

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

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 23-0759.01 Alana Rosen x2606

HOUSE BILL 23-1168

HOUSE SPONSORSHIP

Sharbini and Joseph,

SENATE SPONSORSHIP

Winter F.,

House Committees

Education
Appropriations

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, AND, IN**
104 **CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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

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.

HOUSE
Amended 2nd Reading
March 11, 2023

(parent), to file a state complaint in the event of a dispute with an administrative unit or a state-operated program (education provider). If 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 - report - definitions - repeal.** (1) AS USED IN THIS
6 SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

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

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

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(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.

(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 SHALL 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

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

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

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

24 (5) THE DEPARTMENT SHALL INCLUDE INFORMATION REGARDING
25 THE APPOINTMENT OF ATTORNEYS DESCRIBED IN SUBSECTION (3) OF THIS
26 SECTION IN THE PROCEDURAL SAFEGUARD NOTICE, IN MATERIALS
27 DISTRIBUTED TO PARENTS DESCRIBING DUE PROCESS COMPLAINT

1 PROCEDURES, AND FOLLOWING A DECISION THE DEPARTMENT RENDERS
2 CONCERNING A DISPUTE PURSUANT TO SECTION 22-20-108 (3). THE
3 DEPARTMENT SHALL PROMINENTLY DISPLAY THE NONPROFIT
4 ORGANIZATION'S WEBSITE ON THE DEPARTMENT'S WEBSITE.

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

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

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

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

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

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16 **SECTION 2. Appropriation.** For the 2023-24 state fiscal year,
17 \$33,260 is appropriated to the department of education. This
18 appropriation is from the general fund. To implement this act, the
19 department may use this appropriation for legal representation for due
20 process complaints pursuant to section 22-20-108 (3), C.R.S.

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