

CHAPTER 424
FORMERLY
HOUSE BILL NO. 396
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO EDUCATION

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

Section 1. Amend Chapter 31, Title 14 of the Delaware Code by deleting the word “PERSONS” and replacing with the word “CHILDREN” as it appears in the title of the chapter.

Section 2. Amend § 3101, Title 14 of the Delaware Code by striking the existing subsections (5), (6) and (8) in their entireties and inserting new subsections (1) and (2) to read as follows:

“(1) ‘Child’ means a person of 3 years of age, or an earlier age if otherwise provided in this title, until the receipt of a regular high school diploma or the end of the school year in which the person attains the age of 21, whichever occurs first.

(2) ‘Child with a disability’ means a child who because of mental, physical, emotional, developmental, speech or learning disability problems, as defined by the Department of Education rules and regulations approved by the State Board of Education, requires special education and related services in order to develop that person’s own capabilities. A child with a disability is eligible for services beginning on the child’s 3rd birthday, or earlier if otherwise provided in this title.”

Section 3. Further amend § 3101, Title 14 of the Delaware Code by renumbering the remaining subsections accordingly.

Section 4. Further amend § 3101, Title 14 of the Delaware Code by striking the words “handicapped person” each time they appear in § 3101 and by inserting in lieu thereof the words “child with a disability.”

Section 5. Further amend § 3101, Title 14 of the Delaware Code by striking the word “person” where it appears multiple times in the newly designated subsections (3) and (4) and inserting in lieu thereof the word “child”.

Section 6. Further amend § 3101, Title 14 of the Delaware Code by striking the word “person” wherever it appears in the newly-designated subsection (6) and inserting in lieu thereof the word “child”; and further amend this same subsection by striking the words “20 years inclusive” where they appear and inserting the words “the end of the school year in which the child attains the age of 21 or until receipt of a regular high school diploma, whichever occurs first” therein.

Section 7. Further amend § 3101, Title 14 of the Delaware Code by striking the words “handicapped child’s” where they appear in newly designated subsection (7) and inserting in lieu thereof the words “child with a disability’s” and by adding the word “educational” before the word “surrogate” and adding the language “, relative caregiver” after the words “surrogate parent” as they appear in the newly designated subsection (7).

Section 8. Amend § 3110, Title 14 of the Delaware Code by striking the word “persons” where it appears after the word “exceptional” the first time in subsection (a) and inserting in lieu thereof the words “children”.

Section 9. Amend § 3110, Title 14 of the Delaware Code by striking the words “handicapped persons, ages 3 through 20 inclusive” where they appear after the word “identified” in subsection (b) and inserting in lieu thereof the words “children with disabilities, as defined in Section 3101 of this chapter”.

Section 10. Amend § 3111, Title 14 of the Delaware Code by striking the language “P.L. 94-142 [20 U.S.C. § 1400 *et seq.*]” and inserting in lieu thereof the language the “Individuals with Disabilities Act (IDEA), 20 U.S.C. § 1400, *et seq.*”

Section 11. Amend Subchapter III, Chapter 31, Title 14 of the Delaware Code by striking the word “Persons” where it appears after the words “Subchapter III” and inserting in lieu thereof the word “Children”.

Section 12. Amend § 3120, Title 14 of the Delaware Code by inserting the words “and charter schools” after the word “districts” as it appears in the first sentence; further amend this section by striking the words “disabled person” and “disabled person’s” where they appear and inserting in lieu thereof the words “child with a disability” and “child with a disability’s”, respectively.

Section 13. Amend § 3121, Title 14 of the Delaware Code by inserting the words “, charter school” after the words “Each school district” where they appear in said section; further amend by striking the words “disabled persons” and inserting in lieu thereof the words “children with a disability” where they appear after the words “the needs of” and before the words “as herein defined” in said section.

Section 14. Amend § 3122, Title 14 of the Delaware Code by striking the words “disabled person” each time they appear in said section and inserting in lieu thereof the words “children with a disability” or “child with a disability,” as appropriate, and by striking the word “person” each time it appears in said section and inserting in lieu thereof the word “child” ; and further amend this subsection by adding the words “with a disability” after the word “child” and deleting the words “who is disabled” as they appear in the first sentence therein.

Section 15. Amend § 3123, Title 14 of the Delaware Code by striking the words “autistic children” where they appear in subsection (a) and inserting in lieu thereof the words “children with autism.”

Section 16. Amend § 3124, Title 14 of the Delaware Code by striking subsection (a) in its entirety and replacing in lieu thereof the following:

“(a) Private placement with financial aid may be sought when an Individual Education Program (IEP) team finds that an eligible child with a disability cannot benefit from the regularly offered free appropriate public educational programs which include regular classes, special classes or special schools. The determination shall be made by the IEP team and by the Department of Education that no school district or other state agency has a suitable free and appropriate program of education for the particular child with a disability. Such private placement shall be in a school or institution approved by the Department of Education in keeping with its oversight responsibilities.”

Section 17. Further amend § 3124(b)(1)e., Title 14 of the Delaware Code by deleting the words “Alcoholism, Drug Abuse and Mental Health” and replacing in lieu thereof the words “Substance Abuse and Mental Health”.

Section 18. Further amend § 3124(b)(5), Title 14 of the Delaware Code by deleting the word “may” as it appears in the 3rd sentence and replacing in lieu thereof the word “shall”.

Section 19. Further amend § 3124(d), Title 14 of the Delaware Code by deleting the subsection in its entirety and replacing in lieu thereof the following:

“(d) Financial aid shall include tuition for special education and related services as defined in the IDEA to include daily transportation for a private day program and room and board for a residential program. Transportation for a residential program will include, at a minimum, transportation to and from the facility at the start and end of each school term and when the school is officially closed to students. Reimbursement for other trips home or for the parents’ travel costs to accompany the child or to attend conferences at the facility shall be determined on a case-by-case basis.”.

Section 20. Further amend § 3124(e), Title 14 of the Delaware Code by striking the word “persons” as it appears therein and inserting in lieu thereof the word “children”; further amend this subsection by deleting the language “, or who would otherwise be, identified as “complex or rare” and” and inserting the word “found” in lieu thereof.

Section 21. Amend Subchapter IV, Chapter 31, Title 14 of the Delaware Code in the title by striking the word “Persons” where it appears after the word “Talented” and inserting in lieu thereof the word “Children”.

Section 22. Amend § 3130, Title 14 of the Delaware Code by striking the words “handicapped child” each time they appear in said subsection and by inserting in lieu thereof the words “child with a disability.”

Section 23. Amend § 3131, Title 14 of the Delaware Code by striking the words “handicapped child’s” and “handicapped child” where they appear in said subsection and by inserting in lieu thereof the words “child with a disability’s” and “child with a disability”, respectively.

Section 24. Amend § 3132, Title 14 of the Delaware Code by striking the words “handicapped child” where they appear in said subsection and by inserting in lieu thereof the words “child with a disability” and by inserting the following after the words “ward of the State” where they appear in said subsection: “or an unaccompanied homeless youth as defined in § 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434(a)(6)),” ; and further amend this subsection by adding the word “Educational” and “educational” before the words “Surrogate” and “surrogate” as they appear in the title and body of the subsection respectively.

Section 25. Amend § 3133, Title 14 of the Delaware Code by striking the words “handicapped child” where they appear in said subsection and by inserting in lieu thereof the words “child with a disability”.

Section 26. Amend § 3134 ,Title 14 of the Delaware Code by inserting new subsections (5) and (6) to read as follows:

“(5) A statement that the parents of a child with a disability have protection under the procedural safeguards of this subchapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

(6) Sources for parents to contact to obtain assistance in understanding the provisions of this subchapter.”; and further amend this subsection by deleting the word “and” as it appears at the end of paragraph (3); and further amend this section by deleting the period “.” at the end of subsection “(4)” and replacing it with a semicolon “;” therein”.

Section 27. Amend § 3136, Title 14 of the Delaware Code by striking the words “receipt of a request for a hearing” where they appear in subsection (a) and inserting in lieu thereof the words “the expiration of the 30 day period in subsection (d), or the adjusted time periods in subsection (e)”.

Section 28. Further amend § 3136(b), Title 14 of the Delaware Code by striking the words “45 day limit” where they appear in said subsection and inserting in lieu thereof the words “time periods set out in subsection (a)”.

Section 29. Further amend § 3136, Title 14 of the Delaware Code by inserting new subsections (c), (d), and (e) as follows:

“(c) Within 15 days of receiving notice of the parents’ complaint and prior to the opportunity for an impartial due process hearing, the district or state agency shall convene a meeting with the parents and the relevant member(s) of the IEP Team who have specific knowledge of the facts identified in the due process complaint where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the district or charter school is provided the opportunity to resolve the complaint, unless the parents and the district or state agency

agree in writing to waive such meeting, or agree to use the mediation process. The IEP team shall include a representative of the district or state agency that has decision making authority on behalf of the district or state agency and may not include an attorney of the district or state agency unless the parent is accompanied by an attorney.

(d) If the district or state agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur.

(e) The 45 day timeline for the due process hearing in subsection (a) starts the day after the occurrence of one of the following events:

- (1) Both parties agree in writing to waive the resolution meeting; or
- (2) Either the mediation or resolution meeting starts, but before the end of the 30 day period, the parties agree in writing that no agreement is possible; or
- (3) Both parties agree in writing to continue the mediation at the end of the 30 day resolution period, but later, the parent, district or state agency withdraws from the mediation process.”.

Section 30. Amend § 3137, Title 14 of the Delaware Code by striking the words “the handicapped” where they appear in paragraph (d)(3) and inserting in lieu thereof the words “children with disabilities.”

Section 31. Amend § 3138, Title 14 of the Delaware Code by striking the words “handicapped children” where they appear in paragraph (a)(1) and inserting in lieu thereof the words “children with disabilities”.

Approved July 23, 2010