SENATE BILL 346

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

INTRODUCED BY

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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; MAKING AN APPROPRIATION.

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
planning council;

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

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

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

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


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

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

C. The state ombud shall:

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

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

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

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

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

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

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

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

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

(b) investigative techniques;

(c) dispute resolution; and
(d) such other matters as the office
deems appropriate;

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

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

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

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

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

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

A. actions taken by the office in the year for
which the report is prepared;
B. special education concerns identified by or on behalf of students and parents, resolution of the concerns and the effectiveness of the resolution processes;

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

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

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

SECTION 6. [NEW MATERIAL] ACCESS TO STUDENT EDUCATIONAL RECORDS.--Upon request and with consent from the student or the student's parent, the office shall have access to the student's educational records from the public education department, a school district or a public school as necessary to carry out the office's responsibilities.
SECTION 7. [NEW MATERIAL] CONFIDENTIALITY OF INFORMATION.--

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

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

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

(3) disclosure is ordered by a court.

B. The annual report required pursuant to Section 4 of the Special Education Ombud Act may be based on confidential information and may be published or furnished to the public, but the report shall not identify individual students directly or indirectly nor violate the privileged or confidential nature of the relationship and communications between the student and the office.
SECTION 8. [NEW MATERIAL] CONFLICT OF INTEREST.--The council shall ensure that:

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

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

C. an ombud:

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

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

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

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

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

A. provide advice and consultation to the office
needed to protect the educational rights of students; and
B. assist the office and contractors in the
performance of the official duties of the state ombud and
representatives.

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

A. A person shall not willfully interfere with the
lawful actions of the office.
B. A person shall not institute discriminatory,
disciplinary or retaliatory action against any student or
parent for filing a concern with, providing information to or otherwise cooperating with the office.

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

1. the council shall report the noncompliance to the public education department;
2. the office shall collaborate with the public education department to access processes and resources to address special education services concerns; and
3. the office shall collaborate with the public education department to identify further appropriate actions to be taken in response to the report, which may include a corrective action plan or any other administrative action that the public education department is authorized to take to ensure that students receive the free and appropriate public education required by the Individuals with Disabilities Education Act and state law. The office shall provide a letter to the concerned person explaining the actions the public education department will take.

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

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

A. The developmental disabilities planning council shall:
(1) act as a planning and coordinating body for persons with developmental disabilities;

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

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

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

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

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

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

[and]

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

(9) oversee the office of the state special education ombud.
B. The developmental disabilities planning council is authorized to:

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

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

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

(4) provide training to persons with developmental disabilities, their families and providers of support and services through traineeships, sponsoring training opportunities and by other means determined appropriate by the developmental disabilities planning council."

SECTION 13. APPROPRIATION.--Two hundred ninety-five thousand dollars ($295,000) is appropriated from the general fund to the developmental disabilities planning council for expenditure in fiscal year 2022 for the purposes of the Special Education Ombud Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2022 shall revert to the general fund.