

**SUBJECT:** Alternative dispute resolution for students with disabilities

**COMMITTEE:** Public Education — favorable, without amendment

**VOTE:** 9 ayes — Aycock, Allen, J. Davis, Deshotel, Farney, Huberty, Ratliff, J. Rodriguez, Villarreal

0 nays

2 absent — Dutton, K. King

**SENATE VOTE:** On final passage, April 18 — 30-0

**WITNESSES:** (*On companion bill, HB 2057*)  
For — Rona Statman, The ARC of Texas; (*Registered, but did not testify:* Yannis Banks, Texas NAACP; Chris Borreca; Michelle Crow, The ARC of Wichita County; Stacy Ford; Dwight Harris, Texas AFT; Janna Lilly, Texas Council of Administrators of Special Education; Casey McCreary, Texas Association of School Administrators; Sean McGrath, Texas Advocates; Jeff Miller, Disability Rights Texas and The Disability Policy Consortium; Julie Shields, Texas Association of School Boards)

Against — None

On — (*Registered, but did not testify:* David Anderson and Gene Lenz, Texas Education Agency)

**BACKGROUND:** Under state and federal law, a school district is required to establish an admission, review, and dismissal (ARD) committee to develop an individualized education program (IEP) for each child served by the district's special education program.

**DIGEST:** SB 542 would require the Texas Education Agency (TEA) to provide information to parents regarding IEP facilitation as an alternative dispute resolution method to resolve disputes between a school district and a parent of a student with a disability. The bill would require TEA to develop rules to administer the state individualized education program facilitation project, which would provide independent IEP facilitators.

The rules would include:

- a definition of independent IEP facilitation;
- forms and procedures for requesting, conducting, and evaluating IEP facilitation;
- training, knowledge, experience, and performance requirements for independent facilitators; and
- conditions required for TEA to provide facilitation at no cost to the parties.

The bill would allow the commissioner of education to use federal funds to implement the project. It also would authorize a school district that chose to use facilitation to determine whether to use independent contractors, district employees, or other qualified individuals as facilitators.

Districts that offered the method would be required to inform parents in a written or electronic format about the procedures for requesting the facilitation and that it would be provided at no cost. Facilitation would be provided only if the participants agreed to it, and could not be used to deny or delay the right to pursue a special education complaint, mediation, or due process hearing under federal law. A school district would be able to use facilitation as the district's preferred method of conducting initial and annual ARD meetings.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013, and would apply beginning with the 2014-15 school year.

**SUPPORTERS  
SAY:**

SB 542 would formalize a tool to encourage agreement when there was a dispute over the IEP for a student served by a district's special education services. It would allow disputes to be resolved at a level closest to the child in a manner that provided timely results for students and cost savings for districts and families.

Many districts currently use some form of IEP facilitation, but there is no consistent statewide information provided to parents about the method. The bill would develop statewide criteria for the method to ensure its availability and to allow the state to measure its effectiveness and quality.

The formal complaint resolution processes provided by federal law can become adversarial and cost school districts and parents money, time, and trust. Some school personnel believe that some parent advocates unnecessarily escalate disputes in order to seek fees from school districts, while many parents believe that the administrative hearing and complaint processes are biased toward school districts, which leaves going to court as their only option.

The National Center for Appropriate Dispute Resolution in Special Education recommends that districts provide a full array of alternative dispute options to help ensure positive working relationships between districts and parents and appropriate education plans for students. Facilitation takes place as part of the ARD committee meeting to provide opportunities to resolve conflicts.

**OPPONENTS  
SAY:**

SB 542 would create a state-level project with associated costs at a time when many school districts already are successfully using facilitation and other alternative dispute resolution methods to avoid formal complaints. TEA would need an estimated \$623,413 in federal funds in fiscal 2015 to implement the project, according to the Legislative Budget Board (LBB). Similar costs would be incurred in subsequent years.

**NOTES:**

According to the fiscal note, an estimated 660 parties that are in a dispute would use facilitation under the bill, which is about twice the number of requested mediations under current law. At a cost of \$750 per facilitation, the LBB estimates that facilitation would cost \$495,000 in fiscal 2015 and would increase by 1.8 percent per year. TEA would experience other costs related to hiring an employee to administer the project and an online system to track facilitations, raising the total federal-funds cost to about \$623,000 in fiscal 2014-15. TEA has identified adequate federal funding to cover the costs, according to the LBB.

On April 23, the House Public Education Committee recommended a committee substitute for the companion bill, HB 2057 by Allen.