



SPONSOR: Rep. Heffernan & Rep. Longhurst & Rep. Griffith &
Rep. K. Williams & Sen. Poore & Sen. Sturgeon

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 454

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO ELIGIBILITY FOR SPECIAL
EDUCATION AND RELATED SERVICES.

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

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

3 § 3101. Definitions [Effective until Aug. 31, 2022].

4 The following words, terms and phrases, when used in this chapter shall have the meanings ascribed to them
5 except when the context clearly indicates a different meaning:

6 (1) "Child" means a person of 3 years of age, or an earlier age if otherwise provided in this title, until the
7 receipt of a regular high school diploma or the end of the school year in which the person attains the age of ~~21~~ 22,
8 ~~except as provided in paragraph (2)c. of this section,~~ whichever occurs first.

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

14 ~~b. A child with a disability is eligible for services beginning on the child's third birthday, or earlier if~~
15 ~~otherwise provided in this title.~~

16 ~~c. A child with a disability who attains the age of 21 during the 2020-2021 school year is eligible for~~
17 ~~services until the end of the 2021-2022 school year if extension of special education and related services is~~
18 ~~necessary to address unfinished post-secondary goals caused by the COVID-19 coronavirus pandemic which gave~~
19 ~~rise to the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat issued by~~
20 ~~the Governor on March 12, 2020. The Individualized Education Program Team responsible for a child with a~~
21 ~~disability whose achievement of post-secondary goals has been interrupted or otherwise adversely affected by the~~
22 ~~State of Emergency shall review and revise the child's Individualized Education Program to enumerate the specific~~

~~basis for extension of services, and the transition services and duration of those services necessary to support the child's progress toward reaching identified post-secondary goals. Students covered by this paragraph (2)c. shall not be included in the annual unit count under § 1703 of this title and the services provided to them shall be funded through the Elementary and Secondary School Emergency Relief Fund.~~

§ 3101. Definitions [Effective Aug. 31, 2022].

The following words, terms and phrases, when used in this chapter shall have the meanings ascribed to them except when the context clearly indicates a different meaning:

(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~~ 22, 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 third birthday, or earlier if otherwise provided in this title.

Section 2. Amend Chapter 17, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1703. Unit of pupils [Effective until July 1, 2022].

(d) For funding purposes, the following conditions shall prevail for the calculations of the number of units for children with disabilities and all other children. The preschool unit shall be 1 unit for 12.8 students. The regular education unit for kindergarten through third grade unit (K-3 regular education) shall be 1 unit for 16.2 students, except as noted in subsection (c) of this section above. The regular education unit for grades 4 through 12 (4-12 regular education) shall be 1 unit for 20 students. The basic special education (basic) unit for kindergarten through grade 3 shall be 1 unit for 12.2 students. The basic special education (basic) unit for grades 4 through 12 shall be 1 unit for 8.4 students. The intensive special education (intensive) unit for preschool through grade 12 shall be 1 unit for 6 students. The complex special education (complex) unit for preschool through grade 12 shall be 1 unit for 2.6 students. Grade 12 is defined as enrollment until receipt of a regular high school diploma or the end of the school year in which the student attains the age of ~~21~~ 22, whichever occurs first, as defined in Chapter 31 of this title.

(l) In the case of children, infant through the end of the school year in which the child with a disability turns ~~21~~ 22, or the receipt of a regular high school diploma, whichever occurs first, who are identified with autism, programs of

instruction may be prepared, according to rules and regulations of the Department of Education with the approval of the State Board of Education as authorized in § 203 of this title, that will provide special education and training. Programs for children of the pre-kindergarten ages may include the parents of those children. The minimum age described in § 3101 of this title shall not be applicable to children served under this subsection. Enrollment of children with disabilities in programs other than those administered in the district of residence may occur with the mutual agreement of the district of residence and the district administering the specialized program. The district which accepts and enrolls the child may count that child for unit count purposes and the enrollee shall not be counted in any other school district. The district where the child is enrolled may count that child for the purposes of related services units or any other administrative unit such as director or principal.

(m) In the case of children, infant through the end of the school year in which the child with a disability turns ~~21~~ 22 or the receipt of a regular high school diploma, whichever occurs first, who are identified as deaf-blind, programs of instruction may be prepared, according to rules and regulations of the Department of Education with the approval of the State Board of Education. Programs for children of the pre-kindergarten ages may include the parents of those children. The minimum age described in § 3101 of this title shall not be applicable to children served under this subsection.

§ 1703. Unit of pupils [Effective July 1, 2022; Effective until July 1, 2023].

(d) For funding purposes, the following conditions shall prevail for the calculations of the number of units for children with disabilities and all other children. The preschool unit shall be 1 unit for 12.8 students. The regular education unit for kindergarten through third grade unit (K-3 regular education) shall be 1 unit for 16.2 students, except as noted in subsection (c) of this section above. The regular education unit for grades 4 through 12 (4-12 regular education) shall be 1 unit for 20 students. The basic special education (basic) unit for kindergarten through grade 3 shall be 1 unit for 10.2 students. The basic special education (basic) unit for grades 4 through 12 shall be 1 unit for 8.4 students. The intensive special education (intensive) unit for preschool through grade 12 shall be 1 unit for 6 students. The complex special education (complex) unit for preschool through grade 12 shall be 1 unit for 2.6 students. Grade 12 is defined as enrollment until receipt of a regular high school diploma or the end of the school year in which the student attains the age of ~~21~~ 22, whichever occurs first, as defined in Chapter 31 of this title.

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(m) In the case of children, infant through the end of the school year in which the child with a disability turns ~~24~~ 22 or the receipt of a regular high school diploma, whichever occurs first, who are identified as deaf-blind, programs of instruction may be prepared, according to rules and regulations of the Department of Education with the approval of the State Board of Education. Programs for children of the pre-kindergarten ages may include the parents of those children. The minimum age described in § 3101 of this title shall not be applicable to children served under this subsection.

§ 1703. Unit of pupils [Effective July 1, 2023].

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113 child is enrolled may count that child for the purposes of related services units or any other administrative unit such as
114 director or principal.

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116 22 or the receipt of a regular high school diploma, whichever occurs first, who are identified as deaf-blind, programs of
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118 State Board of Education. Programs for children of the pre-kindergarten ages may include the parents of those children. The
119 minimum age described in § 3101 of this title shall not be applicable to children served under this subsection.

SYNOPSIS

This Act revises the Code to be consistent with federal law. The Individuals with Disabilities in Education Act (IDEA) requires states to make a free appropriate public education (FAPE) available to all children with disabilities “between the ages of 3 and 21, inclusive.” 20 U.S.C. § 1412(a)(1)(A). The term “inclusive” requires states to extend eligibility until a student’s 22nd birthday. The IDEA allows states to limit the age of eligibility for FAPE to students between the ages of 18 through 21 only to the extent state law, practice, or court order limits the provision of public education to all children within those age ranges. 20 U.S.C. § 1412(a)(1)(B). In Delaware, state law and practice provide public education to adults without age limitation. Delaware is one of the few states that has developed a public adult high school, the James H. Groves Adult High School, accommodating those needing an alternative to a regular day-school program. As such, federal law requires Delaware to extend eligibility for children with disabilities through their 22nd birthday. Current statute and regulation extend eligibility to the end of the school year in which a child with a disability turns 21, this Act proposes to keep the established exit point to minimize service interruptions and only change the age from the end of the school year in which a child turns 21 to the end of the school year in which a child turns 22.