

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 222

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

AN ACT

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

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

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

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

A. "council" means the developmental disabilities

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 or an individual who
6 has legal authority to make educational decisions on behalf of
7 the student;

8 D. "state ombud" means the state special education
9 ombud; and

10 E. "student" means a public school student
11 receiving or seeking special education services.

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

14 A. The "office of the state special education
15 ombud" is created within the council.

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

21 C. The state ombud shall:

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

25 (2) assist students and parents in protecting

1 the educational rights of students, which may include assisting
2 students and parents in individualized education plan meetings
3 or other proceedings pursuant to the federal Individuals with
4 Disabilities Education Act;

5 (3) inform students and parents about special
6 education resources in their community;

7 (4) ensure that students and parents have
8 regular and timely access to the services provided through the
9 office and that students and parents receive timely responses
10 from representatives of the office;

11 (5) identify any patterns of concerns that
12 emerge regarding special education services and educational
13 rights and recommend strategies for improvement to the public
14 education department;

15 (6) collaborate with the public education
16 department to ensure that all dispute resolution processes are
17 available to students and parents, including the special
18 education parent liaison, mediation, facilitated individualized
19 education program meetings, state complaint and investigations
20 and due process hearings;

21 (7) collaborate with the parent training
22 information centers and protection and advocacy agencies within
23 the state to identify and report systemic special education
24 issues to the public education department;

25 (8) ensure that office staff, contractors and

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1 volunteers are trained in:

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

4 (b) investigative techniques;

5 (c) dispute resolution; and

6 (d) such other matters as the office
7 deems appropriate;

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

12 (10) analyze, comment on and monitor the
13 development and implementation of federal and state laws, rules
14 and other governmental policies and actions that pertain to the
15 educational rights of students with respect to the adequacy of
16 special education services in the state;

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

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

22 (13) provide information to public and private
23 agencies, legislators and other persons regarding the problems
24 and concerns of special education services and make
25 recommendations related to those problems and concerns.

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1 SECTION 4. [NEW MATERIAL] ANNUAL REPORT--CONTENTS.--No

2 later than December 1 of each year, the office shall prepare a
3 report that includes:

4 A. actions taken by the office in the year for
5 which the report is prepared;

6 B. special education concerns identified by or on
7 behalf of students and parents, resolution of the concerns and
8 the effectiveness of the resolution processes;

9 C. recommendations for improving the quality of
10 special education services provided to students and protecting
11 the educational rights of students; and

12 D. policy, regulatory and legislative
13 recommendations to solve identified concerns related to special
14 education, to improve processes of resolutions of concerns, to
15 improve the quality of services provided to students, to
16 protect the educational rights of students and to remove
17 barriers to education and educational services.

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

25 SECTION 6. [NEW MATERIAL] ACCESS TO STUDENT EDUCATIONAL

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1 RECORDS.--Upon request and with consent from the student or the
2 student's parent, the office shall have access to the student's
3 educational records from the public education department, a
4 school district or a public school as necessary to carry out
5 the office's responsibilities.

6 SECTION 7. [NEW MATERIAL] CONFIDENTIALITY OF
7 INFORMATION.--

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

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

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

23 (3) disclosure is ordered by a court.

24 B. The annual report required pursuant to Section 4
25 of the Special Education Ombud Act may be based on confidential

1 information and may be published or furnished to the public,
2 but the report shall not identify individual students directly
3 or indirectly nor violate the privileged or confidential nature
4 of the relationship and communications between the student and
5 the office.

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

8 A. a person or an immediate family member of that
9 person involved in the designation of an ombud does not have a
10 conflict of interest;

11 B. an employee or a contractor of the office or an
12 immediate family member of the employee or contractor does not
13 have a conflict of interest; and

14 C. an ombud:

15 (1) does not have an ownership or investment
16 interest, represented by equity, debt or other financial
17 relationship, in a public school providing special education
18 services;

19 (2) is not employed by, or participating in
20 the management of, a public school providing special education
21 services; and

22 (3) does not receive, or have the right to
23 receive, directly or indirectly, remuneration in cash or in
24 kind under a compensation arrangement with a public school
25 providing special education services.

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1 SECTION 9. [NEW MATERIAL] POSTING AND DISTRIBUTION OF
2 OMBUD INFORMATION.--Every public school providing special
3 education services shall post in a conspicuous location in the
4 public school a notice regarding the office that contains a
5 brief description of the services provided by the office and
6 the name, address and phone number of the office and shall post
7 it online on the public school's website, if applicable. The
8 public school providing special education services shall
9 distribute information regarding the state ombud at the
10 beginning of every school year, in addition to providing the
11 information as part of the annual individual education plan
12 process prior to scheduling the first individual education plan
13 meeting of each school year. The form of the notice shall be
14 approved by the office.

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

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

21 B. assist the office and contractors in the
22 performance of the official duties of the state ombud and
23 representatives.

24 SECTION 11. [NEW MATERIAL] INTERFERENCE WITH THE OFFICE
25 AND RETALIATION PROHIBITED--POTENTIAL ACTIONS FOR

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1 NONCOMPLIANCE.--

2 A. A person shall not willfully interfere with the
3 lawful actions of the office.

4 B. A person shall not institute discriminatory,
5 disciplinary or retaliatory action against any student or
6 parent for filing a concern with, providing information to or
7 otherwise cooperating with the office.

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

11 (1) the council shall report the noncompliance
12 to the public education department;

13 (2) the office shall collaborate with the
14 public education department to access processes and resources
15 to address special education services concerns; and

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

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

3 "28-16A-5. POWERS AND DUTIES.--

4 A. The developmental disabilities planning council
5 shall:

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

8 (2) provide statewide advocacy systems for
9 persons with developmental disabilities;

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

14 (4) monitor and evaluate the implementation of
15 the developmental disabilities state plan;

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

19 (6) submit to the secretary of the United
20 States department of health and human services, through the
21 office of the governor, periodic reports that the secretary may
22 request;

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

25 [~~and~~]

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

4 (9) oversee the office of the state special
5 education ombud.

6 B. The developmental disabilities planning council
7 is authorized to:

8 (1) award grants and enter into contracts to
9 carry out its duties;

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

12 (3) create and support regional county or
13 local advisory councils; ~~and~~

14 (4) provide training to persons with
15 developmental disabilities, their families and providers of
16 support and services through traineeships, sponsoring training
17 opportunities and by other means determined appropriate by the
18 developmental disabilities planning council; and

19 (5) promulgate rules in accordance with the
20 State Rules Act to carry out the provisions of the Special
21 Education Ombud Act."