

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 23-0759.01 Alana Rosen x2606

HOUSE BILL 23-1168

HOUSE SPONSORSHIP

Sharbini,

SENATE SPONSORSHIP

(None),

House Committees
Education

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING LEGAL REPRESENTATION IN DUE PROCESS COMPLAINT**
102 **HEARINGS FOR THE PARENTS OF A STUDENT WHO MAY BE**
103 **ELIGIBLE FOR SPECIAL EDUCATION SERVICES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Current law entitles a parent, guardian, or legal custodian of, or entity with educational decision-making authority for, a student with a disability, or a student who may be eligible for special education services (parent), to file a state complaint in the event of a dispute with an administrative unit or a state-operated program (education provider). If

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.*

the parent prevails in a state complaint decision, the education provider may file a due process complaint against the parent regarding the issues disputed in the state complaint. The bill requires the department of education (department) to create and maintain a list of attorneys qualified to represent a parent in a due process complaint hearing filed by an education provider concerning issues disputed in the state complaint in which the parent prevailed.

The department shall appoint an attorney to defend a parent against due process complaints filed by an education provider. The parent may waive the appointment of the attorney.

The bill requires the department to include information on attorney appointments in the procedural safeguard notice and in materials distributed to parents describing due process complaint procedures.

The bill creates a fund to pay attorneys defending parents against due process complaints filed by an education provider.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 22-1-140 as
3 follows:

4 **22-1-140. Legal representation - due process complaints -**
5 **appointments - fund - definitions.** (1) AS USED IN THIS SECTION, UNLESS
6 THE CONTEXT OTHERWISE REQUIRES:

7 (a) "ADMINISTRATIVE UNIT" HAS THE SAME MEANING SET FORTH
8 IN SECTION 22-20-103.

9 (b) "DEPARTMENT" MEANS THE DEPARTMENT OF EDUCATION
10 CREATED IN SECTION 24-1-115.

11 (c) "FUND" MEANS THE STUDENTS WITH DISABILITIES LEGAL
12 REPRESENTATION CASH FUND CREATED IN SUBSECTION (5) OF THIS
13 SECTION.

14 (d) "PARENT" MEANS A PARENT, GUARDIAN, OR LEGAL CUSTODIAN
15 OF, OR ENTITY WITH EDUCATIONAL DECISION-MAKING AUTHORITY FOR, A
16 STUDENT WITH A DISABILITY OR A STUDENT WHO MAY BE ELIGIBLE FOR
17 SPECIAL EDUCATION SERVICES.

1 (e) "PROCEDURAL SAFEGUARD NOTICE" MEANS THE REQUIRED
2 NOTICE PROVIDED TO PARENTS CONTAINING AN EXPLANATION OF THE
3 AVAILABLE PROCEDURAL SAFEGUARDS PURSUANT TO THE FEDERAL
4 "INDIVIDUALS WITH DISABILITIES EDUCATION ACT", 20 U.S.C. SEC. 1400
5 ET SEQ., AS AMENDED, AND FEDERAL DEPARTMENT OF EDUCATION
6 REGULATIONS.

7 (f) "STATE-OPERATED PROGRAM" HAS THE SAME MEANING SET
8 FORTH IN SECTION 22-20-103.

9 (g) "STUDENT WITH DISABILITIES" HAS THE SAME MEANING AS
10 "CHILDREN WITH DISABILITIES" SET FORTH IN SECTION 22-20-103.

11 (2) ON OR BEFORE JULY 1, 2024, THE DEPARTMENT SHALL CREATE
12 AND MAINTAIN A LIST OF ATTORNEYS QUALIFIED TO REPRESENT A PARENT
13 IN A DUE PROCESS COMPLAINT FILED BY AN ADMINISTRATIVE UNIT OR A
14 STATE-OPERATED PROGRAM PURSUANT TO SECTION 22-20-108 (3)
15 CONCERNING ISSUES DISPUTED IN A STATE COMPLAINT IN WHICH THE
16 PARENT PREVAILED. THE DEPARTMENT SHALL CONSIDER AN ATTORNEY TO
17 BE QUALIFIED IF THE ATTORNEY DEMONSTRATES A HISTORY OF PRACTICE
18 IN THE AREA OF SPECIAL EDUCATION LAW. THE DEPARTMENT SHALL
19 UPDATE THE LIST ON AN ANNUAL BASIS.

20 (3) (a) THE DEPARTMENT SHALL APPOINT AN ATTORNEY FROM THE
21 LIST OF ATTORNEYS DESCRIBED IN SUBSECTION (2) OF THIS SECTION TO
22 REPRESENT A PARENT IN A DUE PROCESS COMPLAINT THAT AN
23 ADMINISTRATIVE UNIT OR A STATE-OPERATED PROGRAM FILES PURSUANT
24 TO SECTION 22-20-108 (3) CONCERNING ISSUES DISPUTED IN A STATE
25 COMPLAINT IN WHICH THE PARENT PREVAILED. THE PARENT MAY WAIVE
26 THE APPOINTMENT OF THE ATTORNEY BY SUBMITTING A WRITTEN WAIVER
27 TO THE DEPARTMENT. THE DEPARTMENT SHALL ROTATE THE ATTORNEYS

1 ON THE LIST TO DISTRIBUTE DUE PROCESS COMPLAINT CASES EVENLY
2 AMONG THE ATTORNEYS ON THE LIST.

3 (b) THE DEPARTMENT SHALL DISBURSE MONEY FROM THE FUND
4 CREATED IN SUBSECTION (5) OF THIS SECTION TO PAY FOR THE
5 REASONABLE COSTS OF INDEPENDENT LEGAL REPRESENTATION INCURRED
6 BY AN ATTORNEY APPOINTED TO REPRESENT A PARENT. AN ATTORNEY
7 MAY RECEIVE UP TO SEVEN THOUSAND FIVE HUNDRED DOLLARS FROM THE
8 FUND TO REPRESENT A PARENT IN A CASE DESCRIBED IN SUBSECTION (3)(a)
9 OF THIS SECTION.

10 (4) THE DEPARTMENT SHALL INCLUDE INFORMATION REGARDING
11 THE APPOINTMENT OF ATTORNEYS DESCRIBED IN SUBSECTION (3) OF THIS
12 SECTION IN THE PROCEDURAL SAFEGUARD NOTICE AND IN MATERIALS
13 DISTRIBUTED TO PARENTS DESCRIBING DUE PROCESS COMPLAINT
14 PROCEDURES PURSUANT TO SECTION 22-20-108 (3).

15 (5) (a) THE STUDENT WITH DISABILITIES LEGAL REPRESENTATION
16 CASH FUND IS CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF
17 MONEY CREDITED TO THE FUND PURSUANT TO SUBSECTIONS (6) AND (7) OF
18 THIS SECTION AND ANY OTHER MONEY THAT THE GENERAL ASSEMBLY MAY
19 APPROPRIATE OR TRANSFER TO THE FUND.

20 (b) THE STATE TREASURER SHALL CREDIT ALL INTEREST AND
21 INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE
22 FUND TO THE FUND. SUBJECT TO ANNUAL APPROPRIATION BY THE
23 GENERAL ASSEMBLY, THE DEPARTMENT MAY EXPEND MONEY FROM THE
24 FUND FOR PURPOSES OF THIS SECTION.

25 (6) (a) ON OR BEFORE JULY 1, 2024, AND EACH JULY 1
26 THEREAFTER, THE STATE TREASURER SHALL TRANSFER TEN THOUSAND
27 DOLLARS FROM THE GENERAL FUND TO THE FUND.

1 (b) IF AN ATTORNEY RECEIVES ADDITIONAL MONEY TO
2 COMPENSATE THE ATTORNEY FOR THE ATTORNEY'S SERVICES RELATED TO
3 REPRESENTING A PARENT IN A DUE PROCESS COMPLAINT AS DESCRIBED IN
4 SUBSECTION (3) OF THIS SECTION FROM ANOTHER SOURCE, THE ATTORNEY
5 SHALL RETURN AN AMOUNT OF MONEY EQUAL TO THE AMOUNT RECEIVED
6 FROM THE OTHER SOURCE, NOT TO EXCEED SEVEN THOUSAND FIVE
7 HUNDRED DOLLARS, TO THE DEPARTMENT. THE DEPARTMENT SHALL
8 TRANSMIT ALL MONEY RECEIVED FROM AN ATTORNEY TO THE STATE
9 TREASURER, WHO SHALL CREDIT THE MONEY TO THE FUND.

10 (7) THE DEPARTMENT MAY SEEK, ACCEPT, AND EXPEND GIFTS,
11 GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE
12 PURPOSES OF THIS SECTION. THE DEPARTMENT SHALL TRANSMIT ALL
13 MONEY RECEIVED THROUGH GIFTS, GRANTS, OR DONATIONS TO THE STATE
14 TREASURER, WHO SHALL CREDIT THE MONEY TO THE FUND.

15 **SECTION 2. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, or safety.