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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 128

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

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

1 Section 1. Amend § 3101, 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.

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, except
8 as provided in subsection (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.

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

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

21 review and revise the child’s Individualized Education Program to enumerate the specific basis for extension of
22 services and the special education and related services to be provided.

23 (3) “Disruptive child” means a child who continually exhibits behavior that does not meet minimal standards
24 of conduct established by the school authorities and that are required in the school and classrooms; whose behavior is
25 in defiance of school personnel, disrupts the school instructional program and is antagonistic to other students and the
26 purpose of the school.

27 (4) “Exceptional child” means a child with a disability or a gifted and talented child, as defined herein.

28 (5) “Free appropriate public education” means special education that is specially designed instruction
29 including classroom instruction, instruction in physical education, home instruction and instruction in hospitals and
30 institutions, and related services as defined by Department of Education rules and regulations approved by the State
31 Board of Education and as may be required to assist a child with a disability to benefit from an education that:

32 a. Is provided at public expense, under public supervision and direction and without charge in the public
33 school system;

34 b. Meets the standards of the Department of Education as set forth in this title or in the rules and
35 regulations of the Department as approved by the State Board;

36 c. Includes elementary, secondary or vocational education in the State;

37 d. Is individualized to meet the unique needs of the child with a disability;

38 e. Provides significant learning to the child with a disability; and

39 f. Confers meaningful benefit on the child with a disability that is gauged to the child with a disability’s
40 potential.

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

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

49 Section 2. This Act expires on August 31, 2022.

SYNOPSIS

This Act permits the extension of special education and related services to those students with a disability who turn 21 during the 2020-2021 school year to address unfinished learning as a result of the pandemic which resulted in the COVID-19 Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat declared by the Governor on March 12, 2020. The IEP for the child must be revised to reflect the specific basis for extending services and the specific education and related services that will be provided.