

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 23-0759.01 Alana Rosen x2606

HOUSE BILL 23-1168

HOUSE SPONSORSHIP

Sharbini,

SENATE SPONSORSHIP

(None),

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.**

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 - 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.

17

1 (d) "PARENT" MEANS A PARENT, GUARDIAN, OR LEGAL CUSTODIAN
2 OF, OR ENTITY WITH EDUCATIONAL DECISION-MAKING AUTHORITY FOR, A
3 STUDENT WITH A DISABILITY OR A STUDENT WHO MAY BE ELIGIBLE FOR
4 SPECIAL EDUCATION SERVICES.

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

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

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

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

26 (3) A PARENT DESCRIBED IN SUBSECTION (2) OF THIS SECTION MAY
27 CONTACT THE NONPROFIT ORGANIZATION FOR AN ATTORNEY

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

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

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

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

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

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

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

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

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

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

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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.