

CHAPTER 316  
SB 381-FN-A - FINAL VERSION

4May2022... 1857h  
05/26/2022 2011CofC

2022 SESSION

22-3096  
10/05

SENATE BILL

***381-FN-A***

AN ACT

establishing an office of the advocate for special education.

SPONSORS:

Sen. Reagan, Dist 17; Sen. Hennessey, Dist 1; Sen. Bradley, Dist 3; Sen. Watters, Dist 4; Sen. Avard, Dist 12; Sen. Ward, Dist 8; Sen. Rosenwald, Dist 13; Sen. Gannon, Dist 23; Sen. Sherman, Dist 24; Rep. Spillane, Rock. 2

COMMITTEE:

Education

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ANALYSIS

This bill establishes and independent office of the advocate for special education and makes an appropriation therefor.

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Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Two*

AN ACT establishing an office of the advocate for special education.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 316:1 New Subdivision; Advocate for Special Education. Amend RSA 186-C by inserting after  
2 section 35 the following new subdivision:

3 Advocate for Special Education

4 186-C:36 Advocate for Special Education.

5 I. There is established an office of the advocate for special education which shall be an  
6 independent agency, administratively attached to the department of administrative services pursuant to  
7 RSA 21-G:10, under the direction of the advocate for special education (the "advocate").

8 II. The advocate for special education shall be independent of the department of education and  
9 shall serve as an advocate, coordinator, and point of contact for those parents, guardians, and caretakers  
10 of students with disabilities or students with disabilities when dealing with school districts and the districts'  
11 compliance with the applicable individualized education program (IEP) pursuant to RSA 186-C:7 and the  
12 Individuals with Disabilities Education Act (IDEA), 504 plans established pursuant to the Rehabilitation Act  
13 of 1973 (29 U.S.C. section 701 et seq.) and related supports and services for students with disabilities  
14 who are provided special services pursuant to this chapter and federal law, including, but not limited to,  
15 the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.), and the minimum  
16 requirements as they pertain to the individual student.

17 III. The governor and council shall appoint an advocate for special education, who shall be a  
18 person qualified by training and experience to perform the duties set forth in this section. The advocate  
19 shall hold office for a term of 5 years and shall continue to hold office until his or her successor is  
20 appointed and qualified.

21 186-C:37 Application of Subdivision. For purposes of this subdivision, the term "students with  
22 disabilities" shall apply to all children with disabilities, regardless of residence, enrolled in a public school,  
23 including a chartered public school.

24 186-C:38 Duties and Responsibilities.

25 I. The office of the advocate for special education shall:

26 (a) Serve as a resource for disability related information and referrals to available programs  
27 and services for families of children with disabilities.

28 (b) Serve as a source of information and referral regarding state and federal laws and  
29 regulations governing special education.

30 (c) Have the discretion to ensure all IEP documents, 504 plans, related supports and  
31 services to students with disabilities are properly documented and implemented, and the goals and  
32 objectives are being met, and that appropriate related supports and services are being provided.

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

5           (e) Have the discretion to review all documents relating to IEP documents, 504 plans, related  
6 supports and services being provided to students throughout the state, and ensure that proper  
7 documentation is being maintained by all schools and districts.

8           (f) Track metrics of the type of disagreements or complaints between a parent, guardian, or  
9 caretaker of the student with disabilities and the district; the types of suspect disabilities, which may  
10 uncover an unmet need in the education system; and the types of interventions and supports required by  
11 a segment of children.

12           (g) Ensure protections and safeguards are provided to school staff. To this end, all  
13 conversations between teachers, health professionals, and/or any school district personnel and the  
14 advocate shall be deemed confidential and not subject to disclosure absent a court order.

15           (h) Implement measures to track and monitor district achievement, success, and challenges  
16 in the implementation of IEPs, 504 plans, and related supports and services.

17           (i) Establish minimum compliance measures to ensure that copies of all relevant documents  
18 which are discussed at any family meeting involving a student receiving services pursuant to this chapter  
19 are given to the student's family at least 5 days in advance of any scheduled meeting at which these  
20 documents are to be discussed.

21           (j) Investigate any retaliatory act alleged or committed by any administrator, school district,  
22 state department, or other agency with the appropriate referrals to judicial departments or agencies for  
23 action, and any and all complaints filed by a parent, guardian, or caretaker of student with disabilities.

24           II. The advocate may appoint those assistants that may be deemed necessary whose powers  
25 and duties shall be similar to those imposed upon the advocate by law and any other staff as is deemed  
26 necessary. The duties of the assistants and other staff members shall be performed under and by the  
27 advice and direction of the advocate.

28           III. All student records shall remain confidential and compliant with state and federal privacy laws.

29           IV. The advocate shall not be held liable for any lack of compliance of an IEP or 504 plan.

30           V. All records or files of the advocate shall be readily available to any parent, guardian, or  
31 caretaker of a student with disabilities to inspect and/or copy for purposes of any agency or judicial  
32 proceeding.

33           186-C:39 Annual Report.

34           I. The advocate shall prepare a detailed report to the governor, the speaker of the house of  
35 representatives, the president of the senate, the chairpersons of the house and senate education  
36 committees, and the department of education advising on the status of services being provided to  
37 students with disabilities and summarizing the work of the office of the advocate for special education  
38 during the previous school year.

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

5           186-C:40 Evaluation of Process; Meeting Evaluation Form.

6           I. The department, in conjunction with the advocate shall develop a meeting evaluation form to be  
7 provided to parents, guardians, and caretakers of students with disabilities. The meeting evaluation form  
8 shall be provided to parents, guardians, and caretakers of students with disabilities after every meeting  
9 with representatives from the school regarding a student with disabilities. The department shall make this  
10 form available on its website.

11           II. The meeting evaluation form shall be designed to allow parents, guardians, and caretakers of  
12 students with disabilities to provide feedback on their experience, understanding, and level of satisfaction  
13 with the processes involving IEPs, 504 plans, and related supports and services. The meeting evaluation  
14 form shall also include sample or suggested questions that may be asked by parents, guardians, and  
15 caretakers during this process. Schools shall ensure that any parents, guardians, and caretakers of  
16 students with disabilities are given meeting evaluation forms in a language understood by the person  
17 receiving the form.

18           III. Persons receiving the meeting evaluation forms shall be encouraged to return those forms to  
19 the issuing school within 10 days upon receipt and may provide a copy of the meeting evaluation form to  
20 the advocate. Copies of the completed meeting evaluation forms shall be retained in the student's file,  
21 and shall also be distributed to the school's special education team chair or department head, as  
22 applicable, and to the school district's director of special education. Schools shall review the forms and  
23 shall respond appropriately, if necessary.

24           IV. Meeting evaluation forms shall not be deemed to be public records pursuant to RSA 91-A.

25           V. The meeting evaluation forms shall inquire regarding:

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

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

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

31           (d) The family's level of confidence in the collaboration with their student's team members;

32           (e) The family's satisfaction level that their voices were heard and that the family's concerns  
33 were recognized by the district; and

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

36           VI. Each school district shall provide written notification which shall be distributed to the family at  
37 the time a student with disabilities is referred to special education, in conjunction with the meeting  
38 evaluation form.

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1           316:2 Office of the Child Advocate; Reference to Education Deleted. Amend RSA 21-V:2, II(c) to  
2 read as follows:

3                   (c) Ensure that children placed in the care of the state or receiving services under the  
4 supervision of an agency in any public or private facility, receive humane and dignified treatment at all  
5 times, with full respect for the child's personal dignity, right to privacy, and right to adequate and  
6 appropriate healthcare [~~and education~~] in accordance with state and federal law.

7           316:3 Office of the Child Advocate; Access to Information and Facilities; Reference to Education  
8 Deleted. Amend RSA 21-V:4, I(a) to read as follows:

9                   (a) All case records, all third party records, including the healthcare [~~and education~~] records  
10 of any child receiving services from an executive agency, and all records submitted to the courts.

11           316:4 Appropriation. There is appropriated the sum of \$500,000 to the advocate for special  
12 education for the biennium ending June 30, 2023 for the payments of the salaries of the staff and for  
13 payment of office expenses and other actual expenses incurred by the office of the advocate for special  
14 education in the performance of their duties. The governor is authorized to draw a warrant for said sum  
15 out of any money in the treasury not otherwise appropriated.

16           316:5 Effective Date. This act shall take effect 30 days after its passage.

Approved: July 01, 2022  
Effective Date: July 31, 2022

