

1 SENATE BILL 346

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

3 INTRODUCED BY

4 Linda M. Lopez

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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

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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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1 B. The developmental disabilities planning council
2 is authorized to:

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

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

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

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

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

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