

The Texas Education Agency (TEA) adopts amendments to §89.1196 and §89.1197, concerning special education services dispute resolution. The amendments are adopted with changes to the proposed text as published in the July 26, 2024 issue of the *Texas Register* (49 TexReg 5482) and will be republished. The adopted amendments clarify procedures for individualized education program (IEP) facilitation and add language allowing TEA to delegate certain duties and responsibilities.

REASONED JUSTIFICATION: Section 89.1196 addresses the requirement in Texas Education Code, §29.019, to develop rules associated with IEP facilitation that public education agencies may choose to use as an alternative dispute resolution method. The amendment to subsection (a) describes the purpose of IEP facilitation and changes the term "trained" to "qualified" in the description of facilitators who assist admission, review, and dismissal (ARD) committees.

Based on public comment, the agency has clarified in subsection (c) that the subsection is referring to qualified facilitators.

Section 89.1197 addresses procedures for state IEP facilitation when the ARD committee is in dispute with a parent of a student with a disability. New subsection (b) clarifies that TEA may delegate duties and responsibilities to an education service center (ESC) to maximize efficiency. Subsections are re-lettered throughout the rule as a result of this addition. Deletion of subsection (e)(6), re-lettered as subsection (f)(6), removes language prohibiting the use of IEP facilitation if the issue in dispute is part of a special education complaint, as the agency has determined that facilitation may actually be helpful in resolving these situations.

Based on public comment, the agency has modified subsection (f)(3) to reference that the request for facilitation *must be received* by TEA within 10 calendar days of the ARD committee meeting that ended in disagreement, rather than be *filed* within 10 calendar days.

Based on public comment, the agency has deleted provisions that would have prohibited the use of the state IEP facilitation when the dispute was related to a manifestation determination or determination of alternative educational setting, or when the parties were involved in mediation.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began July 26, 2024, and ended August 26, 2024, and included public hearings on August 21 and 22, 2024. Following is a summary of the public comments received and agency responses.

§89.1196, Individualized Education Program Facilitation

Comment: An individual requested clarification on the application process and the legal criteria for being an IEP facilitator.

Response: This comment is outside the scope of rulemaking, as §89.1196 is about districts providing IEP facilitation, not TEA.

Comment: An individual commented in support of the role of a facilitator but asked that it be mandatory for a school district to honor the request for IEP facilitation from a parent.

Response: The agency disagrees; this would require a statutory change.

Comment: The Texas Council of Administrators of Special Education (TCASE) requested an amendment to subsection (c) to add "qualified" in front of facilitator before describing the minimum requirements.

Response: The agency agrees that clarification may be helpful and has updated §89.1196(c) at adoption to use the phrase "qualified facilitator."

§89.1197, State Individualized Education Program Facilitation

Comment: An individual requested an amendment to subsection (f) to state that the request for IEP facilitation must be received by TEA within 10 calendar days.

Response: The agency agrees that the clarification would be helpful and has modified §89.1197(f) at adoption to state that that the request for facilitation must be *received* by TEA within 10 calendar days of the ARD committee meeting that ended in disagreement, rather than be *filed* within 10 calendar days.

Comment: Five individuals and TCASE disagreed and/or requested clarification on the proposed amendment to subsection (b) allowing ESCs as designated IEP facilitators. The commenters stated concerns with limited staffing, rapport with school districts, and ESCs being non-regulatory educational facilities.

Response: The agency disagrees and provides the following clarification. The amendment in §89.1197(b) does not allow ESC staff to serve as facilitators. It specifically refers to the TEA's duties and specifies that TEA may delegate its duties to an ESC. Subsection (b) specifically states that, where TEA is listed in subsections §89.1197(c)-(p), TEA could delegate that duty to an ESC where not otherwise prohibited by law.

Comment: An individual commented that subsections (f)(4) and (5), which state that IEP facilitation would not be available if a dispute is related to a manifestation determination or interim alternative educational setting, or when the parties are involved in mediation, should be deleted, as these are not mandatory prohibitions by law and hinder accessibility of the program.

Response: The agency agrees and has deleted §89.1197(f)(4) and (5) at adoption.

Comment: TCASE commented in support of the proposed amendment to subsection (f)(6).

Response: The agency agrees.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §29.001, which requires the agency to develop and modify as necessary a statewide plan for the delivery of services to children with disabilities that ensures the availability of a free appropriate public education to children between the ages of 3-21; TEC, §29.019, which establishes IEP facilitation as an alternative dispute resolution method that districts may choose to use; and TEC, §29.020, which establishes the state's IEP facilitation project.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§29.001, 29.019, and 29.020.

<rule>

§89.1196. Individualized Education Program Facilitation.

- (a) For the purpose of this section and Texas Education Code, §29.019, individualized education program (IEP) facilitation refers to a method of alternative dispute resolution that may be used to avoid a potential dispute between a public education agency and a parent of a student with a disability. IEP facilitation involves the use of a qualified facilitator to assist an admission, review, and dismissal (ARD) committee in developing an IEP for a student with a disability. The facilitator uses facilitation techniques to help the committee members communicate and collaborate effectively. While public education agencies are not required to offer IEP facilitation as an alternative dispute resolution method, the Texas Education Agency (TEA) encourages the use of IEP facilitation as described in this section.
- (b) A public education agency is not prohibited from incorporating elements of IEP facilitation into ARD committee meetings that are conducted without the assistance of a facilitator as described in this section. For example, a public education agency may provide training on communication skills, conflict management, or meeting effectiveness to individuals who participate in ARD committee meetings to enhance collaboration and efficiency in those meetings.

- (c) A public education agency that chooses to offer IEP facilitation under this section may determine whether to use independent contractors, employees, or other qualified individuals as facilitators. At a minimum, an individual who serves as a qualified facilitator must:
- (1) have demonstrated knowledge of federal and state requirements relating to the provision of special education and related services to students with disabilities;
 - (2) have demonstrated knowledge of and experience with the ARD committee meeting process;
 - (3) have completed 18 hours of training in IEP facilitation, consensus building, and/or conflict resolution; and
 - (4) complete continuing education as determined by the public education agency.
- (d) A public education agency that chooses to offer IEP facilitation under this section must ensure that:
- (1) participation is voluntary on the part of the parties;
 - (2) the facilitation is provided at no cost to parents; and
 - (3) the process is not used to deny or delay the right to pursue a special education complaint, mediation, or a due process hearing in accordance with Part B of the Individuals with Disabilities Education Act (IDEA) and this division.
- (e) A public education agency that chooses to offer IEP facilitation under this section must develop written policies and procedures that include:
- (1) the procedures for requesting facilitation;
 - (2) facilitator qualifications, including whether facilitators are independent contractors, employees, or other qualified individuals;
 - (3) the process for assigning a facilitator;
 - (4) the continuing education requirements for facilitators; and
 - (5) a method for evaluating the effectiveness of the facilitation services and the individual facilitators.
- (f) A public education agency that chooses to offer IEP facilitation under this section must provide parents with information about the process, including a description of the procedures for requesting IEP facilitation and information related to facilitator qualifications. This information must be included when a copy of the procedural safeguards notice under 34 Code of Federal Regulations (CFR), §300.504 is provided to parents, although this information may be provided as a separate document and may be provided in a written or electronic format.
- (g) A facilitator under this section must not be a member of the student's ARD committee, must not have any decision-making authority over the committee, and must remain impartial to the topics under discussion. The facilitator must assist with the overall organization and conduct of the ARD committee meeting by:
- (1) assisting the committee in establishing an agenda and setting the time allotted for the meeting;
 - (2) assisting the committee in establishing a set of guidelines for the meeting;
 - (3) guiding the discussion and keeping the focus on developing a mutually agreed upon IEP for the student;
 - (4) ensuring that each committee member has an opportunity to participate;
 - (5) helping to resolve disagreements that arise; and
 - (6) helping to keep the ARD committee on task so that the meeting purposes can be accomplished within the time allotted for the meeting.
- (h) Promptly after being assigned to facilitate an ARD committee meeting, or within a timeline established under the public education agency's procedures, the facilitator must contact the parents and public education agency representative to clarify the issues, gather necessary information, and explain the IEP facilitation process.

- (i) A public education agency that chooses to offer IEP facilitation under this section must ensure that facilitators protect the confidentiality of personally identifiable information about the student and comply with the requirements in the Family Educational Rights and Privacy Act regulations, 34 CFR, Part 99, relating to the disclosure and redisclosure of personally identifiable information from a student's education record.
- (j) TEA will develop information regarding IEP facilitation as an alternative dispute resolution method, and such information will be available upon request from TEA and on the TEA website.

§89.1197. State Individualized Education Program Facilitation.

- (a) In accordance with Texas Education Code, §29.020, the Texas Education Agency (TEA) will establish a program that provides independent individualized education program (IEP) facilitators.
- (b) For purposes of this section, where TEA is referenced in subsections (c)-(p) of this section and where not otherwise prohibited by law, TEA may delegate duties and responsibilities to an education service center (ESC) when it is determined to be the most efficient way to implement the program.
- (c) For the purpose of this section, IEP facilitation has the same general meaning as described in §89.1196(a) of this title (relating to Individualized Education Program Facilitation), except that state IEP facilitation is used when the admission, review, and dismissal (ARD) committee is in dispute about decisions relating to the provision of a free and appropriate public education to a student with a disability and the facilitator is an independent facilitator provided by TEA.
- (d) A request for IEP facilitation under this section must be filed by completing a form developed by TEA that is available upon request from TEA and on the TEA website. The form must be filed with TEA by one of the parties by electronic mail, mail, hand-delivery, or facsimile.
- (e) IEP facilitation under this section must be voluntary on the part of the parties and provided at no cost to the parties.
- (f) In order for TEA to provide an independent facilitator, the following conditions must be met.
 - (1) The required form must be completed and signed by both parties.
 - (2) The dispute must relate to an ARD committee meeting in which mutual agreement about one or more of the required elements of the IEP was not reached and the parties have agreed to recess and reconvene the meeting in accordance with §89.1055(o) of this title (relating to Individualized Education Program).
 - (3) The request for IEP facilitation must be received by TEA within 10 calendar days of the ARD committee meeting that ended in disagreement, and a facilitator must be available on the date set for reconvening the meeting.
 - (4) The same parties must not have participated in IEP facilitation concerning the same student under this section within the same school year of the filing of the current request for IEP facilitation.
- (g) Within five business days of receipt of a request for an IEP facilitation under this section, TEA will determine whether the conditions in subsections (d)-(f) of this section have been met and will notify the parties of its determination and the assignment of the independent facilitator, if applicable.
- (h) Notwithstanding subsections (c)-(f) of this section, if a special education due process hearing or complaint decision requires a public education agency to provide an independent facilitator to assist with an ARD committee meeting, the public education agency may request that TEA assign an independent facilitator. Within five business days of receipt of a written request for IEP facilitation under this subsection, TEA will notify the parties of its decision to assign or not assign an independent facilitator. If TEA declines the request to assign an independent facilitator, the public education agency must provide an independent facilitator at its own expense.
- (i) TEA's decision not to provide an independent facilitator is final and not subject to review or appeal.
- (j) The independent facilitator assignment may be made based on a combination of factors, including, but not limited to, geographic location and availability. Once assigned, the independent facilitator must promptly

contact the parties to clarify the issues, gather necessary information, and explain the IEP facilitation process.

- (k) TEA will use a competitive solicitation method to seek independent facilitation services, and the contracts with independent facilitators will be developed and managed in accordance with TEA's contracting practices and procedures.
- (l) At a minimum, an individual who serves as an independent facilitator under this section:
 - (1) must have demonstrated knowledge of federal and state requirements relating to the provision of special education and related services to students with disabilities;
 - (2) must have demonstrated knowledge of and experience with the ARD committee meeting process;
 - (3) must have completed 18 hours or more of training in IEP facilitation, consensus building, and/or conflict resolution as specified in TEA's competitive solicitation;
 - (4) must complete continuing education as determined by TEA;
 - (5) may not be an employee of TEA or the public education agency that the student attends; and
 - (6) may not have a personal or professional interest that conflicts with his or her impartiality.
- (m) An individual is not an employee of TEA solely because the individual is paid by TEA to serve as an independent facilitator.
- (n) An independent facilitator must not be a member of the student's ARD committee, must not have any decision-making authority, and must remain impartial to the topics under discussion. The independent facilitator must assist with the overall organization and conduct of the ARD committee meeting by:
 - (1) assisting the committee in establishing an agenda and setting the time allotted for the meeting;
 - (2) assisting the committee in establishing a set of guidelines for the meeting;
 - (3) guiding the discussion and keeping the focus on developing a mutually agreed upon IEP for the student;
 - (4) ensuring that each committee member has an opportunity to participate;
 - (5) helping to resolve disagreements that arise; and
 - (6) helping to keep the ARD committee on task so that the meeting purposes can be accomplished within the time allotted for the meeting.
- (o) An independent facilitator must protect the confidentiality of personally identifiable information about the student and comply with the requirements in the Family Educational Rights and Privacy Act regulations, 34 CFR, Part 99, relating to the disclosure and redisclosure of personally identifiable information from a student's education record.
- (p) TEA will develop surveys to evaluate the IEP facilitation program and the independent facilitators and will request that parties who participate in the program complete the surveys.