

CHAPTER 37
FORMERLY
SENATE BILL NO. 33
AS AMENDED BY
SENATE AMENDMENT NO. 3

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO EDUCATION AND THE INDIVIDUALIZED EDUCATION PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

WHEREAS, the individualized education program (IEP) process is the method by which educational programs and services for students with diagnosed disabilities in Delaware public schools are determined; and

WHEREAS, Senate Concurrent Resolution 63 of the 147th General Assembly established the IEP Improvement Task Force in order to examine means to improve the individualized education program process for students in Delaware public schools,” and

WHEREAS, the task force was assigned to recommend to the General Assembly and Governor “potential legislative, regulatory, funding, or other improvements to Delaware’s IEP process”; and

WHEREAS, the Task Force delivered its report to the General Assembly and Governor in January, 2015, and in so doing recommended a number of legislative and funding changes to improve the IEP process;

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE

Section 1. Amend Subchapter III, Chapter 31, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3125. Parent Councils.

Each school district and charter school enrolling any child with disabilities shall, on an annual basis, contact the parents of each such child to attempt to facilitate the creation and maintenance of a parent council for the parents of students with disabilities. Parent councils will advocate generally for students with disabilities and provide person-to- person support for individual parents and children. The charter schools and school districts shall collaborate and coordinate with existing parent groups and other information and support groups to facilitate creation, maintenance, and effectiveness of the Parent Councils.

§ 3125A. IEP training for charter schools.

Effective January 1, 2016, each charter school will designate and maintain at least one professional staff member who has completed training approved by the Department of Education regarding the legal responsibilities of charter schools with respect to preparation of individualized education programs for students with disabilities and resources available to charter schools to assist in preparation of such programs. The Department of Education, by regulation, shall define the scope and timetable of initial and refresher training.

Section 2. Amend Subchapter V, Chapter 31, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 3131 Minutes of meetings.~~

~~Subject to confidentiality requirements of applicable state or federal law, minutes may be taken, by disclosed recording device or stenographer, of any meeting, review or conference concerning a child with a disability's free, appropriate, public education, at the option of the parents of the child with a disability, their authorized representative or the agency conducting the meeting, review or conference. Costs of the recording shall be borne by the person or agency exercising the option under this section.~~

§ 3131 Conduct of Meetings

(a) No charter school or school district, or any person acting under the authority of a charter school or school district, shall discriminate or take any adverse employment or contract action against any person based upon statements that person makes while advocating for a student in connection with an individualized education program (IEP), including statements made in preparation for or at a meeting, review, or conference concerning a child with a disability’s free, appropriate public education. Entities or persons who violate this subsection shall be subject to the

same injunctive and monetary sanctions as persons or entities that engage in unlawful employment practices under Chapter 7, Title 19 of the Delaware Code.

(b) Subject to confidentiality requirements of applicable state or federal law, minutes may be taken, by disclosed recording device or stenographer, of any meeting, review or conference concerning a child with a disability's free, appropriate, public education, at the option of the parents of the child with a disability, their authorized representative or the agency conducting the meeting, review or conference. Costs of the recording shall be borne by the person or agency exercising the option under this section.

(c) Discussions about employment options with children and parents during the IEP process should be consistent with Delaware's employment first policy articulated by § 743 of Title 19. Progress made toward post-secondary goals in transition IEPs will be reported with the same frequency as that for academic goals.

(d) The Department of Education, in consultation with the Department of Justice, shall annually survey a material number of parents and children who have individualized education programs with respect to the parents' and children's satisfaction with the IEP process. Information gathered through this survey shall be used by the Department of Education and Department of Justice to conduct follow-up examinations with school districts and charter schools as to their good faith compliance with state and federal laws and regulations.

§ 3134. Contents of notice.

The notice under § 3133 of this title must include all of the following:

(1) A full explanation of all of the procedural safeguards available to the parents under ~~this subchapter~~; state and federal law and regulations.

(2) A written description of the action proposed or refused by the district or agency, an explanation of why the district or agency proposes or refuses to take the action, and a description of any options the district or agency considered and the reasons why those options were ~~rejected~~; rejected.

(3) A written description of each evaluation procedure, test, record or report the district or agency uses as a basis for the proposal or ~~refusal~~; refusal.

(4) A written description of any other factors which are relevant to the district or agency's proposal or ~~refusal~~; refusal.

(5) A written statement that the parents of a child with a disability have protection under the procedural safeguards of ~~this chapter~~ state and federal law and regulations and, ~~if this notice is an initial referral for evaluation~~, the means by which a copy of a description of the procedural safeguards can be ~~obtained~~; and obtained.

(6) Sources for parents to contact to obtain assistance in understanding the provisions of this subchapter, including specific contact information for existing parent assistance programs, legal assistance programs, and the Delaware State Bar Association.

(7) A separate questionnaire requesting the input of a child's parent and, where appropriate, a child, with respect to the child's progress to date and additional proposed steps that should be taken to adjust the child's goals, curriculum, services, aids, modifications, or other elements of the child's individualized education program. The questionnaire may be sent prior to the written notice of an individualized education program meeting or its equivalent and, if it is, does not need to be included in the notice under this section.

(8) A copy of the draft individualized education program accompanied by a letter clearly indicating to the parent and child that the document is a draft for discussion and subject to revision at the noticed meeting, if a draft individualized education program will be presented to a child or parent, or otherwise utilized at the individualized education program meeting for which notice is provided. If such a draft individualized education program is prepared subsequent to the notice required by this section but prior to the noticed meeting, it shall be provided to the parent and child prior to the noticed meeting, along with the explanatory letter required by this paragraph. Any draft document provided to a child or parent pursuant to this paragraph shall be clearly labeled on each page as a draft document for discussion purposes only. The Department in collaboration with the Governor's Advisory Council on Exceptional Citizens shall create a draft letter and associated guidance to assist the charter schools and school districts with the content and application of the above letter.

(9) A notice that a parent or child may request prior to an individualized education program meeting any data in the charter school's or school district's possession relevant to the child's needs or disability.

(10) A notice that a parent or child may request the presence of any teacher, paraprofessional, and any additional staff members of their choosing at an individualized education program meeting.

Section 3. The Department of Education is directed to make a formal, written report on the functionality of the IEP Plus system, specific plans that it has put in place to remedy any deficiencies in the IEP Plus system and when those plans will be executed, and specific available alternatives to the IEP Plus system which would provide computerized systems for preparation of individualized education programs. This report must be submitted to the General Assembly within 30 days of enactment of this legislation.

Approved June 18, 2015