL ACTIONS FOR NONCOMPLIANCE; REQUIRING AN  
17 ANNUAL REPORT; MAKING AN APPROPRIATION.  
18

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
21 through 11 of this act may be cited as the "Special Education  
22 Ombud Act".

23 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
24 Special Education Ombud Act:

25 A. "council" means the developmental disabilities

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1 planning council;

2 B. "office" means the office of the state special  
3 education ombud;

4 C. "parent" includes a legal guardian or custodian  
5 who has custody and control of a student;

6 D. "state ombud" means the state special education  
7 ombud; and

8 E. "student" means a public school student  
9 receiving or seeking special education services.

10 SECTION 3. [NEW MATERIAL] CREATION OF THE OFFICE OF THE  
11 STATE SPECIAL EDUCATION OMBUD--GENERAL DUTIES OF THE OFFICE.--

12 A. The "office of the state special education  
13 ombud" is created within the council.

14 B. The council shall appoint the "state special  
15 education ombud", who shall head the office and supervise the  
16 ombuds and other staff of the office. The state ombud may  
17 contract for services to assist the office in conducting its  
18 duties and may use the services of volunteers.

19 C. The state ombud shall:

20 (1) identify, investigate and resolve concerns  
21 pertaining to special education services that are filed with  
22 the office by parents;

23 (2) assist students and parents in protecting  
24 the educational rights of students;

25 (3) inform students and parents about special

1 education resources in their community;

2 (4) ensure that students and parents have  
3 regular and timely access to the services provided through the  
4 office and that students and parents receive timely responses  
5 from representatives of the office;

6 (5) identify any patterns of concerns that  
7 emerge regarding special education services and educational  
8 rights and recommend strategies for improvement to the public  
9 education department;

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

16 (7) collaborate with the parent training  
17 information centers and protection and advocacy agencies within  
18 the state to identify and report systemic special education  
19 issues to the public education department;

20 (8) ensure that office staff, contractors and  
21 volunteers are trained in:

22 (a) federal, state and local laws, rules  
23 and policies with respect to special education in the state;

24 (b) investigative techniques;

25 (c) dispute resolution; and

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1 (d) such other matters as the office  
2 deems appropriate;

3 (9) develop procedures for the certification  
4 of ombuds. An employee or contractor shall not investigate a  
5 concern filed with the office unless that person is certified  
6 by the office;

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

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

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

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

21 SECTION 4. [NEW MATERIAL] ANNUAL REPORT--CONTENTS.--No  
22 later than December 1 of each year, the office shall prepare a  
23 report that includes:

24 A. actions taken by the office in the year for  
25 which the report is prepared;

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1           B. special education concerns identified by or on  
2 behalf of students and parents, resolution of the concerns and  
3 the effectiveness of the resolution processes;

4           C. recommendations for improving the quality of  
5 special education services provided to students and protecting  
6 the educational rights of students; and

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

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

20           SECTION 6. ~~[NEW MATERIAL]~~ ACCESS TO STUDENT EDUCATIONAL  
21 RECORDS.--Upon request and with consent from the student or the  
22 student's parent, the office shall have access to the student's  
23 educational records from the public education department, a  
24 school district or a public school as necessary to carry out  
25 the office's responsibilities.

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1           SECTION 7.   [NEW MATERIAL] CONFIDENTIALITY OF

2 INFORMATION.--

3           A. All files and records maintained by the office  
4 that pertain to students are confidential and not subject to  
5 the provisions of the Inspection of Public Records Act. The  
6 state ombud shall not disclose the identity of a concerned  
7 person or student about whom the office maintains files or  
8 records unless:

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

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

18                      (3) disclosure is ordered by a court.

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

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1           SECTION 8. [NEW MATERIAL] CONFLICT OF INTEREST.--The  
2 council shall ensure that:

3           A. a person or an immediate family member of that  
4 person involved in the designation of an ombud does not have a  
5 conflict of interest;

6           B. an employee or a contractor of the office or an  
7 immediate family member of the employee or contractor does not  
8 have a conflict of interest; and

9           C. an ombud:  
10           (1) does not have an ownership or investment  
11 interest, represented by equity, debt or other financial  
12 relationship, in a public school providing special education  
13 services;

14           (2) is not employed by, or participating in  
15 the management of, a public school providing special education  
16 services; and

17           (3) does not receive, or have the right to  
18 receive, directly or indirectly, remuneration in cash or in  
19 kind under a compensation arrangement with a public school  
20 providing special education services.

21           SECTION 9. [NEW MATERIAL] POSTING AND DISTRIBUTION OF  
22 OMBUD INFORMATION.--Every public school providing special  
23 education services shall post in a conspicuous location in the  
24 public school a notice regarding the office that contains a  
25 brief description of the services provided by the office and

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1 the name, address and phone number of the office and shall post  
2 it online on the public school's website, if applicable. The  
3 public school providing special education services shall  
4 distribute information regarding the state ombud at the  
5 beginning of every school year, in addition to providing the  
6 information as part of the annual individual education plan  
7 process prior to scheduling the first individual education plan  
8 meeting of each school year. The form of the notice shall be  
9 approved by the office.

10 SECTION 10. [NEW MATERIAL] AVAILABILITY OF LEGAL COUNSEL  
11 TO THE OFFICE.--The council shall ensure that adequate legal  
12 counsel is available and is able, without conflict of interest,  
13 to:

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

16 B. assist the office and contractors in the  
17 performance of the official duties of the state ombud and  
18 representatives.

19 SECTION 11. [NEW MATERIAL] INTERFERENCE WITH THE OFFICE  
20 AND RETALIATION PROHIBITED--POTENTIAL ACTIONS FOR  
21 NONCOMPLIANCE.--

22 A. A person shall not willfully interfere with the  
23 lawful actions of the office.

24 B. A person shall not institute discriminatory,  
25 disciplinary or retaliatory action against any student or

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1 parent for filing a concern with, providing information to or  
2 otherwise cooperating with the office.

3 C. If public school personnel or a contractor or  
4 volunteer of a school district or charter school fails to  
5 comply with the provisions of the Special Education Ombud Act:

6 (1) the council shall report the noncompliance  
7 to the public education department;

8 (2) the office shall collaborate with the  
9 public education department to access processes and resources  
10 to address special education services concerns; and

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

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

23 "28-16A-5. POWERS AND DUTIES.--

24 A. The developmental disabilities planning council  
25 shall:

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

3 (2) provide statewide advocacy systems for  
4 persons with developmental disabilities;

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

9 (4) monitor and evaluate the implementation of  
10 the developmental disabilities state plan;

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

14 (6) submit to the secretary of the United  
15 States department of health and human services, through the  
16 office of the governor, periodic reports that the secretary may  
17 request;

18 (7) advise the governor and the legislature  
19 about the needs of persons with developmental disabilities;  
20 [~~and~~]

21 (8) carry out any other activities authorized  
22 or required by the provisions of the federal Developmental  
23 Disabilities Assistance and Bill of Rights Act of 2000; and

24 (9) oversee the office of the state special  
25 education ombud.

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