

CHAPTER 301  
FORMERLY  
HOUSE BILL NO. 328  
AS AMENDED BY  
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO EXCEPTIONAL PERSONS.

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

Section 1. Amend §3101(3), Title 14 of the Delaware Code by deleting subsection (3) in its entirety and substituting in lieu thereof a new subsection (3) as follows:

“(3) ‘Free appropriate public education’ means special education that is specially designed instruction including classroom instruction, instruction in physical education, home instruction and instruction in hospitals and institutions, and related services as defined by Department of Education rules and regulations approved by the State Board of Education and as may be required to assist a handicapped person to benefit from an education that:

- a. Is provided at public expense, under public supervision and direction and without charge in the public school system;
- b. Meets the standards of the Department of Education as set forth in this title or in the rules and regulations of the Department as approved by the State Board;
- c. Includes elementary, secondary or vocational education in the State;
- d. Is individualized to meet the unique needs of the handicapped person;
- e. Provides significant learning to the handicapped person; and
- f. Confers meaningful benefit on the handicapped person that is gauged to the handicapped person’s potential.

No court, administrative tribunal, school district, or school shall use a definition of ‘free appropriate public education’ that states or implies that the term encompasses a lesser educational program than enumerated in this definition. Courts, administrative, tribunals, and schools may use a definition of ‘free appropriate public education’ that states or implies that the term encompasses a more enhanced educational program than described in this definition, if consistent with a decision of the United States Third Circuit Court of Appeals or the United States Supreme Court.

The related services to be provided shall be based upon a program for each child as approved by the Department; provided, that the State Board may review any objection to the Department’s decision. Funds for such services are to be paid from the Educational Contingency Fund of the Department of Education.”.

Approved June 17, 2010