

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 922

### FINAL

#### Regulatory Implementing Order

#### I. Summary of the Evidence and Information Submitted

On March 1, 2007, the Secretary of Education, with the consent of the State Board of Education, proposed to adopt new regulation 14 **DE Admin. Code** 922, Children with Disabilities, Subpart A, Purposes and Definitions.

On December 3, 2004, President Bush signed into law the Individuals with *Disabilities Education Improvement Act of 2004* ("IDEA 2004"). Most of IDEA 2004 became effective in July 2005. On August 14, 2006, the U.S. Department of Education issued its final regulations implementing IDEA 2004. The new federal regulations, located at 34 CFR Part 300, became effective on October 13, 2006.

The current State regulations relating to the education of children with disabilities are codified in 14 **DE Admin. Code** 925. Concurrent with this Order, the Secretary, with the consent of the State Board of Education, will enter additional Orders repealing the existing regulation and replacing it with the following new regulations:

- 14 **DE Admin. Code** 922 Children with Disabilities, Subpart A, Purposes and Definitions
- 14 **DE Admin. Code** 923 Children with Disabilities, Subpart B, General Duties and Eligibility of Agencies
- 14 **DE Admin. Code** 924 Children with Disabilities, Subpart C, Local Educational Agency Eligibility
- 14 **DE Admin. Code** 925 Children with Disabilities, Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs
- 14 **DE Admin. Code** 926 Children with Disabilities, Subpart E, Procedural Safeguards for Parents and Children
- 14 **DE Admin. Code** 927, Children with Disabilities, Subpart F, Monitoring, Enforcement and Confidentiality of Information
- 14 **DE Admin. Code** 928 Children with Disabilities, Subpart G, Use and Administration of Funds, Subpart H Reserved
- 14 **DE Admin. Code** 929 Children with Disabilities, Subpart I, Special Programs and Unique Educational Alternatives

Notice of all the proposed regulations was published in the News Journal and the *Delaware State News* on February 26, 2007, in the form hereto attached as Exhibit "A". The Department received comments on proposed regulation 14 **DE Admin. Code** 922, Children with Disabilities, Subpart A, Purposes and Definitions as noted below in the Findings of Facts.

#### II. Findings of Facts

The Secretary finds that it is appropriate to adopt 14 **DE Admin. Code** 922 as part of a comprehensive review of existing State regulations relating to the education of children with disabilities in light of changes to federal law.

The Secretary also finds that it is appropriate to make the following, non-substantive changes to the published regulation based on public comments. The Governor's Advisory Council for Exceptional Citizens noted an error in the name of a state agency, which the Department was able to correct before publication of the proposed regulation. The Department also received a comment about the proposed definition of "Local Educational Agency" and the status of district-authorized charter schools for special education purposes. This comment requires further consideration by the Department. Consequently, the Department is reserving part of the definition of "Local Educational Agency" until such time as the Department deems appropriate to fully consider the comment.

### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to adopt 14 **DE Admin. Code** 922 with the revisions noted above. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 922, attached hereto as Exhibit "B," is hereby adopted. Pursuant to 14 **Del.C.** §122(e), 14 **DE Admin. Code** 922 shall be in effect for a period of five years from the effective date of this order as set forth in Section V below.

### IV. Text and Citation

The text of 14 **DE Admin. Code** 922 shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 922 in the *Administrative Code of Regulations* for the Department of Education.

### V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 17th day of May 2007.

#### Department of Education

Valerie A. Woodruff, Secretary of Education

Approved this 17th day of May 2007

#### State Board of Education

Jean W. Allen, President

Mary B. Graham, Esquire

Dennis J. Savage

Richard M. Farmer, Jr., Vice President

Barbara Rutt

Dr. Claibourne D. Smith

### **922 Children with Disabilities Subpart A. Purposes and Definitions**

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079a)(2)). The italicized portions of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

#### **1.0 Purposes**

1.1 *Regulations 922 to 929 (14 DE Admin. Code 922 to 929) implement, complement and supplement the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1400 et seq.), its implementing regulations (34 CFR part 300), and 14 Del.C. Ch. 31 (with the exception of Subchapter IV). They are designed and intended to insure compliance with state and federal laws concerning the education of children with disabilities. To the extent these regulations conflict with the federal regulations implementing Part B of the Individuals with Disabilities Education Act, the federal regulations shall prevail. Further, the purposes of these regulations are:*

1.1.1 *To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;*

1.1.2 *To ensure that the rights of children with disabilities and their parents are protected;*

1.1.3 *To assist local educational agencies, educational service agencies, and public agencies to provide for the education of all children with disabilities; and*

1.1.4 To assess and ensure the effectiveness of efforts to educate children with disabilities.  
(Authority: 20 U.S.C. 1400(d); 14 **Del.C.** §3110)

## **2.0 Applicability of These Regulations to State and Local Agencies**

2.1 These regulations apply to the State of Delaware as a recipient of payments under Part B of the Individuals with Disabilities Education Act, as amended.

2.2 Public agencies within the State of Delaware. The provisions of these regulations apply to all political subdivisions of the State of Delaware that are involved in the education of children with disabilities, including:

2.2.1 The Delaware Department of Education.

2.2.2 Local educational agencies ("LEAs"), educational service agencies ("ESAs"), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA.

2.2.3 Any other State agency or school involved in the education of children with disabilities, including but not limited to, the Delaware School for the Deaf, the Delaware Autism Program, the Department of Services for Children, Youth and Their Families, and its divisions, programs, or schools, and the Department of Health and Social Services, and its divisions, units, or programs.

2.2.4 Any juvenile or adult correctional facility involved in the education of children with disabilities, including but not limited to, facilities operated by the Department of Services for Children, Youth and Their Families and its divisions, and the Department of Corrections (through "the Prison Education Program") and are binding on each public agency in Delaware that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Act.

2.2.5 Private Schools and Facilities: Each public agency in the State of Delaware is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities referred to or placed in private schools and facilities by that public agency; or placed in private schools by their parents under the provisions of 14 **DE Admin. Code** 923.48.0.

(Authority: 20 U.S.C. 1412; 14 **Del.C.** §3110)

## **3.0 Definitions Applicable to Regulations 922 to 929:**

"Act" means the Individuals with Disabilities Education Act, as amended.

(Authority: 20 U.S.C. 1400(a); 14 **Del.C.** §3110)

"Assistive Technology Device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

(Authority: 20 U.S.C. 1401(1); 14 **Del.C.** §3110)

"Assistive Technology Service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

(Authority: 20 U.S.C. 1401(2); 14 **Del.C.** §3110)

"Charter School" means given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (ESEA).

(Authority: 20 U.S.C. 7221i(1); 14 **Del.C.** §§3110 and 505(a))

"Child with a Disability" means a child evaluated in accordance with 14 **DE Admin. Code** 925.4.0

through 925.12.0 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in these regulations as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

Except as further provided in this paragraph, if it is determined, through an appropriate evaluation under 14 **DE Admin. Code** 925.4.0 through 925.12.0, that a child has one of the disabilities identified in the definitions of disability terms below, but only needs a related service and not special education the child is not a child with a disability under these regulations. If, consistent with the definition of Special Education in this section, the related service required by the child is considered special education rather than a related service, the child would be determined to be a child with a disability.

Child with a disability for children aged three (3) through nine (9), subject to the conditions described in 14 **DE Admin. Code** 923.11.0, includes a child who is experiencing developmental delays, as defined in the eligibility requirements for 14 **DE Admin. Code** 925, measured by appropriate diagnostic instruments and procedures, in one (1) or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, needs special education and related services.

**Definitions of Disability Terms:** The specific disability terms used in this definition of a child with a disability are defined as follows:

**"Autism"** means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3), that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. A child who manifests the characteristics of autism after age three (3) could be identified as having autism if the other criteria in this definition are satisfied.

Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in this section.

**"Deaf-blindness"** means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

**"Deafness"** means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.

**"Emotional Disturbance"** means a condition exhibiting one (1) or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance as defined in this section.

**"Hearing Impairment"** means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

**"Mental Retardation"** means significantly sub average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

**"Multiple Disabilities"** means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness. *Nothing in these regulations shall be construed to require that a child with a disability be identified or classified as having multiple disabilities so long as the child receives the special education and related services the child needs to receive a free appropriate public education.*

**"Orthopedic Impairment"** means a severe orthopedic impairment that adversely affects a child's

educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

**“Other Health Impairment”** means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome, and adversely affects a child's educational performance.

**“Specific Learning Disability”** means a disorder in one (1) or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. [General] Specific Learning Disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, or mental retardation.

**“Speech or Language Impairment”** means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

**“Traumatic Brain Injury”** means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one (1) or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

**“Visual Impairment Including Blindness”** means impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. (Authority: 20 U.S.C. 1401(3); 1401(30); 14 Del.C. 3110)

**“Consent”** means that the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought; the consent describes that activity and lists the records (if any) that will be released and to whom; and the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). (Authority: 20 U.S.C. 1414(a)(1)(D); 14 Del.C. §3110)

**“Core Academic Subjects”** means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. (Authority: 20 U.S.C. 1401(4); 14 Del.C. §3110)

**“Day”** means calendar day unless otherwise indicated as business day or school day. (Authority: 20 U.S.C. 1221e-3; 14 Del.C. §3110)

**“Business Day”** means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day). (Authority: 20 U.S.C. 1221e-3; 14 Del.C. §3110)

**“School Day”** means any day, including a partial day that children are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities. (Authority: 20 U.S.C. 1221e-3; 14 Del.C. §3110)

**“Department of Education” or “DOE”** means the Delaware Department of Education

**“Educational Service Agency”** means a regional public multi service agency authorized by the State of Delaware to develop, manage, and provide services or programs to LEAs; and is recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State of Delaware. The term includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school and includes

entities that meet the definition of intermediate educational unit in section 602(23) of the Act as in effect prior to June 4, 1997.

(Authority: 20 U.S.C. 1401(5); 14 Del.C. §3110)

**“Elementary School”** means a nonprofit institutional day or residential school (including a public elementary charter school) that provides elementary education, as determined under Delaware law.

(Authority: 20 U.S.C. 1401(6); 14 Del.C. §3110)

**“Equipment”** means machinery, utilities, and built in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(Authority: 20 U.S.C. 1401(7); 14 Del.C. §3110)

**“Evaluation”** means procedures used in accordance with 14 DE Admin. Code 925.4.0 through 925.12.0 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

(Authority: 20 U.S.C. 1414(a) (c); 14 Del.C. §3110)

**“Excess Costs”** means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting amounts received under Part B of the Act; under Part A of Title I of the ESEA; under Parts A and B of Title III of the ESEA; and any State or local funds expended for programs that would qualify for assistance under any of the foregoing federal programs, but excluding any amounts for capital outlay or debt service.

(Authority: 20 U.S.C. 1401(8); 14 Del.C. §3110)

**“Free Appropriate Public Education” or “FAPE”** means special education and related services that: are provided at public expense, under public supervision and direction, and without charge; meet the standards of the DOE, including the requirements of these regulations; include an appropriate preschool, elementary school, or secondary school education in Delaware; and are provided in conformity with an individualized education program (IEP) that meets the requirements of 14 DE Admin. Code 925.20 through 925.24.0.

(Authority: 20 U.S.C. 1401(9); 14 Del.C. §3110)

**“Highly Qualified Special Education Teachers”** means:

1.0 Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term “highly qualified” has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also include the requirements described in 2.0 of this definition, and the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs 3.0 and 4.0 of this definition.

2.0 Requirements for special education teachers in general. When used with respect to any public elementary school or secondary school special education teacher teaching in Delaware, highly qualified requires that the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in Delaware as a special education teacher, (except that when used with respect to any teacher teaching in a public charter school, “highly qualified” means that the teacher meets the certification or licensing requirements set forth in Delaware’s charter school law (14 Del.C. Ch. 5)). In addition, the teacher must not have had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis and must hold at least a bachelor’s degree.

2.1 A teacher will be considered to meet the standard in 2.0 of this definition if the teacher is participating in an alternative route to special education certification program under 14 Del.C. Ch. 12, Subch. VI.

2.2 Any public elementary school or secondary school special education teacher who is not teaching a core academic subject is highly qualified if the teacher meets the requirements in 2.0 of this definition or the teacher holds at least a bachelor’s degree and meets the requirements in 2.1 of this definition.

3.0 Requirements for special education teachers teaching to alternate achievement standards. When used with respect to a special education teacher who teaches core academic subjects

exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), “highly qualified” means the teacher, whether new or not new to the profession, must either: meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards.

4.0 Requirements for special education teachers teaching multiple subjects. When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, “highly qualified” means that the teacher must either: meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c); or, in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c); or, in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two (2) years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c).

5.0 Rule of construction: Notwithstanding any other individual right of action that a parent or student may maintain under these regulations, nothing in these regulations shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular DOE or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under 14 **DE Admin. Code** 923.51.0 through 923.53.0 about staff qualifications with the DOE.

6.0 Applicability of definition to ESEA; and clarification of new special education teacher. A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA. For purposes of 4.0 of this definition, a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

7.0 Private school teachers not covered. The requirements in this definition do not apply to private school teachers hired or contracted by local education agencies to provide equitable services to parentally placed private school children with disabilities under 14 **DE Admin. Code** 923.38.  
(Authority: 20 U.S.C. 1401(10); 14 **Del.C.** §3110)

“**Homeless Children**” has the meaning given the term homeless children and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq.  
(Authority: 20 U.S.C. 1401(11); 14 **Del.C.** §3110)

“**Include**” means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.  
Authority: 20 U.S.C. 1221e-3; 14 **Del.C.** §3110)

“**Individualized Education Program**” or “**IEP**” means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 14 **DE Admin. Code** 925.20.0 through 925.24.0.  
(Authority: 20 U.S.C. 1401(14); 14 **Del.C.** §3110)

“**Individualized Education Program Team**” or “**IEP Team**” means a group of individuals described in 14 **DE Admin. Code** 925.21.0 that is responsible for developing, reviewing, or revising an IEP for a child with a disability  
(Authority: 20 U.S.C. 1414(d)(1)(B); 14 **Del.C.** §3110)

“**Institution of Higher Education**” has the meaning given the term in section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 et seq. (HEA); and also includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, et seq.  
(Authority: 20 U.S.C. 1401(17); 14 **Del.C.** §3110)

“**Limited English Proficient**” has the meaning given the term in section 9101(25) of the ESEA.  
(Authority: 20 U.S.C. 1401(18); 14 **Del.C.** §3110)

“**Local Educational Agency**” or “**LEA**” means a public board of education or other public authority legally constituted within Delaware for either administrative control or direction of, or to perform a service function



for, public elementary or secondary schools in a school district, or for a combination of school districts. The term includes an educational service agency, as defined in this section, and any other public institution or agency having administrative control and direction of a public elementary school or secondary school. ~~[For purposes of these regulations, a Delaware charter school operating under a charter granted by the DOE with the approval of the State Board of Education is considered a local educational agency; a Delaware charter school operating under a charter granted by a Delaware public school district is considered a school of the school district granting the charter.]~~

(Authority: 20 U.S.C. 1401(19); 14 **Del.C.** §3110 )

**"Native Language"** means, when used with respect to an individual who is limited English proficient, the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except that when used in reference to direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, "native language" means the mode of communication that is normally used by the individual (such as sign language, Braille, or oral communication).

(Authority: 20 U.S.C.1401(20); 14 **Del.C.** §3110)

**"Parent"** means a biological or adoptive parent of a child; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives and for whom a Relative Caregiver's School Authorization executed in compliance with 14 **Del.C.** §202(f)(1) is on file; an individual who is otherwise legally responsible for the child's welfare; or a surrogate parent who has been appointed in accordance with 14 **DE Admin. Code** 926.19.0 or section 639(a)(5) of the Act.

The biological or adoptive parent, when attempting to act as the parent under these regulations, and when more than one party is qualified under this definition to act as a parent, must be presumed to be the parent for purposes of this definition unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

If a judicial decree or order identifies a specific person or persons to act as the "parent" of a child, or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this definition.

(Authority: 20 U.S.C. 1401(23); 14 **Del.C.** §3110 )

**"Parent Training and Information Center"** means a center assisted under sections 671 or 672 of the Act, and includes the Parent Information Center of Delaware, Inc.

(Authority: 20 U.S.C. 1401(25); 14 **Del.C.** §3110)

**"Personally Identifiable"** means information that contains the name of the child, the child's parent, or other family member; the address of the child; a personal identifier (such as the child's social security number or student number); or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1415(a); 14 **Del. C.** §3110)

**"Public Agency"** means the Department of Education, LEAs, ESAs, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

(Authority: 20 U.S.C. 1412(a)(11); 14 **Del.C.** §3110)

**"Related Services"** means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. However, nothing in this exception limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in the preceding paragraph) that are determined by the IEP Team to be necessary for the child to receive FAPE; or limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing,



nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in 14 DE Admin. Code 923.13.2.

**Definitions of Related Services Terms:** The specific related services terms used in this definition are defined as follows:

**“Audiology” [means includes]** the identification of children with hearing loss, and determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing; provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation; creation and administration of programs for prevention of hearing loss; counseling and guidance of children, parents, and teachers regarding hearing loss; and determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

**“Counseling Services”** includes services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

**“Early identification and Assessment of Disabilities in Children”** means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

**“Interpreting Services”** means the following when used with respect to children who are deaf or hard of hearing: Oral transliteration services; cued language transliteration services; sign language transliteration and interpreting services and transcription services such as communication access real time translation (CART), C Print, and Type Well; and special interpreting services for children who are deaf blind.

**“Medical Services” [means includes]** services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

**“Occupational Therapy”** means services provided by a qualified occupational therapist; and includes: improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation; improving ability to perform tasks for independent functioning if functions are impaired or lost; and preventing, through early intervention, initial or further impairment or loss of function.

**“Orientation and Mobility Services”** means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and includes teaching children the following, as appropriate:

Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

The use of a long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;

To understand and use remaining vision and distance low vision aids; and  
Other concepts, techniques, and tools.

**“Parent Counseling and Training”** means assisting parents in understanding the special needs of their child, providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP.

**“Physical Therapy”** means services provided by a qualified physical therapist.

**“Psychological Services”** includes administering psychological and educational tests and other assessment procedures; interpreting assessment results; obtaining, integrating, and interpreting information about child behavior and conditions relating to learning; consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations; planning and managing a program of psychological services, including psychological counseling for children and parents; and assisting in developing positive behavioral intervention strategies.

**“Recreation” [means includes]** assessment of leisure function, therapeutic recreation services recreation programs in schools and community agencies and leisure education.

**“Rehabilitation Counseling Services”** means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation

programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

**“School Health Services” and “School Nurse Services”** means health services designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

**“Social Work Services”** in schools **[means includes]** preparing a social or developmental history on a child with a disability; group and individual counseling with the child and family; working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and assisting in developing positive behavioral intervention strategies.

**“Speech language Pathology Services”** **[means includes]** identifying children with speech or language impairments; diagnosis and appraisal of specific speech or language impairments; referral for medical or other professional attention necessary for the habilitation of speech or language impairments; provision of speech and language services for the habilitation or prevention of communicative impairments; and counseling and guidance of parents, children, and teachers regarding speech and language impairments.

**“Transportation”** **[means includes]** travel to and from school and between schools, travel in and around school buildings; and specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(26); 14 **Del.C.** §3110)

**“Scientifically Based Research”** has the meaning given the term in section 9101(37) of the ESEA.

(Authority: 20 U.S.C. 1411(e)(2)(C)(xi); 14 **Del.C.** §3110)

**“Secondary School”** means a nonprofit institutional day or residential school, (including a public secondary charter school) that provides secondary education, as determined under Delaware law, except that it does not include any education beyond grade twelve (12).

(Authority: 20 U.S.C. 1401(27); 14 **Del.C.** §3110)

**“Services Plan”** means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 14 **DE Admin. Code** 923.32.0, and is developed and implemented in accordance with 14 **DE Admin. Code** 923.32.0 through 923.39.0.

(Authority: 20 U.S.C. 1412(a)(10)(A); 14 **Del.C.** §3110 )

**“Secretary”** means the Secretary of Education of the Delaware Department of Education unless otherwise indicated in the text of these regulations.

(Authority: 14 **Del.C.** §3110 )

**“Special Education”** means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings, and instruction in physical education.

Special education includes each of the following, if the services otherwise meet the requirements of the preceding paragraph: Speech-language pathology services, travel training and vocational education.

**Definitions of Special Education Terms:** The specific terms used in the definition of special education are defined as follows:

**“At No Cost”** means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

**“Physical Education”** means the development of physical and motor fitness, fundamental motor skills and patterns; and skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports) and includes special physical education, adapted physical education, movement education, and motor development.

**“Specially Designed Instruction”** means adapting, as appropriate to the needs of an eligible child under these regulations, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

**“Travel Training”** means providing instruction, as appropriate, to children with significant

cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to develop an awareness of the environment in which they live; and learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

“**Vocational Education**” means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

(Authority: 20 U.S.C. 1401(29); 14 **Del.C.** §3110 )

“**State**” means the State of Delaware

(Authority: 20 U.S.C. 1401(31); 14 **Del.C.** §3110)

“**State Educational Agency**” or “**SEA**” means the Delaware Department of Education.

(Authority: 20 U.S.C. 1401(32); 14 **Del.C.** §3110)

“**Supplementary Aids and Services**” means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with 14 **DE Admin. Code** 923.14 through 923.16.0.

(Authority: 20 U.S.C. 1401(33); 14 **Del.C.** §3110)

“**These Regulations**” means 14 **DE Admin. Code** 922 through 929, *Children with Disabilities, Sub Parts A through I* (14 **DE Admin. Code** 922 to 929) *unless the context clearly indicates otherwise.*

(Authority: 14 **Del.C.** §3110)

“**Transition Services**” means a coordinated set of activities for a child with a disability that is designed to be within a results oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; and is based on the individual child's needs, taking into account the child's strengths, preferences, and interests.

Transition services include instruction, related services, community experiences, the development of employment and other post school adult living objectives and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

(Authority: 20 U.S.C. 1401(34); 14 **Del.C.** §3110 )

“**Universal Design**” has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

(Authority: 20 U.S.C. 1401(35); 14 **Del.C.** §3110)

“**Ward of the State**” means a child who, as determined by the state where the child resides, is a foster child, a ward of the state; or in the custody of a public child welfare agency, including, but not limited to, ~~fin~~ **Delaware** the **[Delaware]** Department of Services for Children, Youth, and Their Families.

(Authority: 20 U.S.C. 1401(36); 14 **Del.C.** §3110)

**10 DE Reg. 1816 (06/01/07) (Final)**