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HOUSE OF REPRESENTATIVES  
151st GENERAL ASSEMBLY

HOUSE BILL NO. 128  
AS AMENDED BY  
HOUSE AMENDMENT NO. 1

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:

Section 1. Amend § 3101, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3101. Definitions.

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, except as provided in subsection (2)(c) of this section, whichever occurs first.

(2)a. “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.

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

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

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 subparagraph (2)c. of §3101 of this title 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.

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

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

(5) "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 child with a disability 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 child with a disability;
- e. Provides significant learning to the child with a disability; and
- f. Confers meaningful benefit on the child with a disability that is gauged to the child with a disability'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.

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