

BILL ANALYSIS

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Individualized Education Program (IEP) facilitation takes place as part of the Admission, Review, and Dismissal (ARD) committee meeting. IEP facilitation builds and improves relationships between IEP team members, parents and schools, and provides opportunities to resolve conflicts.

The National Center for Appropriate Dispute Resolution in Special Education (CADRE) recommends that school districts provide a full array of alternative dispute resolution (ADR) options to help ensure a positive working relationship between districts and parents and provide students with an appropriate IEP. One of the most widely used optional ADR methods is IEP facilitation. IEP facilitation builds and improves relationships between IEP team members, parents and schools, provides opportunities to resolve conflicts, and supports all committee members to fully participate.

The Texas Education Agency (TEA) has provided grants to Regional Education Service Centers (ESCs) to provide training to school district staff and other interested individuals, including parents, on IEP facilitation to ensure schools and parents work together to develop an appropriate IEP for students with disabilities. TEA reports that over 4,000 school personnel, parents, ESC personnel and private consultants have participated in such training. TEA is also working on developing a survey for school district, parents, and facilitators on the outcomes of IEP facilitation. Some ESCs provide basic training on IEP facilitation and others offer both basic and advanced training.

Different methods of facilitation are used. District facilitation occurs when school personnel who normally lead an IEP or ARD meeting are trained in facilitation techniques, and facilitate the meeting. The district may also decide to provide other district personnel trained in facilitation techniques or who have received advanced training in facilitation to attend the meeting specifically to facilitate the meeting. Independent IEP facilitation occurs if the school decides it would be helpful to bring in an independent facilitator not employed by the school district to facilitate the meeting.

Currently there is no consistent statewide information provided to parents about IEP facilitation. There are no statewide definitions of Independent IEP Facilitation, nor consistent requirements or standards for independent facilitators. In order to ensure IEP facilitation is consistent throughout the state it is important to provide parents with consistent information and to develop statewide criteria for districts who choose to provide Independent IEP Facilitation. This consistency and criteria will allow the state to measure effectiveness and quality.

As proposed, S.B. 1328 amends current law relating to optional dispute resolution methods for school districts and parents of students seeking or receiving special education services.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of education in SECTION 1 (Sections 29.019 and 29.020, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 29, Education Code, by adding Sections 29.019 and 29.020, as follows:

Sec. 29.019. OPTIONAL DISPUTE RESOLUTION METHODS. (a) Requires a school district to make available and provide information to parents regarding optional dispute resolution methods that may be used when a dispute arises between the district and a parent of a student with a disability regarding:

- (1) identification of the student as a student entitled to special education services;
- (2) evaluation or educational placement of the student; or
- (3) the provision of a free appropriate public education to the student.

(b) Provides that a school district's optional dispute resolution methods:

(1) must include:

- (A) requesting mediation through the Texas Education Agency (TEA) in accordance with 20 U.S.C. Section 1415(e) and 34 C.F.R. Section 300.506;
- (B) requesting independent individualized education program facilitation, as described by Section 29.020, if the district is included within the boundaries of a regional education service center participating in the pilot program implemented under that section; and
- (C) filing a complaint with TEA in accordance with 34 C.F.R. Section 300.153; and

(2) may include:

- (A) convening a meeting of a student's admission, review, and dismissal committee;
- (B) meeting with a student's teachers;
- (C) meeting with one or more of the following:
 - (i) a campus administrator;
 - (ii) the district special education director or the director of a shared services arrangement under Section 29.007 (Shared Services Arrangements) to which the district is a party;
 - (iii) the district superintendent; or
 - (iv) the board of trustees of the district; and
- (D) requesting individualized education program facilitation similar to the facilitation provided under the pilot program implemented under Section 29.020, except that facilitation may be provided by either an independent facilitator or a district employee serving as the facilitator.

(c) Prohibits the use of an optional dispute resolution method made available under this section and the availability of those methods from in any manner being used to deny or delay the right to a special education due process hearing in accordance with federal law.

(d) Requires the school district and the parent, notwithstanding Subsection (c), on the filing of a request for a special education due process hearing in accordance with federal law, to be provided with the opportunity to attempt to resolve the dispute between the district and the parent through TEA's mediation process, provided that both the school district and the parent agree to participate in the mediation.

(e) Provides that, if a school district and a parent participate in mediation under this section:

(1) the fact that the mediation occurred is not admissible into evidence in any subsequent proceeding involving the subject matter of the mediation;

(2) the mediator may not be subpoenaed to testify regarding the subject matter of the mediation at any subsequent special education due process hearing or civil action arising under federal special education law; and

(3) the school district and parent are not entitled to access to any records created by the mediator in connection with the mediation.

(f) Provides that, unless specifically provided otherwise by federal or other state law, the participation of an individualized education program facilitator in the development of a student's individualized education program does not violate confidentiality provisions under federal or state law.

(g) Requires that the facilitation, if a school district chooses to offer individualized education program facilitation under Subsection (b)(2)(D), be provided at no cost to a parent.

(h) Requires the commissioner of education (commissioner) to adopt rules necessary to implement this section.

Sec. 29.020. PILOT PROGRAM FOR INDEPENDENT INDIVIDUALIZED EDUCATION PROGRAM FACILITATION. (a) Requires TEA to develop an independent individualized education program facilitation process as a method of alternative dispute resolution.

(b) Requires TEA to implement the process developed under Subsection (a) on a pilot program basis within the boundaries of three regional education service centers selected by the commissioner for that purpose. Authorizes not more than 500 facilitations to be conducted under the pilot program.

(c) Authorizes the commissioner, notwithstanding Subsection (b), if the commissioner determines that adequate funding is available, to authorize:

(1) the expansion of the pilot program to additional areas; or

(2) a greater number of facilitations than the limit specified under that subsection.

(d) Requires the commissioner to select the participating regional education service centers based on criteria established by the commissioner. Requires that the selection criteria include criteria relating to:

(1) the geographic location of a center;

- (2) student enrollment within the boundaries of a center;
- (3) the number of formal complaints regarding special education issues filed by persons within the boundaries of a center; and
- (4) the number of mediations and special education due process hearings requested by persons within the boundaries of a center.

(e) Authorizes the facilitation process to be used when a school district located within the boundaries of a participating regional education service center and the parents of a student with a disability agree on the value of involving an impartial facilitator in the procedures used to develop the student's individualized education program.

(f) Provides that the role of a facilitator under the facilitation process developed under this section is to assist in creating an atmosphere for fair communication and the successful development of a student's individualized education program.

(g) Requires each participating regional education service center to develop a network of impartial facilitators to be made available on request to school districts and parents that choose to use the facilitation process developed under this section. Requires facilitators to be provided at no cost to a school district or parent.

(h) Requires the commissioner to adopt rules necessary to implement this section.

(i) Requires TEA, not later than January 1, 2013, to submit a report to the legislature regarding the implementation and effectiveness of the pilot program. Provides that this subsection expires September 1, 2013.

SECTION 2. Provides that this Act applies beginning with the 2011-2012 school year.

SECTION 3. Effective date: upon passage or September 1, 2011.