

ATTACHMENT II
Text of Proposed Amendments to 19 TAC

Chapter 89. Adaptations for Special Populations

Subchapter AA. Commissioner's Rules Concerning Special Education Services

Division 7. Dispute Resolution

§89.1151. Special Education Due Process Hearings.

- (a) A parent or public education agency may initiate a due process hearing as provided in 34 Code of Federal Regulations (CFR), §300.507 and §300.508.
- (b) The Texas Education Agency will implement a one-tier system of hearings. The proceedings in hearings will be governed by the provisions of 34 CFR, §§300.507-300.515 and 300.532, if applicable, and this division.
- (c) A parent or public education agency must request a hearing within one year of the date the parent or public education agency knew or should have known about the alleged action that serves as the basis for the request.
- (d) The timeline described in subsection (c) of this section does not apply to a parent if the parent was prevented from filing a request for a due process hearing due to:
 - (1) specific misrepresentations by the public education agency that it had resolved the problem forming the basis of the request for a hearing; or
 - (2) the public education agency's withholding of information from the parent that was required by 34 CFR, §300.1, et seq. to be provided to the parent.
- (e) TEA will include in the Notice of Procedural Safeguards a statement that the statute of limitations for the parent of a student to request an impartial due process hearing under 20 USC, §1415(b), may be tolled if:
 - (1) the parent is an active-duty member of the armed forces, the Commissioned Corps of the National Oceanic and Atmospheric Administration, or the Commissioned Corps of the United States Public Health Service; and
 - (2) 50 USC, §3936, applies to the parent.

§89.1170. Impartial Hearing Officer.

- (a) The Texas Education Agency (TEA) will maintain a pool of impartial hearing officers to conduct due process hearings. The TEA will assign cases to hearing officers who are private practice attorneys based on an alphabetical rotation. The TEA will assign cases to hearing officers who are employed by the State Office of Administrative Hearings (SOAH) in accordance with the procedures specified in the interagency contract between the TEA and SOAH. If, however, a request for a hearing relates to the same student who was involved in another hearing that was filed within the last 12 months, the TEA may ~~will~~ assign the recently filed hearing request to the same hearing officer who presided over the previous hearing. In addition, the same hearing officer may be assigned to hearings involving siblings that are filed within 12 months of each other.
- (b) If a hearing officer is also a mediator under §89.1193 of this title (relating to Special Education Mediation), that individual will not be assigned as hearing officer if he or she is the mediator in a pending mediation involving the same student who is the subject of the hearing or was the mediator in a previous mediation involving the student who is the subject of the hearing.
- (c) A hearing officer must possess the knowledge and abilities described in 34 Code of Federal Regulations, §300.511(c), and must not be:
 - (1) an employee of the TEA or the public agency that is involved in the education or care of the child who is the subject of the hearing; or

- (2) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing.
- (d) A hearing officer is not an employee of the TEA solely because the individual is paid by the TEA to serve as a hearing officer.
- (e) A hearing officer has the authority to administer oaths; call and examine witnesses; rule on motions, including discovery and dispositive motions; determine admissibility of evidence and amendments to pleadings; maintain decorum; schedule and recess the proceedings from day to day; and make any other orders as justice requires, including the application of sanctions as necessary to maintain an orderly hearing process.
- (f) If a hearing officer is removed, dies, becomes disabled, or withdraws from a hearing before the completion of duties, the TEA will designate a substitute hearing officer to complete the performance of duties without the necessity of repeating any previous proceedings.
- (g) A party to a hearing who has grounds to believe that the assigned hearing officer cannot afford the party a fair and impartial hearing due to bias, prejudice, or a conflict of interest may file a written request with the assigned hearing officer asking that the hearing officer recuse himself or herself from presiding over the hearing. Any such written request must state the grounds for the request and the facts upon which the request is based. Upon receipt of a request, the assigned hearing officer must review the request and determine the sufficiency of the grounds stated in the request. The hearing officer then must prepare a written order concerning the request and serve the order on the parties to the hearing within three business days of receiving the request . If the hearing officer finds that the grounds for recusal are insufficient, the TEA will assign a second hearing officer to review the request. The second hearing officer must rule on the request and serve a written order on the parties to the hearing within three business days of receiving the assignment. If the second hearing officer also determines that the grounds for recusal are insufficient, the assigned hearing officer will continue to preside over the hearing. If either the assigned hearing officer or the second hearing officer finds that the grounds for recusal are sufficient, the TEA will assign another hearing officer to preside over the remainder of the proceedings in accordance with the procedures in subsection (a) of this section.

§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 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;
 - (3) knowledge of federal and state special education laws, regulations, and rules; and
 - (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) ~~(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) ~~(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) ~~(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) ~~(g)~~ The written authorization must be signed and dated by the party.

(h) ~~(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) ~~(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) ~~(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) ~~(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.