

BILL ANALYSIS

Senate Research Center
81R26233 KKA-F

C.S.S.B. 1489
By: Watson, Zaffirini
Education
4/24/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Senate Committee on Education's Report to the 81st Legislature recommends utilization of alternative dispute resolution (ADR) 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 (IEP) to meet the needs of each student.

This bill would require the Texas Education Agency to develop an IEP facilitation process as a method of ADR and to develop a statewide network of impartial factors to be made available when requested by a parent or school district. This voluntary ADR process is at no cost to the parent or the school district, as the federal funds that pay for current mediation processes should also pay for ADR.

C.S.S.B. 148 amends current law relating to optional dispute resolution methods for school districts and parents of students seeking or receiving special education services.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of education in SECTION 1 (Sections 29.020 and 29.021, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 29, Education Code, by adding Sections 29.020 and 29.021, as follows:

Sec. 29.020. **OPTIONAL DISPUTE RESOLUTION METHODS.** (a) Requires a school district to make available and provide information to parents regarding optional dispute resolution methods that are authorized to 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.

(b) Requires that a school district's optional dispute resolution methods include requesting mediation through the Texas Education Agency (TEA) in accordance with 20 U.S.C. Section 1415(e) and 34 C.F.R. Section 300.506; requesting independent individualized education program facilitation, as described by Section 29.021, if the district is included within the boundaries of a regional education service center participating in the pilot program implemented under that section; and filing a complaint with TEA in accordance with 34 C.F.R. Section 300.153; and authorizes the methods to include convening a meeting of a student's admission, review, and dismissal committee; meeting with a student's teachers; and meeting with one or more of certain persons; and requesting individualized education program facilitation similar to the facilitation provided under the pilot program implemented under Section 29.021, except that facilitation may be provided by either an independent facilitator or a district employee serving as the facilitator.

(c) Prohibits the use of an optional dispute resolution method made available under this section and the availability of those methods in any manner from being

used to deny or delay the right to a special education due process hearing in accordance with federal law.

(d) Requires the school district and the parent, notwithstanding Subsection (c), 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 in the mediation.

(e) Provides that if a school district and a parent participate in mediation under this section:

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

(2) the mediator is prohibited from being 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

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

(f) Provides that unless specifically provided otherwise by federal or other state law, the participation of an individualized education program facilitator in the development of a student's individualized education program does not violate confidentiality provisions under federal or state law.

(g) Provides that if a school district chooses to offer individualized education program facilitation under Section (b)(2)(D) (relating to parent and district dispute resolution in requesting individualized education program), the facilitation is required to be provided at no cost to a parent.

(h) Requires the commissioner of education (commissioner) to adopt rules necessary to implement this section.

Sec. 29.021. PILOT PROGRAM FOR INDEPENDENT INDIVIDUALIZED EDUCATION PROGRAM FACILITATION. (a) Requires TEA to develop an independent individualized education program facilitation process as a method of alternative dispute resolution.

(b) Requires TEA to implement the process developed under Subsection (a) on a pilot program basis within the boundaries of three regional education service centers selected by the commissioner for that purpose. Authorizes not more than 500 facilitations to be conducted under the pilot program.

(c) Authorizes the commissioner, notwithstanding Subsection (b), if the commissioner determines that adequate funding is available, to authorize the expansion of the pilot program to additional areas, or a greater number of facilitations than the limit specified under that subsection.

(d) Requires the commissioner to select the participating regional education service centers based on criteria established by the commissioner. Sets forth certain required selection criteria.

(e) 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 individualized education program.

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

(g) 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 developed under this section. Requires that facilitators be provided at no cost to a school district or parent.

(h) Requires the commissioner to adopt rules necessary to implement this section.

(i) Requires TEA, not later than January 1, 2011, to submit a report to the legislature regarding the implementation and effectiveness of the pilot program. Provides that this subsection expires September 1, 2011.

SECTION 2. Provides that this Act applies beginning with the 2009-2010 school year.

SECTION 3. Effective date: upon passage or September 1, 2009.