

The Texas Education Agency (TEA) proposes amendments to §89.1196 and §89.1197, concerning special education services dispute resolution. The proposed amendments would clarify procedures for individualized education program (IEP) facilitation and add language allowing TEA to delegate certain duties and responsibilities.

BACKGROUND INFORMATION AND 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 proposed amendment to subsection (a) would describe the purpose of IEP facilitation and would change the term "trained" to "qualified" in the description of facilitators who assist admission, review, and dismissal (ARD) committees.

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. Proposed new subsection (b) would clarify that TEA may delegate duties and responsibilities to an education service center to maximize efficiency. Subsections would be re-lettered throughout the rule as a result of this addition. Deletion of subsection (e)(6), re-lettered as subsection (f)(6), would remove 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.

FISCAL IMPACT: Justin Porter, associate commissioner and chief program officer for special populations programs, reporting, and student support, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand existing regulations to clarify procedures for IEP facilitation and add into rule the delegation of duties and responsibilities.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Porter has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to describe the use of IEP facilitation as a way to avoid a potential dispute between a public education agency and a parent of a student with a disability, as well as address procedures for state IEP facilitation when the ARD committee is in dispute with a parent of a student with a disability.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins July 26, 2024, and ends August 26, 2024. Public hearings will be conducted to solicit testimony and input on the proposed amendments at 9:30 a.m. on August 21 and 22, 2024. The public may participate in either hearing virtually by linking to the hearing at <https://zoom.us/j/95563232072>. Anyone wishing to testify must be present at 9:30 a.m. and indicate to TEA staff their intent to comment and are encouraged to also send written testimony to sped@tea.texas.gov. The hearings will conclude once all who have signed in have been given the opportunity to comment. Questions about the hearings should be directed to Derek Hollingsworth, Special Populations Policy, Integration and Technical Assistance, Derek.Hollingsworth@tea.texas.gov. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendments are proposed 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 [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 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(g)~~ of this title (relating to Individualized Education Program [The Admission, Review, and Dismissal Committee]).
 - (3) The request for IEP facilitation must 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).]~~

~~(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)~~ [(l)] 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.