

ATTACHMENT
Text of Adopted Amendments to 19 TAC

Chapter 89. Adaptations for Special Populations

Subchapter AA. Commissioner's Rules Concerning Special Education Services

Division 7. Dispute Resolution

§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 ~~trained~~ 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) ~~The~~ TEA will develop information regarding IEP facilitation as an alternative dispute resolution method, and such information will be available upon request from ~~the~~ TEA and on the TEA website.

§89.1197. State Individualized Education Program Facilitation.

- (a) In accordance with ~~the~~ Texas Education Code, §29.020, the Texas Education Agency (TEA) will establish a program that provides independent individualized education program (IEP) facilitators ~~[beginning with the 2014-2015 school year]~~ .
- (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) ~~(b)~~ 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 ~~the~~ TEA.
- (d) ~~(e)~~ A request for IEP facilitation under this section must be filed by completing a form developed by ~~the~~ TEA that is available upon request from ~~the~~ TEA and on the TEA website. The form must be filed with ~~the~~ TEA by one of the parties by electronic mail, mail, hand-delivery, or facsimile.
- (e) ~~(d)~~ IEP facilitation under this section must be voluntary on the part of the parties and provided at no cost to the parties.
- (f) ~~(e)~~ In order for ~~the~~ 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) [~~§89.1050(e)~~] of this title (relating to Individualized Education Program [~~The Admission, Review, and Dismissal Committee~~]).
 - (3) The request for IEP facilitation must be received by TEA [have been filed] 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 dispute must not relate to a manifestation determination or determination of interim alternative educational setting under 34 Code of Federal Regulations (CFR), §300.530 or §300.531.]~~
 - ~~[(5) The same parties must not be concurrently involved in special education mediation under §89.1193 of this title (relating to Special Education Mediation).]~~
 - ~~[(6) The issues in dispute must not be the subject of a special education complaint under §89.1195 of this title (relating to Special Education Complaint Resolution) or a special education due process hearing under §89.1151 of this title (relating to Special Education Due Process Hearings) and §89.1165 of this title (relating to Request for Special Education Due Process Hearing).]~~
 - ~~(4)~~ ~~[(6)]~~ ~~[(7)]~~ 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) ~~[(f)]~~ Within five business days of receipt of a request for an IEP facilitation under this section, ~~[the]~~ TEA will determine whether the conditions in subsections ~~(d)-(f)~~ ~~[(e)-(e)]~~ of this section have been met and will notify the parties of its determination and the assignment of the independent facilitator, if applicable.
- (h) ~~[(g)]~~ Notwithstanding subsections ~~(c)-(f)~~ ~~[(b)-(e)]~~ 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 ~~[the]~~ TEA assign an independent facilitator. Within five business days of receipt of a written request for IEP facilitation under this subsection, ~~[the]~~ 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) ~~[(h)]~~ ~~[The]~~ TEA's decision not to provide an independent facilitator is final and not subject to review or appeal.
- (j) ~~[(i)]~~ 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) ~~[(j)]~~ ~~[The]~~ 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 ~~[the]~~ TEA's contracting practices and procedures.
- (l) ~~[(k)]~~ 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 ~~[the]~~ TEA's competitive solicitation;
 - (4) must complete continuing education as determined by ~~[the]~~ TEA;
 - (5) may not be an employee of ~~[the]~~ 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) ~~(4)~~ An individual is not an employee of ~~the~~ TEA solely because the individual is paid by ~~the~~ TEA to serve as an independent facilitator.

(n) ~~(m)~~ 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) ~~(n)~~ 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) ~~(o)~~ ~~The~~ 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.