

1-1 By: Watson, Zaffirini S.B. No. 1489  
1-2 (In the Senate - Filed March 6, 2009; March 17, 2009, read  
1-3 first time and referred to Committee on Education; April 27, 2009,  
1-4 reported adversely, with favorable Committee Substitute by the  
1-5 following vote: Yeas 7, Nays 0; April 27, 2009, sent to printer.)

1-6 COMMITTEE SUBSTITUTE FOR S.B. No. 1489 By: Patrick

1-7 A BILL TO BE ENTITLED  
1-8 AN ACT

1-9 relating to optional dispute resolution methods for school  
1-10 districts and parents of students seeking or receiving special  
1-11 education services.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subchapter A, Chapter 29, Education Code, is  
1-14 amended by adding Sections 29.020 and 29.021 to read as follows:

1-15 Sec. 29.020. OPTIONAL DISPUTE RESOLUTION METHODS. (a) A  
1-16 school district shall make available and provide information to  
1-17 parents regarding optional dispute resolution methods that may be  
1-18 used when a dispute arises between the district and a parent of a  
1-19 student with a disability regarding:

1-20 (1) identification of the student as a student  
1-21 entitled to special education services;

1-22 (2) evaluation or educational placement of the  
1-23 student; or

1-24 (3) the provision of a free appropriate public  
1-25 education to the student.

1-26 (b) A school district's optional dispute resolution  
1-27 methods:

1-28 (1) must include:

1-29 (A) requesting mediation through the agency in  
1-30 accordance with 20 U.S.C. Section 1415(e) and 34 C.F.R. Section  
1-31 300.506;

1-32 (B) requesting independent individualized  
1-33 education program facilitation, as described by Section 29.021, if  
1-34 the district is included within the boundaries of a regional  
1-35 education service center participating in the pilot program  
1-36 implemented under that section; and

1-37 (C) filing a complaint with the agency in  
1-38 accordance with 34 C.F.R. Section 300.153; and

1-39 (2) may include:

1-40 (A) convening a meeting of a student's admission,  
1-41 review, and dismissal committee;

1-42 (B) meeting with a student's teachers;

1-43 (C) meeting with one or more of the following:

1-44 (i) a campus administrator;

1-45 (ii) the district special education  
1-46 director or the director of a shared services arrangement under  
1-47 Section 29.007 to which the district is a party;

1-48 (iii) the district superintendent; or

1-49 (iv) the board of trustees of the district;

1-50 and

1-51 (D) requesting individualized education program  
1-52 facilitation similar to the facilitation provided under the pilot  
1-53 program implemented under Section 29.021, except that facilitation  
1-54 may be provided by either an independent facilitator or a district  
1-55 employee serving as the facilitator.

1-56 (c) The use of an optional dispute resolution method made  
1-57 available under this section and the availability of those methods  
1-58 may not in any manner be used to deny or delay the right to a special  
1-59 education due process hearing in accordance with federal law.

1-60 (d) Notwithstanding Subsection (c), on the filing of a  
1-61 request for a special education due process hearing in accordance  
1-62 with federal law, the school district and the parent shall be  
1-63 provided with the opportunity to attempt to resolve the dispute

2-1 between the district and the parent through the agency's mediation  
 2-2 process, provided that both the school district and the parent  
 2-3 agree to participate in the mediation.  
 2-4 (e) If a school district and a parent participate in  
 2-5 mediation under this section:  
 2-6 (1) the fact that the mediation occurred is not  
 2-7 admissible into evidence in any subsequent proceeding involving the  
 2-8 subject matter of the mediation;  
 2-9 (2) the mediator may not be subpoenaed to testify  
 2-10 regarding the subject matter of the mediation at any subsequent  
 2-11 special education due process hearing or civil action arising under  
 2-12 federal special education law; and  
 2-13 (3) the school district and parent are not entitled to  
 2-14 access to any records created by the mediator in connection with the  
 2-15 mediation.  
 2-16 (f) Unless specifically provided otherwise by federal or  
 2-17 other state law, the participation of an individualized education  
 2-18 program facilitator in the development of a student's  
 2-19 individualized education program does not violate confidentiality  
 2-20 provisions under federal or state law.  
 2-21 (g) If a school district chooses to offer individualized  
 2-22 education program facilitation under Subsection (b)(2)(D), the  
 2-23 facilitation must be provided at no cost to a parent.  
 2-24 (h) The commissioner shall adopt rules necessary to  
 2-25 implement this section.  
 2-26 Sec. 29.021. PILOT PROGRAM FOR INDEPENDENT INDIVIDUALIZED  
 2-27 EDUCATION PROGRAM FACILITATION. (a) The agency shall develop an  
 2-28 independent individualized education program facilitation process  
 2-29 as a method of alternative dispute resolution.  
 2-30 (b) The agency shall implement the process developed under  
 2-31 Subsection (a) on a pilot program basis within the boundaries of  
 2-32 three regional education service centers selected by the  
 2-33 commissioner for that purpose. Not more than 500 facilitations may  
 2-34 be conducted under the pilot program.  
 2-35 (c) Notwithstanding Subsection (b), if the commissioner  
 2-36 determines that adequate funding is available, the commissioner may  
 2-37 authorize:  
 2-38 (1) the expansion of the pilot program to additional  
 2-39 areas; or  
 2-40 (2) a greater number of facilitations than the limit  
 2-41 specified under that subsection.  
 2-42 (d) The commissioner shall select the participating  
 2-43 regional education service centers based on criteria established by  
 2-44 the commissioner. The selection criteria must include criteria  
 2-45 relating to:  
 2-46 (1) the geographic location of a center;  
 2-47 (2) student enrollment within the boundaries of a  
 2-48 center;  
 2-49 (3) the number of formal complaints regarding special  
 2-50 education issues filed by persons within the boundaries of a  
 2-51 center; and  
 2-52 (4) the number of mediations and special education due  
 2-53 process hearings requested by persons within the boundaries of a  
 2-54 center.  
 2-55 (e) The facilitation process may be used when a school  
 2-56 district located within the boundaries of a participating regional  
 2-57 education service center and the parents of a student with a  
 2-58 disability agree on the value of involving an impartial facilitator  
 2-59 in the procedures used to develop the student's individualized  
 2-60 education program.  
 2-61 (f) The role of a facilitator under the facilitation process  
 2-62 developed under this section is to assist in creating an atmosphere  
 2-63 for fair communication and the successful development of a  
 2-64 student's individualized education program.  
 2-65 (g) Each participating regional education service center  
 2-66 shall develop a network of impartial facilitators to be made  
 2-67 available on request to school districts and parents that choose to  
 2-68 use the facilitation process developed under this section.  
 2-69 Facilitators must be provided at no cost to a school district or

3-1 parent.

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

3-4 (i) Not later than January 1, 2011, the agency shall submit  
3-5 a report to the legislature regarding the implementation and  
3-6 effectiveness of the pilot program. This subsection expires  
3-7 September 1, 2011.

3-8 SECTION 2. This Act applies beginning with the 2009-2010  
3-9 school year.

3-10 SECTION 3. This Act takes effect immediately if it receives  
3-11 a vote of two-thirds of all the members elected to each house, as  
3-12 provided by Section 39, Article III, Texas Constitution. If this  
3-13 Act does not receive the vote necessary for immediate effect, this  
3-14 Act takes effect September 1, 2009.

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