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HOUSE OF REPRESENTATIVES
145th GENERAL ASSEMBLY

HOUSE BILL NO. 396

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:

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

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

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

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

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

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

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

19 Section 6. Further amend § 3101, Title 14 of the Delaware Code by striking the word "person" where it appears
20 twice in the newly designated subsection (6) inserting in lieu thereof the word "child"; and further amend this same

21 subsection by striking the words “20 years inclusive” where they appear and inserting the words “the end of the school year
22 in which the child attains the age of 21” therein.

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

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

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

32 Section 10. Amend § 3111, Title 14 of the Delaware Code by striking the language “P.L. 94-142 [20 U.S.C. §
33 1400 *et seq.*]” and inserting in lieu thereof the language “Individuals with Disabilities Act (IDEA), 20 U.S.C. § 1400, *et*
34 *seq.*”

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

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

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

45 Section 14. Amend § 3122, Title 14 of the Delaware Code by striking the words “disabled person” each time they
46 appear in said section and inserting in lieu thereof the words “children with a disability” or “child with a disability,” as
47 appropriate, and by striking the word “person” each time it appears in said section and inserting in lieu thereof the word
48 “child”.

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

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

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

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

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

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

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

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

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

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

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

82 Section 24. Amend § 3132, Title 14 of the Delaware Code by striking the words “handicapped child” where they
83 appear in said subsection and by inserting in lieu thereof the words “child with a disability” and by inserting the following
84 after the words “ward of the State” where they appear in said subsection: “or an unaccompanied homeless youth as defined
85 in § 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434(a)(6)),”.

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

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

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

93 (6) Sources for parents to contact to obtain assistance in understanding the provisions of this
94 subchapter.”; and further amend this subsection by deleting the word “and” as it appears at the end of paragraph
95 (3).

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

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

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

103 “(c) Within 15 days of receiving notice of the parents’ complaint and prior to the opportunity for an
104 impartial due process hearing, the district or charter school shall convene a meeting with the parents and the
105 relevant member(s) of the IEP Team who have specific knowledge of the facts identified in the due process
106 complaint where the parents of the child discuss their complaint, and the facts that form the basis of the complaint,
107 and the district or charter school is provided the opportunity to resolve the complaint, unless the parents and the
108 district or charter school agree in writing to waive such meeting, or agree to use the mediation process. The IEP

109 team shall include a representative of the district or charter school and may not include an attorney of the district
110 or charter school unless the parent is accompanied by an attorney.

111 (d) If the district or charter school has not resolved the complaint to the satisfaction of the parents within
112 30 days of the receipt of the complaint, the due process hearing may occur.

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

115 (1) Both parties agree in writing to waive the resolution meeting; or

116 (2) Either the mediation or resolution meeting starts, but before the end of the 30 day period, the parties
117 agree in writing that no agreement is possible; or

118 (3) Both parties agree in writing to continue the mediation at the end of the 30 day resolution period, but
119 later, the parent, district or charter school withdraws from the mediation process.”.

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

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

SYNOPSIS

This Act aligns Delaware law with the federal requirements of the reauthorized Individuals With Disabilities Education Act relating to the content of prior written notice, the requirements for the appointment of educational surrogates, and the applicable timelines for an administrative due process hearing. In December 2004, Congress amended and reauthorized the Individuals With Disabilities Education Act, 20 U.S.C. §1400, *et seq.*

This Act also changes the terminology of “handicapped person” to “child with a disability” to reflect the change in federal law and the preferred “people first” language. In addition, this Act clarifies that a child with a disability who attains the age of 21 during a school year, may continue and complete the school year.

This Act removes language related to defining children as “rare and complex” when contemplating publicly-funded private placement and uses language consistent with IDEA.