

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

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

Introduced By: Senators Murray, DiPalma, Valverde, Lauria, Quezada, Bell, Felag,
McKenney, DiMario, and Gu

Date Introduced: February 01, 2023

Referred To: Senate 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 in order that each student
- 14 receives 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 165

10 OFFICE OF THE SPECIAL EDUCATION OMBUD

11 **42-165-1. Establishment.**

12 There is hereby created and established the office of the special education ombud.

13 **42-165-2. Purpose.**

14 (a) The office of the special education ombud (the office) shall be independent of the Rhode
15 Island department of education (the department) and shall serve as an impartial state office readily
16 available to members of the public, including, but not limited to, teachers, local education agencies
17 (LEAs), advocates, students, parents, guardians, and custodians of students with disabilities
18 between the ages of three (3) through eighteen (18) or for those guardians and custodians of students
19 with disabilities who are over the age of eighteen (18) through the age of twenty-two (22) and
20 enrolled in school.

21 (b) The primary responsibility of the office shall be to direct students, parents, guardians
22 or custodians to the most appropriate resource in the community, in a school district or within the
23 department, to ensure compliance by schools and school districts with the applicable individualized
24 education program (IEP), as defined in Section 1401 of 20 U.S.C., and related services for students
25 with disabilities pursuant to chapter 24 of title 16 and federal law including the Individuals with
26 Disabilities Education Act (IDEA).

27 (c) When appropriate and necessary, in the discretion of the ombud and pursuant to this
28 chapter, the office of the special education ombud may also serve to monitor and investigate
29 administrative action by the department related to special education services and its authority under
30 the Individuals with Disabilities Education Act.

31 **42-165-3. Definitions.**

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

33 (1) "504 Plan" means § 504 of the Rehabilitation Act of 1973 (Pub. L. No. 93-112, 87 Stat.
34 394 (Sept. 26, 1973) codified at 29 U.S.C. § 701 et seq.).

1 (2) "Administrative action" means any action, decision, adjudication, failure to act,
2 omission, rule or regulation, interpretation, recommendation, policy, practice or procedure of the
3 department.

4 (3) "Department" means the Rhode Island department of education (RIDE);

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

10 (5) "Office" means the office of the special education ombud;

11 (6) "State special education ombud", "state ombud" or "ombud" means the state special
12 education ombud; and

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

16 **42-165-4. Appointment of the special education ombud.**

17 (a) The governor, with the advice and consent of the senate, shall appoint a person qualified
18 by education, training and experience to analyze problems of law, administration and public policy,
19 and to perform the responsibilities of the state special education ombud, as set forth in this chapter.
20 The ombud shall hold office for a term of five (5) years and shall continue to hold office until his
21 or her successor is appointed and qualified. The ombud may be reappointed for additional terms.

22 (b) The appointment shall be made from a list of at least three (3) individuals submitted by
23 a committee, to be convened by the governor, consisting of seven (7) members as follows:

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

26 (2) One of whom shall be a special education administrator of a municipal school district,
27 appointed by the Association of Rhode Island Administrators of Special Education;

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

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

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

34 (6) One of whom shall be the executive director of the Rhode Island developmental

1 disabilities council, or designee; and

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

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

6 **42-165-5. Organization of the office of the state special education ombud.**

7 (a) The ombud shall select, appoint and fix the compensation of a person as deputy ombud
8 and shall select, appoint and fix the compensation of such other employees as the ombud may deem
9 necessary to discharge the ombud's responsibilities under this chapter, and shall include, but not
10 be limited to:

11 (1) In-house legal counsel;

12 (2) A data and evaluation coordinator;

13 (3) An intake coordinator to screen inquiries and complaints filed by the public; and

14 (4) A community liaison to develop strategic partnerships with community organizations,
15 including the parent training and information center, that serve students with disabilities and their
16 families. Compensation shall be fixed within the amount available by appropriation. All officers
17 and employees shall serve at the ombud's pleasure.

18 (b) The ombud may delegate to staff members any authority, power or duty except this
19 power of delegation and the ombud's duty to make any report under this chapter. However, the
20 ombud may authorize the deputy ombud to act in the ombud's stead in the event of illness, absence,
21 leave or disability, or when, in the ombud's sole discretion, an appearance of impropriety or
22 partiality or a conflict of interest prevents the ombud from discharging his or her duty in a particular
23 matter.

24 **42-165-6. Powers and duties of the state special education ombud.**

25 (a) The state special education ombud shall have the authority to:

26 (1) Monitor the department's special education complaint and dispute resolution processes
27 to ensure transparency and accountability;

28 (2) Investigate, on complaint or on the ombud's own initiative, any administrative act by
29 the department pertaining to special education services, pursuant to § 42-165-8;

30 (3) Assist students and guardians in protecting the educational rights of students, which
31 may include assisting students and guardians in individualized education plan meetings or other
32 proceedings pursuant to chapter 24 of title 16 and the Individuals with Disabilities Education Act
33 (IDEA);

34 (4) Under limited circumstances pursuant to § 42-165-8, investigate special education-

1 related action taken by a local education agency or school; and

2 (5) Promulgate rules and regulations required for the discharge of the ombud's duties,
3 including procedures for receiving and processing complaints, conducting investigations, and
4 reporting findings conclusions and recommendations;

5 (b) The office of the state special education ombud shall:

6 (1) Inform students and guardians about special education resources in their community;
7 (2) Ensure that students and guardians have regular and timely access to the services
8 provided through the office and that students and guardians receive timely responses from
9 representatives of the office;

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

12 (4) Collaborate with the department and local education agencies' directors of special
13 education to ensure that all dispute resolution processes are available to students and guardians;

14 (5) Collect, analyze, and disseminate data and collaborate with advocacy agencies within
15 the state to identify and report systemic special education issues to the department;

16 (6) Ensure that office staff and contractors are trained in:

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

19 (ii) Investigative techniques to determine if students are receiving special education
20 opportunities;

21 (iii) Dispute resolution; and

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

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

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

28 (9) Facilitate public comment on proposed laws, rules, policies and actions; and
29 (10) Provide information and data to public and private agencies, legislators and other
30 persons regarding the problems and concerns of special education services and make
31 recommendations related to those problems and concerns.

32 **42-165-7. Annual report.**

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

- 1 (1) Actions taken by the office in the prior school year for which the report is prepared;
2 (2) Special education concerns identified by or on behalf of students and guardians,
3 resolution of the concerns and the effectiveness of the resolution processes;
4 (3) Recommendations for improving the quality of special education services provided to
5 students and protecting the educational rights of students; and
6 (4) Policy, inclusive of regulatory and legislative recommendations, to solve identified
7 concerns related to special education, to improve processes of resolutions of concerns, to improve
8 the quality of services provided to students, to protect the educational rights of students and to
9 remove barriers to education and educational services.

10 **42-165-8. Investigations of special education complaints to the ombud.**

11 (a) The office shall have the authority to investigate complaints related to special education
12 communicated to the office by or on behalf of students and guardians, pursuant to procedures and
13 regulations promulgated by the office of the special education ombud.

14 (b) Prior to formally investigating special education complaints, the office of the state
15 special education ombud shall make a reasonable effort to determine:

16 (1) That the student, parent, or guardian has pursued standard special education dispute
17 resolution processes, or has not been reasonably able to avail themselves of the opportunity to
18 pursue those processes; or

19 (2) That the matter has been referred to the office for investigation by a federally-
20 designated parent training and information center (PTIC) charged with dealing with special
21 education and disabilities under 20 U.S.C. 1471; or

22 (3) That the student, parent, or guardian has filed a complaint with the department, and the
23 department has failed to provide timely response to such complaint, or the department has
24 responded to such complaint and the student's school or district has failed to comply with the
25 department's determination.

26 (c)(1) If determined by the ombud to be a suitable subject for investigation, the ombud may
27 conduct a suitable investigation. An appropriate subject for investigation by the ombud includes
28 any administrative act by the department which the ombud believes may be:

29 (i) Contrary to law or regulation;

30 (ii) Based on mistaken facts or irrelevant considerations;

31 (iii) Unsupported by an adequate statement of reasons;

32 (iv) Performed in an inefficient manner;

33 (v) Unreasonable, unfair, or otherwise objectionable, even though in accordance with law;

34 or

- 1 (vi) Otherwise erroneous.
- 2 (2) Additionally, a complaint that a school or district has failed to comply with a previous
3 special education dispute resolution agreement or determination made by the department shall be
4 considered an appropriate subject for investigation by the ombud.
- 5 (d) If, after investigation, the ombud is of the opinion that the department should:
- 6 (1) Consider the matter further;
7 (2) Modify or cancel an administrative action;
8 (3) Alter a regulation or practice;
9 (4) Explain more fully the administrative action in question; or
10 (5) Pursue additional administrative action, in the case of a school or district failing to
11 comply with a previous agreement or department determination, the ombud shall state any
12 conclusions, recommendations and reasons therefore to the department. If the ombud so requests,
13 the department shall inform the ombud, in a timely manner, about the action taken on
14 recommendations or reasons for not adopting recommendations.
- 15 (e) Before formally issuing a conclusion or recommendation that is significantly critical or
16 adverse to the department, the ombud shall have consulted with the department and permitted the
17 department reasonable opportunity to reply.
- 18 (f) The ombud, in his or her discretion, may decide not to investigate for reasons including,
19 but not limited to:
- 20 (1) The complainant could reasonably be expected to use another remedy or channel;
21 (2) The complaint is trivial or not made in good faith;
22 (3) The complainant is not aggrieved, either personally or on behalf of a student over whom
23 they have custody and control, by the subject matter of the complaint; or
24 (4) Resources are insufficient for adequate investigation;
- 25 (g) The ombud declining to investigate a complaint shall not bar the ombud from
26 proceeding on his or her own initiative to investigate an administrative act whether or not included
27 in the complaint.
- 28 (h) If the office does not address a complaint, the office shall notify the complainant of the
29 decision not to address the complaint and the reasons for the decision, and shall, if appropriate,
30 refer the complainant to other special education resources in the community.

31 **42-165-9. Access to student educational records.**

32 Upon request and with consent from the student or the student's guardian, the office shall
33 have access to the student's educational records from the department, local education agency or any
34 school in possession of the student's records that are necessary to carry out the office's

1 responsibilities.

2 **42-165-10. Confidentiality.**

3 (a) All files, records and evaluation forms maintained by the office that pertain to students
4 are confidential and shall not be deemed "public records" subject to disclosure under chapter 2 of
5 title 38 and shall be compliant with the Family Educational Rights and Privacy Act (FERPA) and
6 the Health Insurance Portability and Accountability Act (HIPAA) except that the state ombud may
7 disclose the identity of a concerned person or student if:

8 (1) The student, provided they are over the age of eighteen (18), or the student's guardian
9 consents in writing to the disclosure; or

10 (2) The student, who is over the age of eighteen (18), or the student's guardian is unable to
11 give written consent, and the student or the student's guardian gives consent using any method that
12 the student or the student's guardian is able to; provided that, the method used to communicate is
13 usual or customary for the individual and clearly indicates that they consent to the disclosure; and
14 provided further that, the consent shall also be documented immediately in writing by a
15 representative of the office; or

16 (4) Disclosure is ordered by the court.

17 (b) The annual report required pursuant to this chapter may use confidential information
18 and may be published or furnished to the public; provided that, the report does not identify
19 individual students directly or indirectly nor violate the privileged or confidential nature of the
20 relationship and communications between the student and the office.

21 **42-165-11. Conflict of Interest.**

22 (a) An ombud shall not:

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

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

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

29 (b) The governor shall ensure that the person or an immediate family member of that person
30 appointed ombud does not have a conflict of interest.

31 (c) The ombud shall ensure that an employee or a contractor of the office does not have a
32 conflict of interest.

33 **42-165-12. Posting and distribution of ombud information - Evaluation of process.**

34 (a) Every school providing special education services shall post, in a conspicuous location

1 in the school, a notice regarding the office that contains a brief description of the services provided
2 by the office and the name, address, and phone number of the office and shall post the information
3 on the school's website, if applicable. The school providing special education services shall
4 distribute information regarding the state ombud at the beginning of every school year, in addition
5 to providing the information as part of the annual individual education plan (IEP) process prior to
6 scheduling the first individual education plan meeting of each school year. The form of the notice
7 shall be developed by the office and made easily available to schools.

8 (b) The department, in conjunction with the ombud, shall develop and implement a
9 reasonable, accessible and consistent method of evaluation that shall be made available to students
10 and/or parents or guardians, for the purpose of regularly collecting feedback from families about
11 their satisfaction with special education services and dispute resolution processes that are available
12 to them. The evaluation shall be made available in as many modalities as is necessary to be made
13 reasonably accessible to any student or guardian, and shall be made available in multiple languages.
14 Students and guardians shall have the option to complete the evaluation anonymously, and any
15 published data from the evaluation shall be de-identified and protect personally identifiable data.
16 The ombud shall have access to all data collected from the evaluation method(s) adopted by the
17 department.

18 **42-165-13. Availability of legal counsel to the office.**

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

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

23 (2) Assist the office and contractors in the performance of the official duties of the state
24 ombud and its representatives.

25 **42-165-14. Interference with the office and retaliation.**

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

27 (b) A person shall not institute discriminatory, disciplinary or retaliatory action against any
28 student or guardian for filing a complaint with, providing information to or otherwise cooperating
29 with the office.

30 (c) If a school district or department personnel or a contractor or volunteer of a school
31 district or the department fails to comply with the provisions of this chapter:

32 (1) The ombud shall report the noncompliance to the commissioner of elementary and
33 secondary education or, when appropriate, the governor;

34 (2) The office shall collaborate with the department to access processes and resources to

1 address special education services concerns;

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

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

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

=====
LC000894
=====

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 office of the Rhode Island ombud for special education, which
2 would serve independent of the department of elementary and secondary education, to ensure
3 school districts throughout the state meet the minimum standards required to comply with the
4 individualized education programs for students with disabilities. This act would also require that
5 families be provided a method of evaluation for collecting feedback about the level of satisfaction
6 with the special education services and dispute resolution processes available to them.

7 This act would take effect upon passage.

=====
LC000894
=====