

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

**SESSION LAW 2008-90  
HOUSE BILL 12**

AN ACT TO AMEND THE DEFINITION OF "EDUCATIONAL SERVICES" FOR STUDENTS WITH DISABILITIES; TO AMEND THE LAW TO ALLOW A DESIGNEE OR DESIGNEES OF A STUDENT'S IEP TEAM TO EVALUATE THE CONTINUED APPROPRIATENESS OF HOMEBOUND INSTRUCTION FOR DISCIPLINE PURPOSES FOR STUDENTS WITH DISABILITIES AS RECOMMENDED BY THE JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE; TO ADD A PROTECTION FOR CHILDREN NOT DETERMINED ELIGIBLE FOR SPECIAL EDUCATION AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON EDUCATION OF STUDENTS WITH DISABILITIES; AND TO DIRECT THE DEPARTMENT OF PUBLIC INSTRUCTION AND THE STATE BOARD OF EDUCATION TO REPORT ON CONTESTED CASES BASED ON THE ADDITIONAL PROTECTION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 115C-106.3(3a) reads as rewritten:

"(3a) 'Educational services' means all of the following:

- a. The necessary instructional hours per week in the form and format as determined by the child's IEP team and consistent with federal and State law. The instruction shall be delivered by an appropriately qualified teacher to the extent required by federal and State law, which requires a free appropriate public education and the opportunity for a sound basic education.
- b. Related services included in the child's IEP.
- c. Behavior intervention services ~~designed to address the behavior violation that caused the disciplinary change of placement in order to prevent a recurrence.~~ to the extent required by federal law."

**SECTION 2.** G.S. 115C-107.7 reads as rewritten:

**"§ 115C-107.7. Discipline and homebound instruction.**

(a) The policies and procedures for the discipline of students with disabilities shall be consistent with federal laws and regulations.

(b) If a change of placement occurs under the discipline regulations of IDEA, a local educational agency shall not assign a student to homebound instruction without a determination by the student's IEP team that the homebound instruction is the least restrictive alternative environment for that student. If it is determined that the homebound instruction is the least restrictive alternative environment for the student, the student's IEP team shall meet to determine the nature of the homebound educational services to be provided to the student. In addition, the continued appropriateness of the homebound instruction shall be evaluated monthly by the ~~head of the student's IEP team.~~ designee or designees of the student's IEP team."

**SECTION 3.** G.S. 115C-107.7 is amended by adding a new subsection to read:

"(c) A local educational agency shall be deemed to have a 'basis of knowledge' that a child is a child with a disability if, prior to the behavior that precipitated the disciplinary action, the behavior and performance of the child clearly and convincingly

establishes the need for special education. Prior disciplinary infractions shall not, standing alone, constitute clear and convincing evidence."

**SECTION 4.** The Department of Public Instruction and the State Board of Education shall report to the Joint Legislative Education Oversight Committee by January 15, 2011, on the number of contested cases that are filed based on Section 3 of this act and the disposition of those contested cases.

**SECTION 5.** Section 3 of this act becomes effective January 1, 2009, and expires March 1, 2011. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3<sup>rd</sup> day of July, 2008.

s/ Beverly E. Perdue  
President of the Senate

s/ Joe Hackney  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 12:39 p.m. this 11<sup>th</sup> day of July, 2008