

## **BILL ANALYSIS**

S.B. 1489  
By: Watson  
Public Education  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The Senate Committee on Education's report to the 81st Legislature recommends the use of alternative dispute resolution strategies to empower parents and students within the special education system and to encourage stronger collaboration between schools, parents, and students in designing an individualized education program to meet the needs of each student.

S.B. 1489 requires the Texas Education Agency to develop an individualized education program facilitation process as a method of alternative dispute resolution and to develop a statewide network of impartial facilitators to be made available when requested by a parent or school district. The bill also 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 identification of the student as being entitled to special education services, evaluation or educational placement of the student, or the provision of a free appropriate public education to the student.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of education in SECTION 1 of this bill.

### **ANALYSIS**

S.B. 1489 amends the Education Code to require 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 identification of the student as a student entitled to special education services, evaluation or educational placement of the student, or the provision of a free appropriate public education to the student. The bill requires the optional dispute resolution methods to include requesting mediation through the Texas Education Agency (TEA) in accordance with federal law, requesting independent individualized education program (IEP) facilitation if the district is included within the boundaries of a regional education service center participating in the pilot program established under the bill's provisions below for that program, and filing a complaint with TEA in accordance with federal law. The bill authorizes the optional dispute resolution methods to include convening a meeting of a student's admission, review, and dismissal committee; meeting with a student's teachers; meeting with one or more of the following: a campus administrator, the district special education director or the director of a shared services arrangement to which the district is a party, the district superintendent, or the school district board of trustees; requesting IEP facilitation similar to the facilitation provided under the pilot program, except that facilitation may be provided by either an independent facilitator or a district employee serving as the facilitator.

S.B. 1489 prohibits an optional dispute resolution method and the availability of such methods from being used in any manner to deny or delay the right to a special education due process hearing in accordance with federal law. The bill requires the school district and the parent of a

student with a disability, 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. The bill establishes that, if a school district and a parent participate in such mediation, the fact that the mediation occurred is not admissible into evidence in any subsequent proceeding involving the subject matter of the mediation, that 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 that the school district and parent are not entitled to access to any records created by the mediator in connection with the mediation.

S.B. 1489 establishes that, unless specifically provided otherwise by federal or other state law, the participation of an IEP facilitator in the development of a student's IEP does not violate confidentiality provisions under federal or state law. The bill requires the IEP facilitation, if a school district chooses to offer facilitation, to be provided at no cost to a parent and requires the commissioner of education to adopt rules necessary to implement these provisions.

S.B. 1489 requires TEA to develop an independent IEP facilitation process as a method of alternative dispute resolution and requires TEA to implement the process on a pilot program basis within the boundaries of three regional education service centers selected by the commissioner for that purpose. The bill caps the number of facilitations from being conducted under the pilot program at 500 facilitations.

S.B. 1489 authorizes the commissioner, if the commissioner determines that adequate funding is available, to authorize the expansion of the pilot program to additional areas or to authorize a greater number of facilitations than the 500 facilitation limit specified in the bill. The bill requires the commissioner to select the participating regional education service centers based on criteria established by the commissioner, which must include criteria relating to the geographic location of a center, student enrollment within the boundaries of a center, the number of formal complaints regarding special education issues filed by persons within the boundaries of a center, and the number of mediations and special education due process hearings requested by persons within the boundaries of a center.

S.B. 1489 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 IEP. The bill establishes that the role of a facilitator under the facilitation process is to assist in creating an atmosphere for fair communication and the successful development of a student's IEP and 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. The bill requires facilitators to be provided at no cost to a school district or parent and requires the commissioner to adopt rules necessary to implement these provisions.

S.B. 1489 adds a temporary provision, set to expire September 1, 2011, to require TEA to submit a report to the legislature regarding the implementation and effectiveness of the pilot program not later than January 1, 2011. The bill makes its provisions applicable beginning with the 2009-2010 school year and specifies that its provisions do not make an appropriation and that any such provision that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific implementing appropriation.

#### **EFFECTIVE DATE**

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.