

By: Watson, Zaffirini

S.B. No. 1489

A BILL TO BE ENTITLED

AN ACT

relating to optional dispute resolution methods for school districts and parents of students seeking or receiving special education services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 29, Education Code, is amended by adding Sections 29.020 and 29.021 to read as follows:

Sec. 29.020. OPTIONAL DISPUTE RESOLUTION METHODS. (a) A school district shall 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:

(1) identification of the student as a student entitled to special education services;

(2) evaluation or educational placement of the student; or

(3) the provision of a free appropriate public education to the student.

(b) A school district's optional dispute resolution methods:

(1) must include:

(A) requesting mediation through the agency in accordance with 20 U.S.C. Section 1415(e) and 34 C.F.R. Section 300.506;

1 (B) requesting independent individualized
2 education program facilitation, as described by Section 29.021, if
3 the district is included within the boundaries of a regional
4 education service center participating in the pilot program
5 implemented under that section; and

6 (C) filing a complaint with the agency in
7 accordance with 34 C.F.R. Section 300.153; and

8 (2) may include:

9 (A) convening a meeting of a student's admission,
10 review, and dismissal committee;

11 (B) meeting with a student's teachers;

12 (C) meeting with one or more of the following:

13 (i) a campus administrator;

14 (ii) the district special education
15 director or the director of a shared services arrangement under
16 Section 29.007 to which the district is a party;

17 (iii) the district superintendent; or

18 (iv) the board of trustees of the district;

19 and

20 (D) requesting individualized education program
21 facilitation similar to the facilitation provided under the pilot
22 program implemented under Section 29.021, except that facilitation
23 may be provided by either an independent facilitator or a district
24 employee serving as the facilitator.

25 (c) The use of an optional dispute resolution method made
26 available under this section and the availability of those methods
27 may not in any manner be used to deny or delay the right to a special

1 education due process hearing in accordance with federal law.

2 (d) Notwithstanding Subsection (c), on the filing of a
3 request for a special education due process hearing in accordance
4 with federal law, the school district and the parent shall be
5 provided with the opportunity to attempt to resolve the dispute
6 between the district and the parent through the agency's mediation
7 process, provided that both the school district and the parent
8 agree to participate in the mediation.

9 (e) If a school district and a parent participate in
10 mediation under this section:

11 (1) the fact that the mediation occurred is not
12 admissible into evidence in any subsequent proceeding involving the
13 subject matter of the mediation;

14 (2) the mediator may not be subpoenaed to testify
15 regarding the subject matter of the mediation at any subsequent
16 special education due process hearing or civil action arising under
17 federal special education law; and

18 (3) the school district and parent are not entitled to
19 access to any records created by the mediator in connection with the
20 mediation.

21 (f) Unless specifically provided otherwise by federal or
22 other state law, the participation of an individualized education
23 program facilitator in the development of a student's
24 individualized education program does not violate confidentiality
25 provisions under federal or state law.

26 (g) If a school district chooses to offer individualized
27 education program facilitation under Subsection (b)(2)(D), the

1 facilitation must be provided at no cost to a parent.

2 (h) The commissioner shall adopt rules necessary to
3 implement this section.

4 Sec. 29.021. PILOT PROGRAM FOR INDEPENDENT INDIVIDUALIZED
5 EDUCATION PROGRAM FACILITATION. (a) The agency shall develop an
6 independent individualized education program facilitation process
7 as a method of alternative dispute resolution.

8 (b) The agency shall implement the process developed under
9 Subsection (a) on a pilot program basis within the boundaries of
10 three regional education service centers selected by the
11 commissioner for that purpose. Not more than 500 facilitations may
12 be conducted under the pilot program.

13 (c) Notwithstanding Subsection (b), if the commissioner
14 determines that adequate funding is available, the commissioner may
15 authorize:

16 (1) the expansion of the pilot program to additional
17 areas; or

18 (2) a greater number of facilitations than the limit
19 specified under that subsection.

20 (d) The commissioner shall select the participating
21 regional education service centers based on criteria established by
22 the commissioner. The selection criteria must include criteria
23 relating to:

24 (1) the geographic location of a center;

25 (2) student enrollment within the boundaries of a
26 center;

27 (3) the number of formal complaints regarding special

1 education issues filed by persons within the boundaries of a
2 center; and

3 (4) the number of mediations and special education due
4 process hearings requested by persons within the boundaries of a
5 center.

6 (e) The facilitation process may be used when a school
7 district located within the boundaries of a participating regional
8 education service center and the parents of a student with a
9 disability agree on the value of involving an impartial facilitator
10 in the procedures used to develop the student's individualized
11 education program.

12 (f) The role of a facilitator under the facilitation process
13 developed under this section is to assist in creating an atmosphere
14 for fair communication and the successful development of a
15 student's individualized education program.

16 (g) Each participating regional education service center
17 shall develop a network of impartial facilitators to be made
18 available on request to school districts and parents that choose to
19 use the facilitation process developed under this section.
20 Facilitators must be provided at no cost to a school district or
21 parent.

22 (h) The commissioner shall adopt rules necessary to
23 implement this section.

24 (i) Not later than January 1, 2011, the agency shall submit
25 a report to the legislature regarding the implementation and
26 effectiveness of the pilot program. This subsection expires
27 September 1, 2011.

1 SECTION 2. This Act applies beginning with the 2009-2010
2 school year.

3 SECTION 3. This Act does not make an appropriation. A
4 provision in this Act that creates a new governmental program,
5 creates a new entitlement, or imposes a new duty on a governmental
6 entity is not mandatory during a fiscal period for which the
7 legislature has not made a specific appropriation to implement the
8 provision, unless funding is provided from another source such as
9 federal funds.

10 SECTION 4. This Act takes effect immediately if it receives
11 a vote of two-thirds of all the members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2009.