

2021 -- H 5833

=====
LC001455
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

—————
A N A C T

RELATING TO EDUCATION

Introduced By: Representatives Carson, Cortvriend, Amore, Speakman, Caldwell,
Casimiro, Fenton-Fung, Kislak, Craven, and Fogarty

Date Introduced: February 24, 2021

Referred To: House Education

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 16-24 of the General Laws entitled "Children With Disabilities [See
2 Title 16 Chapter 97 - The Rhode Island Board of Education Act]" is hereby amended by adding
3 thereto the following sections:

4 **16-24-19. Legislative findings.**

5 The legislature finds and declares that:

6 (1) Every student who receives special education is covered by the Individuals with
7 Disabilities Education Act (IDEA). There are seven (7) basic principles which are consistent with
8 the IDEA. These principles are as follows:

9 (i) To identify the child with special needs;

10 (ii) To provide free and appropriate public education;

11 (iii) Conduct an evaluation. Districts shall gather the information necessary to help
12 determine the student's educational needs and guide decision making about appropriate educational
13 programming;

14 (iv) Produce an individualized education program ("IEP") to ensure that each student's
15 individual needs are met; districts shall create a written statement of the educational program
16 designed to the needs of the student;

17 (v) Provide the least restrictive environment for the student so that each student receives
18 an appropriate education designed to meet their special needs. Each student with disabilities shall
19 be separated from their nondisabled peers only when the nature of the disability is such that they

1 cannot succeed in a general education classroom, even with supplementary aids and supports;

2 (vi) Offer opportunities for meaningful participation of parents, guardians, and caretakers
3 of students with disabilities, and the students, when appropriate, to become involved throughout
4 the special education process; and

5 (vii) Implement procedural safeguards to ensure that each student's rights and the rights of
6 the parents, guardians, and caretakers of the students with disabilities are protected and establish
7 clear steps to address issues which may arise. Parents, guardians and caretakers of students with
8 disabilities or students with disabilities who are over the age of eighteen (18) through twenty-one
9 (21) and enrolled in school shall have the ability to participate in meetings, examine all education
10 records and obtain an individual educational evaluation of the student.

11 **16-24-20. The Rhode Island ombudsperson for special education.**

12 (a) There is hereby established a Rhode Island ombudsperson for parents, guardians and
13 caretakers of students with disabilities students with disabilities or students with disabilities who
14 are over the age of eighteen (18) through twenty-one (21) and enrolled in school. The
15 ombudsperson shall be independent of the department of education and shall serve as an advocate,
16 coordinator, and point of contact for those parents, guardians, and caretakers of students with
17 disabilities or students with disabilities who are over the age of eighteen (18) through twenty-one
18 (21) and enrolled in school, when dealing with school districts and the districts' compliance with
19 the applicable individualized education program (referred to hereinafter in this section and §§ 16-
20 24-21, 16-24-22, 16-24-23, 16-24-24, and 16-24-26 as an "IEP"), 504 plans established pursuant
21 to the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) (which plans are hereinafter referred to
22 in this section and §§ 16-24-21, 16-24-22, 16-24-23, 16-24-24, and 16-25-25 as "504 plans"), and
23 related supports and services for students with disabilities who are provided special services
24 pursuant to this chapter and federal law, including, but not limited to, the Individuals with
25 Disabilities Education Act (20 U.S.C. Section 1400 et seq.), and the minimum accountability
26 standards as they pertain to the individual student.

27 (b) The governor, with the advice and consent of the senate, shall appoint an
28 ombudsperson, who shall be a person qualified by training and experience to perform the duties set
29 forth in subsections (c) through (e) of this section. The appointment shall be made from a list of at
30 least three (3) persons prepared and submitted by a committee consisting of six (6) members, all of
31 whom shall be appointed to serve four (4) year terms. Four (4) members of the committee shall
32 constitute a quorum. No one shall be eligible for appointment unless he or she is a resident of this
33 state. Each member appointed to the committee shall have knowledge of federal and state special
34 education law, knowledge of civil rights, and experience with the implementation of IEP and 504

1 plans. The members shall be as follows:

2 (1) One of whom shall be a member of the Rhode Island senate, appointed by the president
3 of the senate;

4 (2) One of whom shall be a member of the house of representatives, appointed by the
5 speaker of the house of representatives;

6 (3) One of whom shall be an attorney who practices in the area of special education law;
7 (4) One of whom shall be a parent, guardian or caretaker of a student with special
8 disabilities;

9 (5) One of whom shall be an administrator of a municipal school district, or designee; and
10 (6) One of whom shall be a special education teacher, or designee.

11 (7) The ombudsperson shall hold office for a term of five (5) years and shall continue to
12 hold office until his or her successor is appointed and qualified.

13 (c) The ombudsperson shall have the discretion to ensure all IEP documents, 504 plans,
14 related supports and services to students with disabilities are properly documented and
15 implemented, and the goals and objectives are being met, and that appropriate related supports and
16 services are being provided.

17 (d)(1) The ombudsperson shall have authority to inquire of, investigate, and review all
18 documents from any school, district, or special education department in this state. The
19 ombudsperson shall have access to all IEP documents, 504 plans, related supports and services,
20 treatment plans, progress reports and report cards of all students with disabilities.

21 (2) The ombudsperson shall have the discretion to review all documents relating to IEP
22 documents, 504 plans, related supports and services being provided to students throughout the state,
23 and ensure that proper documentation is being maintained by all schools and districts.

24 (3) The ombudsperson shall track metrics of the type of disagreements or complaints
25 between a parent, guardian or caretaker of the student with disabilities or s student with disabilities
26 who are over the age of eighteen (18) through twenty-one (21) and is enrolled in school, and the
27 district; the type of suspect disabilities, which may uncover an unmet need in the education system;
28 the types of interventions and supports required by a segment of children.

29 (4) The ombudsperson shall ensure protections and safeguards are provided to school staff.
30 To this end, all conversations between teachers, health professionals and/or any school district
31 personnel and the ombudsperson shall be deemed confidential and not subject to disclosure absent
32 a court order.

33 (5) The ombudsperson shall implement measures to track and monitor district achievement,
34 success, and challenges in the implementation of IEPs, 504 plans, and related supports and services.

1 (6) The ombudsperson shall appoint a designee to attend IEP meetings in schools
2 throughout the state and speak with any person with knowledge of the student’s educational
3 program. The designee shall have access to all school district personnel and may work with the
4 Rhode Island child advocate as necessary.

5 (7) The ombudsperson shall establish minimum compliance measures to ensure that copies
6 of all relevant documents which are discussed at any family meeting involving a student receiving
7 services pursuant to this chapter are given to the student’s family at least five (5) days in advance
8 of any scheduled meeting at which these documents are to be discussed.

9 (8) The ombudsperson shall investigate any retaliatory act alleged or committed by any
10 administrator, school district, state department or other agency with the appropriate referrals to
11 judicial departments or agencies for action, and any and all complaints filed by a parent, guardian
12 or caretaker of student with disabilities or a student with disabilities who is over the age of eighteen
13 (18) through twenty-one (21) and enrolled in school.

14 (9) The ombudsperson may appoint those assistants that may be deemed necessary whose
15 powers and duties shall be similar to those imposed upon the ombudsperson by law and any other
16 staff as is deemed necessary. The duties of the assistants and other staff members shall be performed
17 under and by the advice and direction of the ombudsperson.

18 (10) All student records shall remain confidential and compliant with the Health Insurance
19 Portability and Accountability Act (HIPAA).

20 (11) The ombudsperson shall not be held liable for any lack of compliance of an IEP or
21 504 plan.

22 (12) All records or files of the ombudsperson shall be readily available to any parent,
23 guardian or caretaker of a student with disabilities or a student with disabilities who is over the age
24 of eighteen (18) through twenty-one (21) and enrolled in school to inspect and/or copy for purposes
25 of any agency or judicial proceeding.

26 (e) On or before August 1, 2024, and annually on or before August 1 thereafter, the
27 ombudsperson shall prepare a detailed report to the governor, the general assembly and the
28 department of education advising on the status of services being provided to students with
29 disabilities in Rhode Island schools and summarizing the work of the ombudsperson during the
30 previous school year. The report shall be available to the public.

31 This report shall also include a summary of the parent complaints being filed against
32 schools by families in regard to these services. The complaints shall remain confidential and shall
33 not be made available to the public. For purposes of this section, the complaints are as to the lack
34 of compliance of IEP and 504 plans or the denial of eligibility and/or lack of services.

1 (f) The general assembly shall annually appropriate the sum of five hundred thousand
2 dollars (\$500,000) for the payments of the salaries of the staff and for payment of office expenses
3 and other actual expenses incurred by the ombudsperson in the performance of his or her duties;
4 and the controller is authorized and directed to draw his or her orders upon the general treasurer for
5 the payment of any sum or sums or so much that may from time to time be required upon receipt
6 by him or her of proper vouchers approved by the ombudsperson.

7 (g) As used in this chapter, the term “family” includes parents, legal guardians, and
8 caretakers of students with disabilities, or any student with disabilities who is over the age of
9 eighteen (18) through twenty-one (21) and enrolled in school.

10 (h)(1) As used in this chapter, the term “students with disabilities” shall apply to all children
11 with disabilities, regardless of residence, enrolled by their parent, guardian or caretaker in private,
12 including religious, schools that are served by the local educational agency and meet the
13 requirements of an elementary or secondary school pursuant to chapter 60 of title 16, in accordance
14 with 34 C.F.R. § 300.131 (Child Find for parentally-placed private school children with
15 disabilities); 34 C.F.R. § 300.13 (Elementary School); and 34 C.F.R. § 300.36 (Secondary School);
16 or

17 (2) Students with disabilities who are over the age of eighteen (18) through twenty-one
18 (21) and enrolled in school.

19 (3) For children age three (3) through five (5) years, the screening procedures must be
20 consistent with the Rhode Island guidelines for implementing child outreach screening, as adopted
21 by the Rhode Island board of education.

22 **16-24-21. Evaluation of process.**

23 (a) The department, in conjunction with the ombudsperson established pursuant to § 16-
24 24-20, shall develop a meeting evaluation form to be provided to parents, guardians, and caretakers
25 of students with disabilities or a student with disabilities who is over the age of eighteen (18)
26 through twenty-one (21) and enrolled in school. The meeting evaluation form shall be provided to
27 parents, guardians, and caretakers of students with disabilities or a student with disabilities who is
28 over the age of eighteen (18) through twenty-one (21) and enrolled in school after every meeting
29 with representatives from the school regarding a student with disabilities. The department shall
30 make this form available on its website and shall have such forms printed in the language of the ten
31 (10) most commonly-used languages in Rhode Island.

32 (b) The meeting evaluation form shall be designed to allow parents, guardians, and
33 caretakers of students with disabilities or a student with disabilities who is over the age of eighteen
34 (18) through twenty-one (21) and enrolled in school to provide feedback on their experience,

1 understanding, and level of satisfaction with the processes involving IEPs, 504 plans, and related
2 supports and services. The meeting evaluation form shall also include sample or suggested
3 questions that may be asked by parents, guardians, and caretakers during this process.

4 (c) Schools shall ensure that any parents, guardians, and caretakers of students with
5 disabilities or a student with disabilities who is over the age of eighteen (18) through twenty-one
6 (21) and enrolled in school are given meeting evaluation forms in a language understood by the
7 person receiving the form.

8 (d) Persons receiving the meeting evaluation forms shall be encouraged to return those
9 forms to the issuing school within ten (10) days upon receipt and may provide a copy of the meeting
10 evaluation form to the ombudsperson. Copies of the completed meeting evaluation forms shall be
11 retained in the student's file, and shall also be distributed to the school's special education team
12 chair or department head, as applicable, and to the school district's director of special education.

13 (e) Schools shall review the forms and shall respond appropriately, if necessary.

14 (f) Meeting evaluation forms shall not be deemed to be public records pursuant to chapter
15 2 of title 38 ("access to public records") and shall be compliant with the Health Insurance Portability
16 and Accountability Act (HIPAA).

17 (g) The meeting evaluation forms shall inquire regarding:

18 (1) Whether documents received by the family related to special education services were
19 given in a timely manner;

20 (2) The quality of the student's special education team interaction with the parents;

21 (3) The family's level of confidence in the school or district's explanation, development,
22 and implementation of the IEP, 504 plan, or related supports and services;

23 (4) The family's level of confidence in the collaboration with their student's team
24 members;

25 (5) The family's satisfaction level that their voices were heard and that the family's
26 concerns were recognized by the district; and

27 (6) The family's level of confidence that there are avenues to address any concerns or
28 complaints the family may have in the future regarding their student.

29 (h) Each school district or regional special education program shall provide written
30 notification which shall be distributed to the family at the time a student with disabilities is referred
31 to special education, in conjunction with the meeting evaluation form set forth in subsection (a) of
32 this section. The notification shall specify that a majority of the local advisory committee (LAC)
33 on special education is parents, guardians or caretakers of students with disabilities, and shall
34 include the name, address, e-mail, and telephone number of the chairperson of the local advisory

1 committee (LAC) for special education or the regional advisory committee on special education.
2 The school district or regional special education program shall ensure the notification is distributed
3 in the ten (10) most commonly used languages in Rhode Island.

4 **16-24-22. Progress reports.**

5 The department shall develop a model uniform checklist and progress report which schools
6 shall issue to parents, guardians, and caretakers of students with disabilities or a student with
7 disabilities who is over the age eighteen (18) through twenty-one (21) and enrolled in school to
8 inform those persons of the progress being made by their student in accordance with an IEP or 504
9 plan. The model uniform checklist and progress report shall be posted on the department's website.
10 Schools may, but shall not be required to utilize the model progress report, but schools shall include
11 all information required on the uniform checklist within the schools' progress reports. Provided, in
12 the event that information listed on the uniform checklist is not applicable to the particular student,
13 the progress report shall indicate it is not applicable. These progress reports and checklists shall not
14 be deemed to be public records pursuant to chapter 2 of title 38 ("access to public records").
15 Progress reports shall be based upon data and evidence driven.

16 **16-24-23. Model uniform information pamphlet.**

17 The department shall develop a model uniform information pamphlet which shall be
18 distributed to the family in conjunction with the student's report card. The information pamphlet
19 shall include the name, address, e-mail, and telephone number of the Rhode Island ombudsperson
20 for special education; shall describe the roles, availability and authority of the ombudsperson; and
21 shall be clear and conspicuous. The department shall ensure the information pamphlet is distributed
22 in the ten (10) most commonly used languages in Rhode Island.

23 **16-24-24. Local advisory committee on special education.**

24 (a) There is hereby authorized, created and established an advisory committee on special
25 education to be appointed by the school committee of each local educational or regional special
26 education program.

27 (b) Each local or regional committee shall be composed of persons involved in or
28 concerned with the education of students with disabilities. Parents, guardians and caretakers of
29 students with disabilities shall compose a majority of the committee membership, and at least fifty
30 percent (50%) of this majority shall be selected by the parents, guardians and caretakers of students
31 with disabilities. A regional committee shall reflect an equal distribution of representatives from
32 each of the school districts that comprise the regional program. Members of the committee shall
33 consist of an individual with a disability, a public school administrator, a special education teacher,
34 a general education teacher and other members of the community at the discretion of the school

1 committee and school board.

2 (c) The local advisory committee shall advise the school district or regional program on
3 matters concerning the unmet needs of students with disabilities, comment on improvement plans
4 including school support plans resulting from Individuals with Disabilities Education Act (IDEA)
5 Part B compliance reports, local compliance with state and federal laws pertaining to the education
6 of students with disabilities, comment on applications for federal and state funds and serve as
7 advocates in partnership with parents, guardians and caretakers of students with disabilities or
8 students with disabilities who are over the age of eighteen (18) through twenty-one (21) and
9 enrolled in school to ensure that they receive the entitlements provided to them under state and
10 federal law.

11 (d) The local or regional educational agency shall provide support to the local advisory
12 committee by contracting for technical assistance services with the Rhode Island designated parent
13 training and technical assistance agency or other community-based nonprofit parent organization.
14 Such technical assistance shall include the role of the advisory committees in advocating for
15 children, state and federal regulations, community resources, strategic planning and development
16 of an annual report to the school committee. The local or regional educational agency shall also
17 provide school and district improvement plans to the committee for comment and make available
18 appropriate records and data as permitted by law. The public agency shall also support the
19 committee in disseminating information to parents, guardians and caretakers of students with
20 disabilities or students with disabilities who are over the age of eighteen (18) through twenty-one
21 (21) and enrolled in school regarding the role of the local advisory committee, information
22 pertaining to special education and inform the committee of professional development
23 opportunities that are available within the local educational agency.

24 **16-24-25. Audit.**

25 (a) By providing notice to parents, guardians or caretakers of students with disabilities or
26 students with disabilities who are over the age of eighteen (18) through twenty-one (21) and
27 enrolled in school that records will be reviewed and/or audited it increases the awareness of parental
28 educational rights, increases opportunities for parent assistance and guidance, increases parent
29 engagement, and provides the opportunity of communication and resolution between the district
30 and the students, parents, guardians or caretakers of students with disabilities or students with
31 disabilities who are over the age of eighteen (18) through twenty-one (21) and enrolled in school.

32 (b) Commencing on December 1, 2022, the Rhode Island ombudsperson for special
33 education shall conduct random audits of school districts to ensure accountability and compliance
34 by the school district with the implementation of IEPs, 504 plans, and related supports and services

1 for students of those school districts, and provide the department with yearly data, including denials
2 of eligibility of services, that will guide the department in improving educational outcomes.
3 Random audits may be conducted of any school district or individual school if requested by the
4 Rhode Island ombudsperson for special education, if there is a complaint filed by a parent, guardian
5 or caretaker of a student with disabilities or a student with disabilities who is over the age of
6 eighteen (18) through twenty-one (21) and enrolled in school, if there is a lawsuit filed against a
7 district, or if annually scheduled. These audits shall track, monitor metrics and provide
8 recommendations to the department and school district for remediation of non-compliance issues
9 and recommendations for improvements of systems and recordkeeping. A copy of the audit shall
10 be provided to the department, school district, school committee and/or any other child protection
11 agency as necessary.

12 SECTION 2. This act shall take effect upon passage.

=====
LC001455
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO EDUCATION

1 This act would establish the Rhode Island ombudsman for special education, independent
2 of the department of elementary and secondary education, to ensure school districts throughout the
3 state meet the minimum standards required to comply with individualized education programs for
4 students with disabilities. This act would further direct that families be provided forms to evaluate
5 their level of confidence and satisfaction with the schools in the process being followed in regard
6 to their student, as well as informational pamphlets in regards to the services provided and contact
7 information.

8 This act would take effect upon passage.

=====
LC001455
=====