

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

§89.1150. General Provisions.

- (a) It is the policy and intent of the Texas Education Agency (TEA) to encourage and support the resolution of any dispute that arises between a parent and a public education agency relating to the identification, evaluation, or educational placement of or the provision of a free appropriate public education (FAPE) to a student with a disability at the lowest level possible and in a prompt, efficient, and effective manner.
- (b) To implement the policy and intent described by subsection (a) of this section and to offer opportunities for an alternative means of dispute resolution when a parent and a public education agency are in disagreement, TEA may disclose information to a representative as authorized by the Family Educational Rights and Privacy Act to assist with resolution efforts. Neither party would be required to engage in this process, and the information shared would only be for purposes of determining interest of either party in an alternative or early resolution process.
- (c) ~~(b)~~ The possible options for resolving disputes include, but are not limited to:
- (1) meetings of the student's admission, review, and dismissal committee, including individualized education program (IEP) facilitation if offered by the public education agency in accordance with §89.1196 of this title (relating to Individualized Education Program Facilitation);
 - (2) meetings or conferences with the student's teachers or providers;
 - (3) meetings or conferences, subject to the public education agency's policies, with the campus administrator, the special education director of the public education agency (or the shared services arrangement to which the public education agency may be a member), the superintendent of the public education agency, or the board of trustees of the public education agency;
 - (4) requesting state IEP facilitation in accordance with §89.1197 of this title (relating to State-Administered [State] Individualized Education Program Facilitation);
 - (5) requesting mediation through TEA in accordance with 34 Code of Federal Regulations (CFR), §300.506;
 - (6) filing a complaint with TEA in accordance with 34 CFR, §300.153; or
 - (7) requesting a due process hearing through TEA in accordance with 34 CFR, §§300.507-300.514.

§89.1175. Representation in Special Education Due Process Hearings.

- (a) A party to a due process hearing may represent himself or herself or be represented by:
- (1) an attorney who is licensed in the State of Texas; or
 - (2) an individual who is not an attorney licensed in the State of Texas but who has special knowledge or training with respect to problems of children with disabilities and who satisfies the qualifications of this section.
- (b) A party who wishes to be represented by an individual who is not an attorney licensed in the State of Texas must file a written authorization with the hearing officer promptly after filing the request for a due process hearing or promptly after retaining the services of the non-attorney representative. The party must forward a copy of the written authorization to the opposing party at the same time that the written authorization is filed with the hearing officer.
- (c) The written authorization must be on the form provided in this subsection.

Figure: 19 TAC §89.1175(c) [~~Figure: 19 TAC §89.1175(c)~~]

- (d) The written authorization must include the non-attorney representative's name and contact information and a description of the non-attorney representative's:
- (1) special knowledge or training with respect to problems of children with disabilities;
 - (2) knowledge of all special education dispute resolution options available to parents, including due process hearings, state complaints, mediation, and individualized education program facilitation;
 - (3) [~~(2)~~] knowledge of the rules and procedures that apply to due process hearings, including those in 34 Code of Federal Regulations, §§300.507-300.515 and 300.532, if applicable, and this division;
 - (4) [~~(3)~~] knowledge of federal and state special education laws, regulations, and rules; and
 - (5) [~~(4)~~] educational background.
- (e) The written authorization must state the party's acknowledgment of the following:
- (1) the non-attorney representative has been given full authority to act on the party's behalf with respect to the hearing;
 - (2) the actions or omissions by the non-attorney representative are binding on the party, as if the party had taken or omitted those actions directly;
 - (3) documents are deemed to be served on the party if served on the non-attorney representative;
 - (4) communications between the party and a non-attorney representative are not generally protected by the attorney-client privilege and may be subject to disclosure during the hearing proceeding;
 - (5) neither federal nor state special education laws provide for the recovery of fees for the services of a non-attorney representative; and
 - (6) it is the party's responsibility to notify the hearing officer and the opposing party of any change in the status of the authorization and that the provisions of the authorization will remain in effect until the party notifies the hearing officer and the opposing party of the party's revocation of the authorization.
- (f) If the non-attorney representative receives monetary compensation in exchange for representing the party in the due process hearing, the written authorization must affirm the following:
- (1) the non-attorney representative has agreed to abide by a voluntary code of ethics and professional conduct during the period of representation; and
 - (2) the non-attorney representative and the party have entered into a confidential, written representation agreement that includes a process for resolving any disputes that may arise between the non-attorney representative and the party.
- (g) The written authorization must be signed and dated by the party.
- (h) An individual is prohibited from being a party's representative under subsection (a)(2) of this section if the individual has prior employment experience with the school district and the school district raises an objection to the individual serving as a representative based on the individual's prior employment experience. No other objections to a party's representation by a non-attorney are permitted under this section.
- (i) Upon receipt of a written authorization filed under this section, the hearing officer must promptly determine whether the non-attorney representative is qualified and meets the requirements to represent the party in the hearing and must notify the parties in writing of the determination. A hearing officer's determination is final and not subject to review or appeal.
- (j) A non-attorney representative may not file pleadings or other documents on behalf of a party, present statements and arguments on behalf of a party, examine and cross-examine witnesses, offer and introduce evidence, object to the introduction of evidence and testimony, or engage in other activities in a representative

capacity unless the hearing officer has reviewed a written authorization filed under this section and determined that the non-attorney representative is qualified to represent the party in the hearing.

- (k) In accordance with the Texas Education Code, §38.022, a school district may require an attorney or a non-attorney representative who enters a school campus to display his or her driver's license or another form of government-issued identification. A school district may also verify whether the representative is a registered sex offender and may apply a policy adopted by its board of trustees regarding the action to be taken when a visitor to a school campus is identified as a sex offender.

§89.1195. Special Education Complaint Resolution.

- (a) In accordance with 34 Code of Federal Regulations (CFR), §300.151, the Texas Education Agency (TEA) has established a complaint resolution process that provides for the investigation and issuance of findings regarding alleged violations of Part B of the Individuals with Disabilities Education Act (IDEA) or a state special education statute or administrative rule.
- (b) A complaint may be filed with the TEA by any individual or organization and must:
 - (1) be in writing;
 - (2) include the signature and contact information for the complainant;
 - (3) contain a statement that a public education agency has violated Part B of the IDEA; 34 CFR, §300.1 et seq.; or a state special education statute or administrative rule;
 - (4) include the facts upon which the complaint is based;
 - (5) if alleging violations with respect to a specific student, include:
 - (A) the name and address of the residence of the student;
 - (B) the name of the school the student is attending;
 - (C) in the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Act (42 United States Code, §11434a(2)), available contact information for the student and the name of the school the student is attending;
 - (D) a description of the nature of the problem of the student, including facts relating to the problem; and
 - (E) a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed;
 - (6) allege a violation that occurred not more than one calendar year prior to the date the complaint is received; and
 - (7) be forwarded to the public education agency that is the subject of the complaint at the same time that the complaint is filed with the TEA.
- (c) A complaint must be filed with the TEA by electronic mail, mail, hand-delivery, or facsimile. The TEA has developed a form that may be used by persons or organizations filing a complaint. The form is available on request from the TEA and is also available on the TEA website. The complaint timeline will commence on the business day that TEA receives the complaint. If a complaint is received on a day other than a business day, the complaint timeline will commence on the first business day after the day on which the TEA receives the complaint. The one-calendar-year statute of limitations for a complaint will be determined based on the day that the complaint timeline commences.
- (d) If a complaint does not meet the requirements outlined in subsection (b) of this section, the TEA must notify the complainant of the deficiencies in the complaint.
- (e) Upon receipt of a complaint that meets the requirements of this section, the TEA must initiate an investigation to determine whether the public education agency is in compliance with applicable law and regulations in accordance with the following procedures.
 - (1) The TEA must send written notification to the parties acknowledging receipt of a complaint.

- (A) The notification must include:
 - (i) the alleged violations that will be investigated;
 - (ii) alternative procedures available to address allegations in the complaint that are outside of the scope of Part B of the IDEA; 34 CFR, §300.1, et seq.; or a state special education statute or administrative rule;
 - (iii) a statement that the public education agency may, at its discretion, investigate the alleged violations and propose a resolution of the complaint;
 - (iv) a statement that the parties have the opportunity to resolve the complaint through mediation in accordance with the procedures in §89.1193 of this title (relating to Special Education Mediation);
 - (v) a timeline for the public education agency to submit:
 - (I) documentation demonstrating that the complaint has been resolved; or
 - (II) a written response to the complaint and all documentation and information requested by the TEA;
 - (vi) a statement that the complainant may submit additional information about the allegations in the complaint, either orally or in writing within a timeline specified by the TEA, and may provide a copy of any additional information to the public education agency to assist the parties in resolving the dispute at the local level; and
 - (vii) a statement that the TEA may grant extensions of the timeline for a party to submit information under clause (v) or (vi) of this subparagraph at the request of either party.
- (B) In accordance with 34 CFR, §300.504, upon receipt of the first special education complaint filed by a parent during a school year, TEA will provide an electronic copy of the Notice of Procedural Safeguards to the parent, and the public education agency against which the complaint is filed must provide the parent with a hard copy of the Notice of Procedural Safeguards unless that parent has elected, in accordance with 34 CFR, §300.505, to receive the required notice by electronic mail, if the public education agency makes that option available.
- (C) The public education agency must provide the TEA with a written response to the complaint and all documentation and information requested by the TEA. The public education agency must forward its response to the parent who filed the complaint at the same time that the response is provided to the TEA. The public education agency may also provide the parent with a copy of the documentation and information requested by the TEA. If the complaint was filed by an individual other than the student's parent, the public education agency must forward a copy of the response to that individual only if written parental consent has been provided to the public education agency.
- (2) If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, the TEA must:
 - (A) set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and
 - (B) resolve any issue in the complaint that is not a part of the due process hearing.
- (3) If an issue raised in the complaint has previously been decided in a due process hearing involving the same parties, the TEA must inform the complainant that the due process hearing decision is binding.
- (4) The TEA has 60 calendar days after a valid written complaint is received to carry out the investigation and to resolve the complaint. The TEA may extend the time limit beyond 60 calendar days if exceptional circumstances, as determined by the TEA, exist with respect to a

particular complaint. The parties will be notified in writing by ~~the~~ TEA of the exceptional circumstances, if applicable, and the extended time limit. The time limit may also be extended if the parties agree to extend it in order to engage in mediation pursuant to §89.1193 of this title or other alternative means of dispute resolution. In accordance with the Texas Education Code, §29.010(e), ~~the~~ TEA must expedite a complaint alleging that a public education agency has refused to enroll a student eligible for special education and related services or that otherwise indicates a need for expedited resolution, as determined by ~~the~~ TEA.

- (5) During the course of the investigation and in resolving the complaint , ~~the~~ TEA must:
 - (A) conduct an investigation of the complaint that must include a complete review of all relevant documentation and that may include interviews with appropriate individuals and an independent on-site investigation, if necessary;
 - (B) consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards;
 - (C) make a determination of compliance or noncompliance on each issue in the complaint based upon the facts and applicable law, regulations, or standards and issue a written report of findings of fact and conclusions, including reasons for the decision, and any corrective actions that are required, including the time period within which each action must be taken;
 - (D) review any evidence that the public education agency has corrected noncompliance on its own initiative;
 - (E) ensure that ~~the~~ TEA's final decision is effectively implemented, if needed, through technical assistance activities, negotiations, and corrective actions to achieve compliance; and
 - (F) in the case of a complaint filed by an individual other than the student's parent, provide a copy of the written report only if written parental consent has been provided to ~~the~~ TEA.
- (6) In resolving a complaint in which a failure to provide appropriate services is found, ~~the~~ TEA must address:
 - (A) the failure to provide appropriate services, including corrective action appropriate to address the needs of the student, including compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the student; and
 - (B) appropriate future provision of services for all students with disabilities.
- (7) In accordance with 34 CFR, §300.600(e), the public education agency must complete all required corrective actions as soon as possible, and in no case later than one year after ~~the~~ TEA's identification of the noncompliance. A public education agency's failure to correct the identified noncompliance within the one-year timeline will result in an additional finding of noncompliance under 34 CFR, §300.600(e), and may result in sanctions against the public education agency in accordance with §89.1076 of this title (relating to Interventions and Sanctions).

~~[(f) — If a party to a complaint believes that the TEA's written report includes an error that is material to the determination in the report, the party may submit a signed, written request for reconsideration to the TEA by electronic mail, mail, hand delivery, or facsimile within 15 calendar days of the date of the report. The party's reconsideration request must identify the asserted error and include any documentation to support the claim. The party filing a reconsideration request must forward a copy of the request to the other party at the same time that the request is filed with the TEA. The other party may respond to the reconsideration request within five calendar days of the date on which the TEA received the request. The TEA will consider the reconsideration request and provide a written response to the parties within 45 calendar days of receipt of the request. The filing of a reconsideration request must not delay a public education agency's implementation of any corrective actions required by the TEA.]~~

- (f) ~~(e)~~ In accordance with 34 CFR, §300.151, ~~the~~ TEA's complaint resolution procedures must be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.
- (g) ~~(h)~~ In exercising its general supervisory authority under 34 CFR, §300.149 and §300.600, ~~the~~ TEA may resolve any other credibly alleged violation of IDEA or a state special education statute or administrative rule that it receives even if a sufficient complaint is not filed with ~~the~~ TEA in accordance with 34 CFR, §§300.151-300.153, and this section. In doing so, ~~the~~ TEA may take one or more of the following actions:
- (1) requesting a response and supporting documentation from a public education agency against which a credible violation of IDEA or a state special education statute or administrative rule has been alleged;
 - (2) conducting a desk or on-site investigation of a public education agency;
 - (3) making a determination regarding the allegation(s); and
 - (4) requiring a public education agency to implement corrective actions to address any identified noncompliance.
- (h) ~~(i)~~ For the purposes of subsection (g) ~~(h)~~ of this section, anonymous complaints, complaints that are received outside the one-calendar-year statute of limitations for a special education complaint, and complaints that do not include sufficient information or detail for ~~the~~ TEA to determine that an alleged violation of special education requirements may have occurred will not be considered to be credible complaints under this section but may possibly be addressed through the procedures describe by §97.1071 of this title (relating to Special Program Performance; Monitoring, Review, and Supports).
- ~~(i) If the public education agency against which a complaint is received under subsection (h) of this section believes that TEA made an incorrect determination of noncompliance, the public education agency may submit a written request for reconsideration to the TEA within 15 calendar days of the date that TEA issued its findings. The reconsideration request must identify the asserted error and include any documentation to support the claim. The TEA will consider the reconsideration request and provide a written response to the public education agency within 45 calendar days of receipt of the request. The filing of a reconsideration request must not delay a public education agency's implementation of any corrective actions required by the TEA.]~~

§89.1197. State-Administered ~~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 may be utilized by a school district and a parent of a student with a disability to avoid a potential dispute relating to the provision of a free and appropriate public education (FAPE) or [is used] when the admission, review, and dismissal (ARD) committee meeting has ended in disagreement [is in dispute] about decisions relating to the provision of FAPE [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 request must be submitted jointly by a school district and a parent of a student with a disability, and the following conditions must be met.

- (1) The required form must be completed and signed by both parties.
 - (2) ~~The parties believe that a state-appointed IEP facilitator may assist in avoiding a potential dispute relating to the provision of FAPE or [dispute must relate to] an ARD committee meeting has ended in disagreement regarding the provision of FAPE and the committee has [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 at least 10 school ~~[calendar]~~ days prior to the ARD committee meeting for which a facilitator is being requested or within 10 school ~~[calendar]~~ days of the ARD committee meeting that ended in disagreement . A state-appointed ~~[= 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.