

CHAPTER 272

EDUCATION - PUBLIC SCHOOLS

HOUSE BILL 23-1168

BY REPRESENTATIVE(S) Sharbini and Joseph, Amabile, Bacon, Brown, Dickson, Duran, English, Froelich, Lieder, Lindsay, Mabrey, McLachlan, Michaelson Jenet, Ortiz, Snyder, Titone, Valdez, Weissman, Woodrow, Young, Boesenecker, Garcia, Gonzales-Gutierrez, Hamrick, Ricks, Sirota, Soper, Velasco, Willford;
also SENATOR(S) Winter F., Buckner, Cutter, Exum, Fields, Ginal, Hinrichsen, Marchman, Moreno, Priola, Rodriguez, Sullivan.

AN ACT

CONCERNING LEGAL REPRESENTATION IN DUE PROCESS COMPLAINT HEARINGS FOR THE PARENTS OF A STUDENT WHO MAY BE ELIGIBLE FOR SPECIAL EDUCATION SERVICES, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, **add 22-1-141** as follows:

22-1-141. Legal representation - due process complaints - appointments - report - definitions - repeal. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

(b) "COLORADO NONPROFIT LEGAL ORGANIZATION" OR "NONPROFIT ORGANIZATION" MEANS A COLORADO NONPROFIT LEGAL ORGANIZATION THAT FOCUSES ON SPECIAL EDUCATION LAW, PROVIDES AFFORDABLE LEGAL SERVICES, AND OPERATES PURSUANT TO SECTION 501 (c)(3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 501, AS AMENDED.

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

(d) "PARENT" MEANS 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.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

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

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

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

(2) ON OR BEFORE AUGUST 1, 2023, THE DEPARTMENT SHALL ENTER INTO A SERVICE AGREEMENT WITH A NONPROFIT ORGANIZATION TO CREATE AND MAINTAIN A LIST OF ATTORNEYS QUALIFIED TO REPRESENT A PARENT IN A DUE PROCESS COMPLAINT FILED BY AN ADMINISTRATIVE UNIT OR STATE-OPERATED PROGRAM PURSUANT TO SECTION 22-20-108 (3) CONCERNING ISSUES DISPUTED IN A STATE COMPLAINT IN WHICH THE PARENT PREVAILED. THE SERVICE AGREEMENT IS FOR FIVE YEARS. THE NONPROFIT ORGANIZATION MAY CONSIDER AN ATTORNEY TO BE QUALIFIED IF THE ATTORNEY DEMONSTRATES A HISTORY OF PRACTICE IN SPECIAL EDUCATION LAW. THE NONPROFIT ORGANIZATION SHALL UPDATE THE LIST ON AN ANNUAL BASIS.

(3) A PARENT DESCRIBED IN SUBSECTION (2) OF THIS SECTION MAY CONTACT THE NONPROFIT ORGANIZATION FOR AN ATTORNEY APPOINTMENT. THE NONPROFIT ORGANIZATION SHALL APPOINT AN ATTORNEY FROM THE LIST OF ATTORNEYS DESCRIBED IN SUBSECTION (2) OF THIS SECTION TO REPRESENT THE PARENT IN A DUE PROCESS COMPLAINT THAT AN ADMINISTRATIVE UNIT OR A STATE-OPERATED PROGRAM FILES PURSUANT TO SECTION 22-20-108 (3) CONCERNING ISSUES DISPUTED IN A STATE COMPLAINT IN WHICH THE PARENT PREVAILED. THE NONPROFIT ORGANIZATION SHALL ROTATE THE ATTORNEYS ON THE LIST TO DISTRIBUTE DUE PROCESS COMPLAINT CASES EVENLY AMONG THE ATTORNEYS ON THE LIST.

(4) (a) THE DEPARTMENT SHALL ANNUALLY PROVIDE THE NONPROFIT ORGANIZATION TWENTY THOUSAND DOLLARS TO PAY ATTORNEYS APPOINTED PURSUANT TO SUBSECTION (3) OF THIS SECTION AND TO CREATE, MAINTAIN, AND ADMINISTER THE LIST OF ATTORNEYS PURSUANT TO SUBSECTION (2) OF THIS SECTION. THE NONPROFIT ORGANIZATION MAY RETAIN UNSPENT MONEY AT THE END OF A BUDGET YEAR.

(b) IF THERE IS ANY UNSPENT MONEY AT THE END OF THE FIVE-YEAR SERVICE AGREEMENT, THE NONPROFIT ORGANIZATION SHALL RETURN THE UNSPENT MONEY TO THE DEPARTMENT. THE DEPARTMENT SHALL TRANSMIT ALL MONEY RECEIVED FROM THE NONPROFIT ORGANIZATION TO THE STATE TREASURER, WHO SHALL CREDIT THE MONEY TO THE GENERAL FUND.

(5) THE DEPARTMENT SHALL INCLUDE INFORMATION REGARDING THE APPOINTMENT OF ATTORNEYS DESCRIBED IN SUBSECTION (3) OF THIS SECTION IN THE PROCEDURAL SAFEGUARD NOTICE, IN MATERIALS DISTRIBUTED TO PARENTS DESCRIBING DUE PROCESS COMPLAINT PROCEDURES, AND FOLLOWING A DECISION

THE DEPARTMENT RENDERS CONCERNING A DISPUTE PURSUANT TO SECTION 22-20-108 (3). THE DEPARTMENT SHALL PROMINENTLY DISPLAY THE NONPROFIT ORGANIZATION'S WEBSITE ON THE DEPARTMENT'S WEBSITE.

(6) ON OR BEFORE SEPTEMBER 1, 2024, AND EACH SEPTEMBER 1 THEREAFTER THROUGH SEPTEMBER 1, 2028, THE NONPROFIT ORGANIZATION SHALL REPORT TO THE DEPARTMENT THE FOLLOWING:

(a) THE NUMBER OF ATTORNEYS APPOINTED TO PARENTS IN DUE PROCESS COMPLAINT PROCEDURES PURSUANT TO SECTION 22-20-108 (3);

(b) THE COSTS ASSOCIATED WITH EACH DUE PROCESS COMPLAINT CASE; AND

(c) THE AMOUNT OF UNSPENT MONEY THE NONPROFIT ORGANIZATION RETAINS AT THE END OF THE BUDGET YEAR.

(7) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2029.

SECTION 2. Appropriation. For the 2023-24 state fiscal year, \$33,260 is appropriated to the department of education. This appropriation is from the general fund. To implement this act, the department may use this appropriation for legal representation for due process complaints pursuant to section 22-20-108 (3), C.R.S.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: May 25, 2023