

CHAPTER 393
FORMERLY
HOUSE BILL NO. 365

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

WHEREAS, parents of children with special needs who wish to challenge the denial of educational services to their children must do so through an adversarial hearing process that is set up under federal and state law; and

WHEREAS, challenging denial of services to a child with special needs often requires the hiring of experts or the administration of diagnostic tests or both, which can be prohibitively expensive for parents; and

WHEREAS, prior to 2006, multiple federal circuit courts held that parents who prevailed in their appeals of service denials were able to recover from school districts the costs of experts and tests that they were forced to incur in order to successfully challenge those service denials, pursuant to the Individuals with Disabilities Act (“IDEA”); and

WHEREAS, a divided U.S. Supreme Court ruled in 2006 that federal law did not permit awarding such costs to parents who prevailed in their claims; and

WHEREAS, the inability of parents to recover the costs of challenging the denial of services to their children with special needs is effectively preventing many parents from being able to advocate for their children’s needs; and

WHEREAS, the State of Delaware has the authority to permit reimbursement to these parents even if it is not provided by federal law; and

WHEREAS, the only parents who would be entitled to recover expert fees and testing costs under this proposed statute would be parents who were ultimately successful in challenging the denial of services to their children;

NOW, THEREFORE:

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

Section 1. Amend Section 3138, Title 14 of the Delaware Code by adding a new subsection (g) as follows:

(g) Following any disposition under this chapter which entitles a parent to attorney’s fees under state or federal law, said parent shall also be awarded the reasonable fees of expert witnesses and the reasonable costs of any tests or evaluations necessary for the preparation of the parent’s hearings. Awards made pursuant to this section shall not be made with the use of funds previously designated for the direct provision of education or services to children. Each school district and charter school shall report annually to the Department of Education, in a form to be determined by the Department, the amount of all awards made pursuant to this subsection and the source of funds for such awards.

Section 2. This Act shall be applicable to any action or proceeding that has not been finally adjudicated as of the date that it becomes law.

Approved August 09, 2012