

2022 -- H 7536

LC003291

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- OFFICE OF THE SPECIAL
EDUCATION OMBUD

Introduced By: Representatives Carson, Cortvriend, Fogarty, Alzate, Donovan, Fenton-
Fung, Shallcross Smith, Amore, Serpa, and Craven

Date Introduced: February 18, 2022

Referred To: House Education

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative findings. The general assembly hereby finds and declares that:

2 (1) Every student who receives special education is covered by the Individuals with
3 Disabilities Education Act (IDEA). There are seven (7) basic principles which are consistent with
4 the IDEA. These principles are as follows:

5 (i) To identify the child with special needs;

6 (ii) To provide free and appropriate public education;

7 (iii) To conduct an evaluation where school districts gather the information necessary to
8 help determine the student's educational needs and guide decision making about appropriate
9 educational programming;

10 (iv) To produce an individualized education program (IEP) to ensure that each student's
11 individual needs are met; school districts shall create a written statement of the educational program
12 designed to the needs of the student;

13 (v) To provide the least restrictive environment for the student so that each student receives
14 an appropriate education designed to meet their special needs.

15 (vi) To offer opportunities for meaningful participation of parents, guardians, and
16 custodians of students with disabilities, and the students, when appropriate, to become involved
17 throughout the special education process; and

18 (vii) To implement procedural safeguards to ensure that each student's rights and the rights

1 of the parents, guardians, and custodians of the students with disabilities are protected and establish
2 clear steps to address issues which may arise. Parents, guardians and custodians of students with
3 disabilities between the ages of three (3) through eighteen (18) or custodians or guardians of
4 students with disabilities who are over the age of eighteen (18) through twenty-two (22) and
5 enrolled in school shall have the ability to participate in meetings, examine all education records
6 and obtain an individual educational evaluation of the student.

7 SECTION 2. Title 42 of the General Laws entitled "STATE AFFAIRS AND
8 GOVERNMENT" is hereby amended by adding thereto the following chapter:

9 CHAPTER 162

10 OFFICE OF THE SPECIAL EDUCATION OMBUD

11 **42-162-1. Establishment.**

12 There is hereby created the office of the Special Education Ombud.

13 **42-162-2. Purpose.**

14 The office of the special education ombud shall be independent of the Rhode Island
15 department of education and shall serve as a point of contact for teachers, local education agencies
16 (LEAs), advocates, parents, guardians, and custodians of students with disabilities between the ages
17 of three (3) through eighteen (18) or for those guardians and custodians of students with disabilities
18 who are over the age of eighteen (18) through the age of twenty-two (22) and enrolled in school.
19 The office shall coordinate and advocate to ensure compliance by the school district with the
20 applicable individualized education program (IEP) and related services for students with disabilities
21 pursuant to chapter 24 of title 16 and federal law including the Individuals with Disabilities
22 Education Act (IDEA).

23 **42-162-3. Definitions.**

24 When used in this chapter, the following terms shall have the following meanings:

25 (1) "504 Plan" means the federal § 504 of the Rehabilitation Act of 1973 (Pub. L. No. 98-
26 112, 87 Stat. 394 (Sept. 26, 1973) codified at 29 U.S.C. § 701 et seq.).

27 (2) "Department" means the Rhode Island department of education (RIDE);

28 (3) "Guardian" or "guardians" means parents, guardians, and custodians of students with
29 disabilities between the ages of three (3) through eighteen (18) or those guardians and custodians
30 of students with disabilities who are over the age of eighteen (18) through the age of twenty-two
31 (22). It includes an individual who has custody and control of a student or one who has legal
32 authority to make educational decisions on behalf of the student;

33 (4) "Office" means the office of the special education ombud;

34 (5) "State special education ombud", "state ombud" or "ombud" means the state special

1 education ombud; and

2 (6) "Student" means a public school student age three (3) through the age of twenty-two
3 (22) receiving or seeking special education services, such as early intervention, IEP, 504 Plan and
4 transitional plan for student leaving high school.

5 **42-162-4. Appointment of the special education ombud.**

6 (a) The governor, with the advice and consent of the senate, shall appoint a person qualified
7 by education, training and experience to perform the responsibilities of the state special education
8 ombud, as set forth in § 42-162-5. The ombud shall hold office for a term of five (5) years and shall
9 continue to hold office until his or her successor is appointed and qualified.

10 (b) The appointment shall be made from a list of at least three (3) individuals submitted by
11 a committee consisting of seven (7) members as follows:

12 (1) One of whom shall be an attorney who practices in the area of special education
13 advocacy law appointed by the Rhode Island Bar Association;

14 (2) One of whom shall be an administrator of a municipal school district, appointed by the
15 Rhode Island School Superintendents Organization;

16 (3) One of whom shall be a special education teacher appointed by the American Federation
17 of Teachers (AFT);

18 (4) One of whom shall be a special education teacher appointed by the National Education
19 Association;

20 (5) One of whom shall be a parent, guardian or caretaker of a student with special needs
21 appointed by Rhode Island Advocacy for Children;

22 (6) One of whom shall be the executive director of the Rhode Island developmental
23 disabilities council, or designee; and

24 (7) One of whom shall be the child advocate, or designee.

25 (c) Members of the committee shall have knowledge of federal and state special education
26 law, knowledge of civil rights, or experience with the implementation of an individualized
27 education program (IEP) and § 504 of the Rehabilitation Act of 1973 (504 plans).

28 **42-162-5. Powers and duties of the state special education ombud.**

29 (a) The state special education ombud shall:

30 (1) Identify, investigate and resolve concerns pertaining to special education services that
31 are filed with the office by guardians;

32 (2) Assist students and guardians in protecting the educational rights of students, which
33 may include assisting students and custodians in individualized education plan meetings or other
34 proceedings pursuant to chapter 24 of title 16 and the federal Individuals with Disabilities

1 Education Act (IDEA):

2 (3) Inform students and guardians about special education resources in their community;

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

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

8 (6) Collaborate with the department and the school district's director of special education
9 to ensure that all dispute resolution processes are available to students and guardians;

10 (7) Collect data and collaborate with all advocacy agencies within the state to identify and
11 report systemic special education issues to the department;

12 (8) Ensure that office staff and contractors are trained in:

13 (i) Federal, state and local laws, rules and policies with respect to special education in the
14 state;

15 (ii) Investigative techniques to determine if students are receiving special education
16 opportunities;

17 (iii) Dispute resolution; and

18 (iv) Such other matters as the office deems appropriate;

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

22 (10) Recommend changes to laws, rules, policies and actions pertaining to the special
23 educational rights of students as the office determines to be appropriate;

24 (11) Facilitate public comment on proposed laws, rules, policies and actions; and

25 (12) Provide information and data to public and private agencies, legislators and other
26 persons regarding the problems and concerns of special education services and make
27 recommendations related to those problems and concerns.

28 **42-162-6. Annual report.**

29 No later than December 1 of each year, the office shall prepare and submit a report to the
30 governor and to the general assembly that includes:

31 (1) Actions taken by the office in the year for which the report is prepared;

32 (2) Special education concerns identified by or on behalf of students and guardians,
33 resolution of the concerns and the effectiveness of the resolution processes;

34 (3) Recommendations for improving the quality of special education services provided to

1 students and protecting the educational rights of students; and

2 (4) Policy, inclusive of regulatory and legislative recommendations to solve identified
3 concerns related to special education, to improve processes of resolutions of concerns, to improve
4 the quality of services provided to students, to protect the educational rights of students and to
5 remove barriers to education and educational services.

6 **42-162-7. Investigation and resolution of special education concerns.**

7 The office shall identify, investigate and seek to resolve concerns related to special
8 education communicated by or on behalf of students and guardians. If the office does not address
9 a concern, the office shall notify the concerned person of the decision not to address the concern
10 and the reasons for the decision.

11 **42-162-8. Access to student educational records.**

12 Upon request and with consent from the student or the student's guardian, the office shall
13 have access to the student's educational records from the department, school district or any public
14 school in possession of the student's records that are necessary to carry out the office's
15 responsibilities.

16 **42-162-9. Confidentiality.**

17 (a) All files, records and evaluation forms maintained by the office that pertain to students
18 are confidential and shall not be deemed "public records" subject to disclosure under chapter 2 of
19 title 38 and shall be compliant with the federal Health Insurance Portability and Accountability Act
20 (HIPAA) except that the state ombud may disclose the identity of a concerned person or student if:

21 (1) The student over the age of eighteen (18), or guardian consents in writing to the
22 disclosure; or

23 (2) The student over the age of eighteen (18), or guardian gives oral consent that is
24 documented immediately in writing by a representative of the office; or

25 (3) If the student over the age of eighteen (18), is unable to give oral consent, the student
26 may give consent in any way that the student is able to, and the consent shall also be documented
27 immediately in writing by a representative of the office; or

28 (4) Disclosure is ordered by the court.

29 (b) The annual report required pursuant to § 42-162-6 may use confidential information
30 and may be published or furnished to the public; provided that, the report does not identify
31 individual students directly or indirectly nor violate the privileged or confidential nature of the
32 relationship and communications between the student and the office.

33 **42-162-10. Conflict of Interest.**

34 (a) An ombud shall not:

1 (1) Have an ownership or investment or other financial relationship in a school providing
2 special education services;

3 (2) Be employed by, or participating in the management of, a school providing special
4 education services; and

5 (3) Receive, or have the right to receive, directly or indirectly, remuneration with a school
6 providing special education services.

7 (b) The governor shall ensure that:

8 (1) The person or an immediate family member of that person appointed ombud does not
9 have a conflict of interest;

10 (2) The ombud shall ensure that an employee or a contractor of the office or an immediate
11 family member of the employee or contractor does not have a conflict of interest.

12 **42-162-11. Posting and distribution of ombud information - Evaluation of process.**

13 (a) Every public school providing special education services shall post, in a conspicuous
14 location in the school, a notice regarding the office that contains a brief description of the services
15 provided by the office and the name, address, and phone number of the office and shall post the
16 information on the school's website, if applicable. The public school providing special education
17 services shall distribute information regarding the state ombud at the beginning of every school
18 year, in addition to providing the information as part of the annual individual education plan (IEP)
19 process prior to scheduling the first individual education plan meeting of each school year. The
20 form of the notice shall be approved by the office.

21 (b) The department, in conjunction with the ombud, shall develop a meeting evaluation
22 form that will be available on its website and distributed to guardians after every meeting with
23 representatives from the school regarding a student with disabilities. The form will allow guardians,
24 to provide feedback on their experience, and level of satisfaction with the processes involving early
25 intervention, IEPs, 504 Plans, and related supports and services. Guardians will be encouraged to
26 complete and return the form to the school and a copy to the office so that the ombud may collect
27 and analyze data for research and recommendations.

28 **42-162-12. Availability of legal counsel to the office.**

29 The governor shall ensure that adequate legal counsel is available and is able, without
30 conflict of interest, to:

31 (1) Provide advice and consultation to the office needed to protect the educational rights of
32 students; and

33 (2) Assist the office and contractors in the performance of the official duties of the state
34 ombud and representatives.

1 **42-162-13. Interference with the office and retaliation.**

2 (a) A person shall not willfully interfere with the lawful actions of the office.

3 (b) A person shall not institute discriminatory, disciplinary or retaliatory action against any
4 student or guardian for filing a concern with, providing information to or otherwise cooperating
5 with the office.

6 (c) If public school personnel or a contractor or volunteer of a school district or charter
7 school fails to comply with the provisions of this chapter:

8 (1) The governor shall report the noncompliance to the department;

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

11 (3) The office shall collaborate with the department to identify further appropriate actions
12 to be taken in response to the report, which may include a corrective action plan or any other
13 administrative action that the department is authorized to take to ensure that students receive the
14 free and appropriate public education required by state law including chapter 24 of title 16 and
15 federal law including the Individuals with Disabilities Education Act (IDEA).

16 (4) The office shall provide a letter to the concerned person and guardian explaining the
17 actions needed to be taken by the department to ensure compliance with this chapter.

18 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- OFFICE OF THE SPECIAL
EDUCATION OMBUD

1 This act would establish the Rhode Island ombud for special education, who would serve
2 independent of the department of elementary and secondary education, to ensure school districts
3 throughout the state meet the minimum standards required to comply with individualized education
4 programs for students with disabilities. This act would further direct that families be provided forms
5 to evaluate their level of confidence and satisfaction with the schools' program compliance that the
6 ombud may use to collect data and make recommendations.

7 This act would take effect upon passage.

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