

Abstract:

The recently amended Individuals with Disabilities Education Act (IDEA) now includes federal statutes of limitations for IDEA due process hearings and appeals of these decisions. The amendments also grant state legislatures the ability to apply state-provided statutory limitations periods. Previously, courts found analogous state statutes to determine IDEA statutes of limitations. While the limitations provisions improve special education by promoting equality and removing policy-making from the courts, they also create ambiguity and remove judicial safeguards. Congress should reconsider the IDEA's wording to better serve parents and schools while providing a federal statute of limitations.

Bibliography:**Constitution**

U.S. CONST amend X

Statutes

Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* (2005)
20 U.S.C. § 1681 (2004).
28 U.S.C. § 1658 (2004)
42 U.S.C. §§ 2000d-2000d7 (2004).
Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* (2004)

CAL. EDUC. CODE § 56321 (West 2005)
CAL. EDUC. CODE § 56505 (West 2005).
105 ILL. COMP. STAT. 5/14-8.02 (K) (2005)
MD. EDUC. CODE ANN. § 8-413h (2005).
[N.C. GEN. STAT. § 115C-116\(k\)](#) (2005)
[N.H. REV. STAT. ANN. § 186-C:16-b](#) (2005).
VA. CODE ANN. § 22.1-214 (2005).
WIS. STAT. § 115.80(1)(a) (2004).

Cases

Buckley v. Valeo, 424 U.S. 44 (1995)
Wilson v. Garcia, 471 U.S. 261(1985)
Burlington v. Dep't of Educ., 471 U.S. 359 (1985)
County of Oneida v. Oneida Indian Nation, 470 U.S. 226 (1985)
Del Costello v. Int'l Bd. of Teamsters, 462 U.S. 151 (1983)
Bd. of Educ. v. Rowley, 458 U.S. 176 (1982)
San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973)
Brown v. Bd. of Educ., 347 U.S. 483 (1954).
Chase Sec. Corp. v. Donaldson, 325 U.S. 304 (1945)

Shore Reg'l High Sch. Bd. of Educ. v. P.S., 381 F.3d 194 (3d Cir. 2004)
G. v. Fort Bragg Dependent Sch., 343 F.3d 295 (4th Cir. 2003)
M.D. v. Southington Bd. of Educ., 334 F.3d 217 (2d Cir. 2003)
R. R. v. Fairfax County Sch. Bd., 338 F.3d 325 (4th Cir. 2003)
M.M. v. Sch. Dist. of Greenville County, 303 F.3d 523 (4th Cir. 2002)
Ga. State Dep't of Educ. v. Cherry, 314 F.3d 545 (11th Cir. 2002)

Cory D. v. Burke County Sch. Dist., 285 F.3d 1294 (11th Cir. 2002)
S.V. v. Sherwood Sch. Dist., 254 F. 3d 877 (9th Cir. 2001)
C.M. v Bd. of Educ. of Henderson County, 241 F.3d 374 (4th Cir. 2001)
Birmingham v. Omaha Sch. Dist., 220 F.3d 850 (8th Cir. 2000)
Ridgewood Bd. of Educ. v. N.E. for M.E., 172 F.3d 238 (3d Cir. 1999)
Manning v. Fairfax County Sch. Bd., 176 F.3d 235 (4th Cir. 1999)
Cleveland Heights-Univ. Heights City Sch. Dist. v. Boss, 144 F.3d 391 (6th Cir. 1998)
Thompson v. Bd. of the Special Sch. Dist. No. 1, 144 F.3d 574 (8th Cir. 1998)
Zipperer v. Sch. Bd. of Seminole County, 111 F.3d 847 (11th Cir. 1997)
Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118 F.3d 245 (5th Cir. 1997)
Livingston Sch. Dist. Nos. 4 & 1 v. Keenan, 82 F.3d 912 (9th Cir. 1996)
Union Sch. Dist. v. Smith, 15 F.3d 1519 (9th Cir. 1994)
Dreher v. Amphitheater Unified Sch. Dist., 22 F.3d 228 (9th Cir. 1994)
Dell v. Board of Educ., Township High Sch. Dist. 113, 32 F.3d 1053 (7th Cir. 1994)
Amann v. Stow, 991 F.2d 929 (1st Cir. 1993)
Hall v. Knott County Bd. of Educ., 941 F.2d 402 (6th Cir. 1991)
Speigler v. Dist. of Columbia, 866 F.2d 461 (D.C. Cir. 1989)
Lachman v. Ill. State Bd. of Educ., 852 F.2d 290 (7th Cir. 1988)
Alexopoulos v. San Francisco Unified Sch. Dist, 817 F.2d 551 (9th Cir. 1987)
Schimmel v. Spillane, 819 F.2d 477 (4th Cir. 1987)
Janzen v. Knox County Bd. of Educ., 790 F.2d 484 (6th Cir. 1986).
Adler v. Educ. Dep't of New York, 760 F.2d 454 (2d Cir. 1985)
Dubois v. Conn. State Bd. of Education, 727 F.2d 44 (2d Cir. 1984)
Burlington v. Dep't of Educ., 736 F.2d 773 (1st Cir. 1984)
Dep't of Educ. v. Carl D., 695 F.2d 1154 (9th Cir. 1983)

A.A. v. Bd. of Educ., 255 F. Supp. 2d 119 (S.D.N.Y. 2003).
Amanda A. v. Coatesville Area Sch. Dist., 2005 U.S. Dist. LEXIS 2637 (E.D.Pa. 2005)
Fritschle v. Andes, 25 F. Supp. 2d 699 (D. Md. 1998)
Curtis K. v. Sioux City Cmty Sch. Dist., 895 F. Supp. 1197 (N.D. 1995)
Wills v. Ferrandino, 830 F. Supp. 116 (D. Conn. 1993)
Hebert v. Manchester Sch. Dist., 833 F. Supp. 80 (D.N.H. 1993)
Elizabeth K. v. Warrick County Sch. Corp., 795 F. Supp. 881 (D. Ind. 1992)
Elizabeth K. v. Warrick County Sch. Corp., 795 F. Supp. 881 (S.D. Ind. 1992)
Gertel v. Sch. Comm. of Brookline Sch. Dist., 783 F. Supp. 701 (D. Mass 1992)
Lawson v. Edwardsburg Pub. Sch., 751 F. Supp. 1257(W.D. Mich. 1990).
Bow School Dist. v. Quentin W., 750 F. Supp. 546 (D.N.H. 1990).
Saleh v. District of Columbia, 660 F. Supp. 212 (D.D.C. 1987)
Pa. Ass'n. for Retarded Children v. Pennsylvania, 334 F. Supp. 1257 (E.D. Pa. 1971)

Jonesboro Pub. Sch., 26 IDELR 1073 (Ala. SEA 1997)

Legislative Materials

H.R. 1350, 108th Cong. (2003)
S. REP. NO. 108-185 (2004)
150 CONG. REC. S11,653 (daily ed. Nov. 19, 2004) (statement of Sen. Reed)
150 CONG. REC. S5,405 (daily ed. May 13, 2004) (statement of Sen. Gregg)
149 CONG. REC. E847 (extensions of remarks May 1, 2003) (statement of Rep. Sandlin)
149 CONG. REC. H3,472 (daily ed. April 30, 2003) (statement of Rep. Carter).
149 CONG. REC. H3,464 (daily ed. April 20, 2003) (statement of Rep. Davis)
149 CONG. REC. H3,471 (daily ed. April 30, 2003) (statement of Rep. Kildee)
121 CONG. REC. 37,416 (1975) (statement of Sen. Williams)

Administrative Materials

34 C.F.R. § 300.300(a).

Secondary Materials

THOMAS F. GUERNSEY & KATHY KLARE, *SPECIAL EDUCATION LAW* (2d. ed. 2001)

MICHAEL IMBER & TYLL VAN GEEL, *EDUCATION LAW* (2d Ed. 2000)

ANNA LUKEMEYER, *COURTS AS POLICYMAKERS* (2003).

MARTHA M. MCCARTHY & NELDA H. CAMBRON-MCCABE, *PUBLIC SCHOOL LAW* (3d. ed 1992)

LAURA ROTHSTEIN, *SPECIAL EDUCATION LAW* (2000).

RUTHERFORD TURNBULL III, *FREE APPROPRIATE PUBLIC EDUCATION: THE LAW AND CHILDREN WITH DISABILITIES* (3d ed. 1990)

51 AM. JUR. 2D *Limitations of Actions* § 17 (2004)

Gerald Benjamin, *Reform in New York: The Budget, the Legislature, and the Governance Process*, 67 ALB. L. REV. 1021, 1152 (2004).

Susan H. Bitensky, *Theoretical Foundations for a Right to Education Under the U.S. Constitution: A Beginning to the End of the National Education Crisis*, 86 NW. U.L. REV. 550 (1992)

Theresa Bryant, *The Death Knell for School Expulsion; The 1997 Amendments to the Individuals with Disabilities Education Act*, 47 Am. U.L. Rev. 487 (1998).

Kara W. Edmunds, Note, *Implying Damages Under the Individuals with Disabilities Education Act: Franklin v. Gwinnett County Public Schools Adds New Fuel to the Argument*, 27 GA. L. REV. 789 (1993)

Stefan R. Hanson, *Buckhannon, Special Education Disputes, and Attorneys' Fees: Time for a Congressional Response Again*, 2003 BYU EDUC. & L.J. 519 (2003)

Michale Heise, *Children and Education: Tensions Within the Parent-Child-State Triad: The Courts, Educational Policy, and Unintended Consequences*, 11 CORNELL J. L. & PUB. POL'Y 633 (2002).

Jack Jennings, *Knocking on Your Door: The Federal Government is Taking a Stronger Role in Your Schools*, 189 AMERICAN SCHOOL BOARD JOURNAL 25 (2002), available at http://www.ctredpol.org/feded_programs/knockingdoor/knockingonyourdooraug2002.pdf.

Antonis Katsiyannis and Maria Herbst, *Punitive Damages in Special Education*, 15 JOURNAL OF DISABILITY POLICY STUDIES 9 (2004)

Robert A. Katzmann, *Making Sense of Congressional Intent: Statutory Interpretation and Welfare Policy*, 104 YALE L.J. 2345 (1995)

Roger J.R. Levesque, *The Right to Education in the United States: Beyond the Limits of the Lore and Lure of Law*, 4 ANN. SURV. INT'L & COMP. L. 205 (1997);

Ralph D. Mawdsley, *The Changing Face of Parents' Rights*, 2003 BYU EDUC. & L.J. 165 (2003)

Solomon Metzger, *Compensatory Education Under The Individuals With Disabilities Education Act*, 23 CARDOZO L. REV 1839 (2002)

Abner J. Mikva & James E. Pfander, *On the Meaning of Congressional Silence: Using Federal Common Law to Fill the Gap in Congress's Residual Statute of Limitations*, 107 YALE L.J. 393 (1997)

Gary L. Monserud, *The Quest for a Meaningful Mandate for the Education of Children with Disabilities*, 18 ST. JOHN'S J.KL. COMM. 675 (2004)

Allan Osborne, *Statutes of Limitations for Filing Lawsuits under the IDEA: A State by State Analysis*, 191 ED. LAW REP. 545 (forthcoming 2004).

Allan Osborne, *Statues of Limitations for Filing a Lawsuit Under the Individuals with Disabilities Education Act*, 106 ED. LAW REP. 959 (1996)

Stephen A. Rosenbaum, *Getting Inside a New IDEA, Getting Behind No Child Left Behind and Getting Outside of it all*, 15 HASTINGS WOMEN'S L.J. 1 (2004)

Stephen A. Rosenbaum, *When It's Not Apparent: Some Modest Advice to Parent Advocates for Students with Disabilities*, 5 U.C. DAVIS J. JUV. L. & POL'Y 159 (2001)

Laura Rothstein, *Reflections on Disability Discrimination Policy – 25 Years*, 22 U. ARK. LITTLE ROCK L. REV. 147 (2000)

Jennifer S. Rowe, *High School Exit Exams Meet IDEA - An Examination of the History, Legal Ramifications, and Implications for Local School Administrators and Teachers*, 2005 2004 BYU EDUC. & L. J. 75 (2004)

Christina Samuels, *Congress on the Verge of Reauthorizing Special Ed. Law*, 24 EDUCATION WEEK 1 (2004)

Christina Samuels, *Reauthorized IDEA Could Shift Power To School Districts*, 24 EDUCATION WEEK 1 (Dec. 1, 2004)

TENN. JURIS. LIMITATION OF ACTIONS § 2

Terry Jean Seligmann, *Not as Simple as ABC: Disciplining Children with Disabilities Under the 1997 IDEA Amendments*, 42 ARIZ. L. REV. 77 (2000)

Charles L. Zelden, *From Rights to Resources: The Southern Federal District Courts and the Transformation of Civil Rights in Education, 1968-1974*, 32 AKRON L. REV. 471 (1999)

Perry A. Zirkel, *The Statute of Limitations Under the Individuals with Disabilities Education Act: Is Montour Myopic?* 12 WIDENER L.J. 1 2003

Perry A. Zirkel & Peter J. Maher, *The Statute of Limitations under the Individuals with Disabilities Education Act*, 175 ED. LAW REP. 1 (2003).

Lauren Zykorie, *Reauthorizing Discipline for the Disabled Student: Will Congress Create a Better Balance in the Individuals with Disabilities Education Act (Idea)?*, 3 CONN. PUB. INT. L.J. 101 (2003).

Darren A. Craig, Note, *Actions Founded on Statutory Liability: Adopting a Limitations Period for Attorneys' Fees Actions Brought Under the Individuals with Disabilities Education Act*, 79 IND. L.J. 493 (2004)

Stephanie L. Gill, Comment, *Punitive Damages: Flying in the Face of the Individuals with Disabilities Education Act?*, 100 DICK. L. REV. 383 (1996)

Ed Halsell, Note, *Disabled School Children: Where Are Their Advocates?*, 23 J. JUV. L. 65 (2002).

COUNCIL FOR EXCEPTIONAL STUDENTS, *Analysis for IDEA Conference: H.R. 1350 and S. 1248 38*, available at <http://www.cec.sped.org/pp/IDEAConference.pdf>

DIVISION OF SPECIAL EDUCATION, TEXAS EDUCATION AGENCY, NOTICE OF PROCEDURAL SAFEGUARDS: RIGHTS OF PARENTS OF STUDENTS WITH DISABILITIES 2 (2002), available at <http://www.tea.state.tx.us/special.ed/explansaf/pdf/eng-ps.pdf>

HOUSE COMMITTEE ON EDUCATION AND THE WORKFORCE, Press Release, *House Approves Final Special Education Bill*, (November 19, 2004), available at <http://edworkforce.house.gov/press/press108/second/11nov/ideapasseshouse111904.htm>

INDIANA DEPARTMENT OF EDUCATION, NOTICE OF PROCEDURAL SAFEGUARDS AND PARENTS RIGHTS IN SPECIAL EDUCATION, available at <http://www.doe.state.in.us/exceptional/speced/pdf/NoticeofProceduralSafeguards.pdf>

Letter from Rep. John Carter & Rep. John A. Boehner, the Chairman of Education and the Committee on the Workforce, available at <http://edworkforce.house.gov/index.htm>

memorandum from the Autism Society, to society members, *November 2004 Action Alert: House and Senate Meet on IDEA on Nov 17* (Nov. 2004), available at <http://www.autism-society.org/>

NATIONAL ASSOCIATION OF PROTECTION AND ADVOCACY SYSTEMS, Summary of Major Changes Proposed in House IDEA Reauthorization Bill (HR 1350) Regarding Discipline and Due Process Protections (April 7, 2003), available at http://www.aucd.org/legislative_affairs/hr1350_due_process.htm

U.S. DEPARTMENT OF EDUCATION, Press Release, *Paige Releases Principles for Reauthorizing Individuals with Disabilities Education Act* (Feb 25, 2003), available at <http://www.ed.gov/news/pressreleases/2003/02/02252003.html>

Statutes of Limitation & the 2004 IDEA Reauthorization: The Good, the Bad, and the Unintended Consequences

"Few areas of the law stand in greater need of firmly defined, easily applied rules than does the subject of periods of limitations."

Wilson v. Garcia, 471 U.S. 261, 266 (1985).

A father, Alfred Edwards, glances at a handout given to him at a school meeting with the principal, the school psychologist, and his daughter's teachers. He reads the headings in the handout: "What are your rights related to identification and referral?" "What are your rights related to evaluation and reevaluation?"¹

He flips through the pages, and some words catch his eye— due process hearing, Individualized Education Plan, learning disabilities. He understands his eight-year-old daughter, Kaye, has extreme difficulty with math and reading, and now she is going to attend special classes. They are making a plan for her education, and if he does not agree with the way the school educates Kaye, he can complain.

Six months later, Mr. Edwards sees no improvement. In addition, Kaye's math and reading skills have deteriorated. If he waits too long to complain about the lack of Kaye's educational progress, his claim will be time-barred because the statute of limitations will have elapsed. What Mr. Edwards does not know—and what is not in his handout—is that the clock is ticking.

In the 2004 amendments to the Individuals with Disabilities Act ("IDEA"), Congress introduced federal statutes of limitation and mandated that schools inform parents of those limitation periods.² After a complex and difficult three-year reauthorization period, a bipartisan

¹ These questions are example questions, taken from DIVISION OF SPECIAL EDUCATION, TEXAS EDUCATION AGENCY, NOTICE OF PROCEDURAL SAFEGUARDS: RIGHTS OF PARENTS OF STUDENTS WITH DISABILITIES 2 (2002), available at <http://www.tea.state.tx.us/special.ed/explansaf/pdf/eng-ps.pdf>.

² Compare 20 U.S.C. § 1415 (2004) with 20 U.S.C. § 1415 (2005).

effort resulted in the successful passage of these amendments.³ By providing federal funding to state educational agencies, the IDEA supports states providing disabled students with a “free and appropriate public education” (FAPE) alongside their non-disabled peers.⁴ Optimistically, these amendments will prevent situations like Mr. Edwards’ predicament from occurring to other parents and students.

The new amendments focus on changing procedures both to ease administrative burdens on teachers and to maintain the provisions protecting and encouraging parental options and involvement in a student’s education.⁵ Included in the reauthorized IDEA “are new approaches to resolving [parental] complaints to head off litigation and to reducing paperwork.”⁶ According to Senator Gregg, the chairman of the Senate Committee on Health, Education, Labor, and Pensions:

“[t]he new procedures in the amended IDEA create dispute resolution in a more comfortable manner rather than a confrontational and litigious manner. . . . It will mean resources, instead of being focused on hiring attorneys and confrontation

³ HOUSE COMMITTEE ON EDUCATION AND THE WORKFORCE, Press Release, *House Approves Final Special Education Bill*, (November 19, 2004), available at <http://edworkforce.house.gov/press/press108/second/11nov/ideapasseshouse111904.htm>; see Christina Samuels, *Congress on the Verge of Reauthorizing Special Ed. Law*, 24 EDUCATION WEEK 1 (2004).

⁴ Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* (2005); see also *Ridgewood Bd. of Educ. v. N.E. for M.E.*, 172 F.3d 238, 247 (3d Cir. 1999); *Dubois v. Conn. State Bd. of Education*, 727 F.2d 44, 45 (2d Cir. 1984).

⁵ 20 U.S.C. § 1400 *et seq.* (2005); U.S. DEPARTMENT OF EDUCATION, Press Release, *Paige Releases Principles for Reauthorizing Individuals with Disabilities Education Act* (Feb 25, 2003), available at <http://www.ed.gov/pressreleases/2003/03/02252003.html>.

⁶ 150 CONG. REC. S11,653 (daily ed. Nov. 19, 2004) (statement of Sen. Reed) (commenting on the conference report being presented to the Senate).

in the courtroom or confrontation in a formal legal setting, can be focused on actually educating the child in the classroom.”⁷

This Comment focuses on an important aspect of the reauthorized, newly amended IDEA—the introduction of federal statutes of limitation for IDEA claims.⁸ Parents like the Edwards now will have two years to file a complaint for a due process hearing and ninety days to appeal a due process hearing decision, and schools must inform parents of these timelines.⁹

The addition of federal statutes of limitation for IDEA claims clarifies some ambiguities within the former state of the law. Yet the amendments fail to provide complete clarity because they do not specify when state statutes of limitation should be applied to the IDEA and the amendments lack consistency because they allow state legislatures to institute state-created statutes of limitation.¹⁰ This Comment will examine the implications of the amendments that introduce IDEA statutes of limitation, will discuss their benefits, drawbacks, and ambiguities, and will recommend alternative proposals to the amended law.

Until July 1, 2005 and enactment of the new IDEA amendments, courts, rather than Congress, determined statutes of limitation for claims asserted under the IDEA.¹¹ Courts, according to judicial precedent, compared the IDEA to analogous state statutes, resulting in substantial differences across state lines—and sometimes even within the same state—in the amount of time parents had either to file claims asserting a violation of the IDEA or to appeal an

⁷ 150 CONG. REC. S5,405 (daily ed. May 13, 2004) (statement of Sen. Gregg).

⁸ See 20 U.S.C. §§ 1415(f)(3)(c), 1415(i)(2)(b) (2005) (these amendments will not take effect until July 1, 2005); 150 CONG. REC. S5,405, (daily ed. May 13, 2004) (statement of Sen. Gregg).

⁹ 20 U.S.C. §§ 1415(f)(3)(c), 1415(i)(2)(b), 1415(d) (2005); see *infra* Part I for an explanation of IDEA procedures for parents.

¹⁰ 20 U.S.C. §§ 1415(f)(3)(c), 1415(i)(2)(b) (2005).

¹¹ See *Wilson v. Garcia*, 471 U.S. 261, 268-69 (1985); *Del Costello v. Int'l Bd. of Teamsters*, 462 U.S. 151, 158 (1983); compare 20 U.S.C. § 1415 (2004) with 20 U.S.C. § 1415 (2005).

administrative decision under the IDEA.¹² This Comment will examine the reasoning behind the courts' decisions as they chose the former statutes of limitation. Furthermore, this Comment will explain how the new statutes of limitation align with this judicial reasoning and both advance and undermine the policy decisions behind the new IDEA. The scope of this Comment is limited to the discussion of statutes of limitation for the initial IDEA due process hearing and the appeal to state or federal court.¹³

Part I of this Comment will focus on the history and purpose of the IDEA. Also, it will explain the various procedural safeguards existing to protect students' individual rights and how those rights are protected through litigation. Part II will examine the importance of statutes of limitation and the previous state of the law for determining statutes of limitation for due process hearing procedures and appeals from these hearings. It will survey the various policies applied by the judiciary as it sought to establish stability out of the disorder created by the absence of limitation periods. Part III will discuss the new amendments. It will explore the policies behind the new statutes of limitation, then will analyze the state-created limitations period exception and potential sources of confusion and inconsistency based on the amendments' application. Part IV will suggest alternative plans for Congress to adopt as a substitute to the new scheme for determining statutes of limitation. This Comment will conclude with a description of how

¹² Allan Osborne, *Limitation statutes of Limitation for Filing a Lawsuit Under the Individuals with Disabilities Education Act*, 106 ED. LAW REP. 959, 969 (1996); see *Ga. State Dep't of Educ. v. Cherry*, 314 F.3d 545, 546 (11th Cir. 2002).

¹³ For a discussion on the previous state of the law regarding attorneys fees and the IDEA, consider Stefan R. Hanson, *Buckhannon, Special Education Disputes, and Attorneys' Fees: Time for a Congressional Response Again*, 2003 BYU EDUC. & L.J. 519 (2003) and Darren A. Craig, Note, *Actions Founded on Statutory Liability: Adopting a Limitations Period for Attorneys' Fees Actions Brought Under the Individuals with Disabilities Education Act*, 79 IND. L.J. 493 (2004).

Congress, by allowing states to apply their own statutes of limitation, undermined its worthwhile goal of improving the IDEA by adding federal limitations period.

I. The IDEA: Historical Foundations Before the 2004 Reauthorization

The IDEA evolved from a belief in and requirement for equality in America's public schools.¹⁴ This federal legislation obliges states to provide educational opportunities for students with disabilities, but still entrusts states with particular decision-making powers.¹⁵ To ensure that states and schools supply these opportunities, the IDEA provides parents with an avenue for complaints and a mechanism for challenging resulting decisions if they feel that their child is not receiving a FAPE.¹⁶

A. State Control in Education and the IDEA

Traditionally, the role of determining education standards and policies belongs to state governments, rather than to the federal government.¹⁷ While no right to education exists under

¹⁴ See *infra* Part I.B.; see also *Pa. Ass'n. for Retarded Children v. Pennsylvania*, 334 F. Supp. 1257, 1262 (E.D. Pa. 1971) (creating the framework for federal legislation supporting disabled children's education); Laura Rothstein, *Reflections on Disability Discrimination Policy – 25 Years*, 22 U. ARK. LITTLE ROCK L. REV, 147, 148 (2000).

¹⁵ See *infra* Part I.B.1.; see also 20 U.S.C. § 1400 *et seq.* (2005).

¹⁶ See *infra* Part I.B.; see also 20 U.S.C. § 1415 (2005).

¹⁷ MARTHA M. MCCARTHY & NELDA H. CAMBRON-MCCABE, *PUBLIC SCHOOL LAW 1* (3d. ed 1992); Ralph D. Mawdsley, *The Changing Face of Parents' Rights*, 2003 BYU EDUC. & L.J. 165, 165 n.1 (2003) (federal constitution does not delegate the power of education to the national government so it is reserved to the states); see U.S. CONST. amend. X.

the Federal Constitution,¹⁸ every state constitution includes guarantees of education.¹⁹ State legislative powers generally contain the ability to establish many of the state's education policies, including the authority to "raise revenue and distribute education funds, . . . prescribe curricular offerings, [and] establish pupil performance standards."²⁰

However, the Federal Constitution also protects individuals as states provide educational opportunities.²¹ In the area of civil rights, federal law performs a central role in promoting equal educational opportunity.²² The Supreme Court's decision in *Brown v. Board of Education* captures this federal role by declaring that discriminating against students based on their race is unconstitutional.²³ Through Title VI of the Civil Rights Act of 1964 addressing race

¹⁸ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973); see U.S. CONST.

¹⁹ Susan H. Bitensky, *Theoretical Foundations for a Right to Education Under the U.S. Constitution: A Beginning to the End of the National Education Crisis*, 86 NW. U.L. REV. 550, 587 (1992) (citing applicable constitutional provisions by state).

²⁰ MCCARTHY & CAMBRON-MCCABE, *supra* note 17, at 2.

²¹ Jack Jennings, *Knocking on Your Door: The Federal Government is Taking a Stronger Role in Your Schools*, 189 AMERICAN SCHOOL BOARD JOURNAL 25, 25 (2002), available at http://www.ctredpol.org/feded_programs/knockingdoor/knockingonyourdooraug2002.pdf; Roger J.R. Levesque, *The Right to Education in the United States: Beyond the Limits of the Lore and Lure of Law*, 4 ANN. SURV. INT'L & COMP. L. 205, 216 (1997); see RUTHERFORD TURNBULL III, FREE APPROPRIATE PUBLIC EDUCATION: THE LAW AND CHILDREN WITH DISABILITIES 10 (3d ed. 1990).

²² Charles L. Zelden, *From Rights to Resources: The Southern Federal District Courts and the Transformation of Civil Rights in Education, 1968-1974*, 32 AKRON L. REV. 471, 473 (1999).

²³ *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954). In *Brown*, the Supreme Court declared "separate educational facilities are inherently unequal." *Id.* See TURNBULL *supra* note 21, at 10 (comparing the children in *Brown* with students with disabilities).

discrimination²⁴ and Title IX of the Education Amendments of 1972 prohibiting sex discrimination in schools that receive federal financial assistance,²⁵ the federal government continued influencing education and protecting the civil rights of students.²⁶

Civil rights in education also extend to students with disabilities.²⁷ Congress began appropriating federal funding for students with disabilities in 1970.²⁸ However, the 1975 Education For All Handicapped Children Act (“EAHCA”) caused the federal revenue to become tied to “procedural safeguards, integration, and nondiscriminatory testing and evaluation materials and procedures” for disabled students.²⁹ Congressional findings supporting the creation of the EAHCA concluded “that a majority of handicapped children in the United States ‘were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when

²⁴ 42 U.S.C. §§ 2000d-2000d7 (2004).

²⁵ 20 U.S.C. § 1681 (2004).

²⁶ See Lauren Zykorie, *Reauthorizing Discipline for the Disabled Student: Will Congress Create a Better Balance in the Individuals with Disabilities Education Act (Idea)?*, 3 CONN. PUB. INT. L.J. 101, 106 (2003).

²⁷ MCCARTHY & CAMBRON-MCCABE, *supra* note 17, at 164-65; TURNBULL, *supra* note 21, at 12-13; Gary L. Monserud, *The Quest for a Meaningful Mandate for the Education of Children with Disabilities*, 18 ST. JOHN’S J. LEGAL COMMENT. 675, 687-88 (2004); see 20 U.S.C. § 1400 (2005) (includes purpose of the IDEA).

²⁸ In 1970, Congress created the Education of the Handicapped Act (“EHA”). LAURA ROTHSTEIN, SPECIAL EDUCATION LAW 21 (2000). However, this legislation only granted federal funds to the states, requiring very little protection of students in return. *Id.* The EHA was generally unsuccessful. See *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179 (1982).

²⁹ ROTHSTEIN, *supra* note 28, at 21 (includes excerpts from the 1973-1974 Senate hearings for the Committee on Labor and Public Welfare, giving examples of the shortcomings in special education in the early 1970s, before the 1975 amendments).

they were old enough to 'drop out.'"³⁰ Congress renamed the EACHA the IDEA in 1990.³¹ The IDEA "creates individual rights" for children with disabilities.³²

However, states retain substantial decision-making under the IDEA in determining how they will protect the rights of disabled children.³³ While states must comply with the IDEA to receive federal funds,³⁴ they have considerable leeway regarding child placement in the program,³⁵ general curriculum,³⁶ and due process procedures.³⁷ Moreover, if the *state* standards regarding children with disabilities meet higher standards than those set by the IDEA, the state standards are enforceable so long as they are consistent with the federal standards.³⁸ The newly

³⁰ *Rowley*, 458 U.S. at 179 (quoting H.R. REP. NO. 94-332, p. 2 (1975)). See Ed Halsell, Note, *Disabled School Children: Where Are Their Advocates?*, 23 J. JUV. L. 65, 65 (2002).

³¹ Halsell, *supra* note 30, at 66.

³² ROTHSTEIN, *supra* note 28, at 21.

³³ See Terry Jean Seligmann, *Not as Simple as ABC: Disciplining Children with Disabilities Under the 1997 IDEA Amendments*, 42 ARIZ. L. REV. 77, 111 (2000).

³⁴ 20 U.S.C. § 1411 (2005); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 247 (5th Cir. 1997); THOMAS F. GUERNSEY & KATHE KLARE, *SPECIAL EDUCATION LAW* 6 (2d. ed. 2001).

³⁵ *Lachman v. Ill. State Bd. of Educ.*, 852 F.2d 290, 297 (7th Cir. 1988).

³⁶ See Seligmann, *supra* note 33, at 111.

³⁷ States may apply their substantive law regarding due process procedures. *Burlington v. Dep't of Educ.*, 736 F.2d 773, 779 (1st Cir. 1984), *aff'd* 471 U.S. 35 (1985). The IDEA asserts that states can also determine whether the due process procedure begins on a state or a local level. 20 U.S.C. § 1415(f)(1)(a) (2005); see VA. CODE ANN. § 22.1-214 (2005).

³⁸ *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1527 (9th Cir. 1994) (determining the suitability of a child's placement under the IDEA by using California's stricter education protections for children with disabilities).

amended IDEA also reserves state power by allowing states to create their own “explicit time limitation” for IDEA initial due process complaints and hearing appeals.³⁹

B. IDEA Goals and Basic Procedures

The IDEA attempts to lessen a variety of educational and societal disadvantages that children with special needs face.⁴⁰ According to its statement of purpose, the IDEA’s goal is to provide “equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.”⁴¹ Under the IDEA, each student with disabilities must receive a FAPE, with uniquely tailored, individualized instruction and procedural safeguards to ensure the student’s progress.⁴² The Supreme Court interpreted FAPE to require “education instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child ‘to benefit’ from the instruction.”⁴³

States and local governments must follow certain procedures to obtain federal IDEA funding.⁴⁴ First, states and local educational agencies receiving IDEA funding must identify students needing special education.⁴⁵ After an evaluation determining that a student qualifies for

³⁹ 20 U.S.C. §§ 1415 (b)(6)(b); 1415(i)(2)(b) (2005).

⁴⁰ See 20 U.S.C. § 1400 (2005); *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179 (1982).

⁴¹ 20 U.S.C. § 1400(c)(1) (2005).

⁴² *Id.* §§ 1401(18), 1415; see *Rowley*, 458 U.S. at 176 (offering a detailed explanation of the definition of a FAPE); see also *Thompson v. Bd. of the Special Sch. Dist. No. 1*, 144 F.3d 574, 578 (8th Cir. 1998).

⁴³ *Rowley*, 458 U.S. at 188-89.

⁴⁴ See, e.g., 20 U.S.C. § 1415(a)(1)-(3) (2005); 34 C.F.R. § 300.300(a).

⁴⁵ 20 U.S.C. § 1415(a) (2005); see *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 198 (3d Cir. 2004).

special education, a team of teachers, administrators, and the student's parents create an Individualized Education Plan ("IEP") for the student.⁴⁶ The IEP, the "required vehicle . . . for FAPE,"⁴⁷ explains the student's "measurable annual goals" and includes descriptions of the modifications and support that the school will provide to the student for attainment of those goals.⁴⁸

Congress amended the IDEA numerous times to improve the education of children with disabilities, changing the substance of the statute since 1975.⁴⁹ In December 2004, Congress again reauthorized the IDEA.⁵⁰ The reauthorization takes effect on July 1, 2005, and drastically changes many of the previous rules and requirements of states, schools, and parents.⁵¹

1. Procedural Safeguards in the IDEA

⁴⁶ 20 U.S.C. § 1414 (2005); see *G. v. Fort Bragg Dependent Sch.*, 343 F.3d 295, 298-99 (4th Cir. 2003). See *Shore Reg'l High Sch. Bd. of Educ.*, 381 F.3d at 198, for an explanation of how New Jersey determines how children qualify for special education.

⁴⁷ Perry A. Zirkel, *The Statute of Limitations Under the Individuals with Disabilities Education Act: Is Montour Myopic?* 12 WIDENER L.J. 1, 4 2003.

⁴⁸ 20 U.S.C. § 1414(d) (2005); see *Fort Bragg Dependent Sch.*, 343 F.3d at 298-99.

⁴⁹ Jennifer S. Rowe, *High School Exit Exams Meet IDEA - An Examination of the History, Legal Ramifications, and Implications for Local School Administrators and Teachers*, 2005 2004 BYU EDUC. & L. J. 75, 85-86 (2004); see GUERNSEY & KLARE, *supra* note 34, at 7; Christina Samuels, *Reauthorized IDEA Could Shift Power To School Districts*, 24 EDUCATION WEEK 1 (2004).

⁵⁰ Associated Press, *Congress Backs Special-Ed Changes: Discipline Issues, Parent Disputes and Paperwork Addressed*, WASH. POST., Nov. 20 2004, at A5.

⁵¹ Compare 20 U.S.C. §§ 1414, 1415 (2004) with 20 U.S.C. §§ 1414, 1415 (2005); see *infra* Part III.

While procedural safeguards serve multiple purposes in the IDEA, their primary purpose concentrates on a child's right to a FAPE.⁵² Procedural safeguards protect the due process rights of students with disabilities.⁵³ Additionally, these safeguards help guarantee that special education students receive "equal protection in their education programming."⁵⁴ The IDEA incorporates an "elaborate mechanism"⁵⁵ for dispute resolution, including enforcement provisions regarding parental notice,⁵⁶ mediations,⁵⁷ due process hearings,⁵⁸ and appeals to state or federal court.⁵⁹ These safeguards also require the federal government "to assess, and ensure the effectiveness of, efforts to educate children with disabilities."⁶⁰

The procedural safeguards involve parents in their child's education and ensure that parents are informed of their options.⁶¹ To meet the mandates of the IDEA, parents and schools must work closely together.⁶² The IDEA's "path of administrative and judicial proceedings" compels parents and school districts to participate on a "level . . . playing field" for the placement

⁵² See Zirkel, *supra* note 47, at 4. Other purposes of the IDEA include federal evaluation and assurance that states are meeting funding requirements. 20 U.S.C. § 1411 (2005).

⁵³ ROTHSTEIN, *supra* note 28, at 13.

⁵⁴ *Id.*

⁵⁵ Osborne, *supra* note 12, at 960.

⁵⁶ 20 U.S.C. § 1415(d) (2005).

⁵⁷ *Id.* § 1415(e).

⁵⁸ *Id.* § 1415(f).

⁵⁹ *Id.* § 1415(i)(2)(a).

⁶⁰ *Id.* § 1400; see also *A.A. v. Bd. of Educ.*, 255 F. Supp. 2d 119, 124 (S.D.N.Y. 2003).

⁶¹ 20 U.S.C. § 1415(d)(2005).

⁶² See Mawdsley, *supra* note 17, at 176.

⁶² See 20 U.S.C. § 1415 (2005).

and education of the child with disabilities.⁶³ These safeguards allow parents recourse particularly if they believe the school incorrectly placed their child or failed to provide their child with a FAPE.⁶⁴

Informational safeguards ensure that parents are informed of their due process options.⁶⁵ Schools notify parents about their child's educational status at placement, once a year at progress meetings, and any time the school changes the student's education plan.⁶⁶ Moreover, parents receive notification handouts from schools at their child's initial special education placement and throughout their child's education.⁶⁷ These mandated lists of "procedural safeguards" include information regarding protesting a student's placement and education.⁶⁸

⁶³ Solomon Metzger, *Compensatory Education Under The Individuals With Disabilities Education Act*, 23 CARDOZO L. REV 1839, 1840 (2002). If a school wishes to change a child's placement under the IDEA, the school must notify the parents in writing and explain why the school wishes to change the placement. 20 U.S.C. § 1415(b)(3) (2005); see *infra* notes 213-18 and accompanying text (discussing changes to the parental notification section of the IDEA).

⁶⁴ Zirkel, *supra* note 47, at 4.

⁶⁵ See *M.M. v. Sch. Dist. of Greenville County*, 303 F.3d 523, 527 (4th Cir. 2002) (stating that the IDEA is "designed to ensure that the parents or guardian of a child with a disability are both notified of decisions affecting their child and given an opportunity to object to these decisions").

⁶⁶ 20 U.S.C. § 1415(d) (2005).

⁶⁷ *Id.* For examples of procedural safeguards parent handouts, see DIVISION OF SPECIAL EDUCATION, TEXAS EDUCATION AGENCY, *supra* note 1, and INDIANA DEPARTMENT OF EDUCATION, NOTICE OF PROCEDURAL SAFEGUARDS AND PARENTS RIGHTS IN SPECIAL EDUCATION, *available at* <http://www.doe.state.in.us/exceptional/speced/pdf/NoticeofProceduralSafeguards.pdf>.

⁶⁸ 20 U.S.C. § 1415(d)(2) (2005).

If a parent disagrees with either the current IEP or the way the school educates her child, the parent may file a complaint with the school system or ask for a mediation.⁶⁹ Parents may “present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to such child.”⁷⁰ After filing the complaint, the parent also may ask for an impartial due process hearing, the “cornerstone” of the IDEA’s dispute resolution formula.⁷¹ If the parents are dissatisfied with the outcome of the due process hearing, they may appeal to state or federal court.⁷²

If parents succeed in their due process hearing or appeal, courts may grant a variety of remedies.⁷³ The text of the IDEA provides little guidance on the remedies available to plaintiffs, stating that the court may “grant such relief as the court determines is appropriate.”⁷⁴ Courts

⁶⁹ *Id.* § 1415(e)(1) (each state must provide a mediation option for parents who have a complaint regarding their child’s IEP, placement, or the educational service the child is receiving).

⁷⁰ 20 U.S.C. § 1415(b)(6) (2005).

⁷¹ Mawdsley, *supra* note 17, at 176; Perry A. Zirkel & Peter J. Maher, *The Statute of Limitations under the Individuals with Disabilities Education Act*, 175 ED. LAW REP. 1, 1 (2003). An impartial party administers the hearing. 20 U.S.C. § 1415(k).

⁷² 20 U.S.C. § 1415(g) (2005).

⁷³ See Kara W. Edmunds, Note, *Implying Damages Under the Individuals with Disabilities Education Act: Franklin v. Gwinnett County Public Schools Adds New Fuel to the Argument*, 27 GA. L. REV. 789, 797-816 (1993); Stephanie L. Gill, Comment, *Punitive Damages: Flying in the Face of the Individuals with Disabilities Education Act?*, 100 DICK. L. REV. 383, 439 (1996); see also Burlington v. Dep’t of Educ., 471 U.S. 359, 269-71 (1985); Antonis Katsiyannis and Maria Herbst, *Punitive Damages in Special Education*, 15 JOURNAL OF DISABILITY POLICY STUDIES 9, 9 (2004).

⁷⁴ 20 U.S.C. § 1415(i)(2)(b)(iii) (2005).

allow injunctive relief,⁷⁵ compensatory education,⁷⁶ and some permit tuition reimbursement if the parents move the child to a private school.⁷⁷

The intricate system of due process hearings and IDEA student placement often confused parents and school systems, producing disgruntled parents and school administrators.⁷⁸ Moreover, the lack of a federal IDEA statute of limitations frustrated the due process system as parents failed to realize the amount of time that they had to either file a due process complaint or appeal a due process hearing decision.⁷⁹

II. State Variance on IDEA Statutes of Limitation: The Previous State of the Law

While the previous version of the IDEA lacked any federal statutes of limitation for parents bringing a claim under its provisions, recent amendments include a federal limitations

⁷⁵ Saleh v. Dist. of Columbia, 660 F. Supp. 212, 214 (D.D.C. 1987).

⁷⁶ See Solomon Metzger, *Compensatory Education Under The Individuals With Disabilities Education Act*, 23 CARDOZO L. REV 1839, 1862-63 (2002) (compensatory education includes funding student's attendance at private schools if the local public schools cannot serve the student's needs). The scope of this comment does not extend to compensatory damages or attorney's fees. The newly amended IDEA has a new approach to attorney's fees. See 20 U.S.C. § 1415(i)(3) (2005).

⁷⁷ Zirkel, *supra* note 47, at 4. For a discussion on various IDEA remedies, see Metzger, *supra* note 77, at 1839.

⁷⁸ See Stephen A. Rosenbaum, *When It's Not Apparent: Some Modest Advice to Parent Advocates for Students with Disabilities*, 5 U.C. DAVIS J. JUV. L. & POL'Y 159, 168 (2001).

⁷⁹ Schimmel v. Spillane, 819 F.2d 477, 482 (4th Cir. 1987).

period.⁸⁰ The earlier absence of IDEA statutes of limitation forced courts to tackle problems created by this absence, but resulted in new conflicts and concerns.⁸¹

Part II addresses the prior state of the law and the negative implications and effects of the lack of statutes of limitation in the IDEA, then Part III will explain how the 2004 amendments confront difficulties created by the preceding IDEA but still necessitate the protections of oversight that Congress recently removed.

A. Statutes of Limitation: Their Importance & General Applications

Courts employ statutes of limitation to preclude a plaintiff from bringing claims after an established period of time.⁸² Statutes of limitation “destroy[] any right and remedy of the potential claimant.”⁸³ Additionally, limitation periods are “necessary and convenient,”⁸⁴ because they prevent parties from “litigat[ing] stale claims.”⁸⁵ Litigating claims within the limitation period allows evidence to be fresh on witnesses’ minds,⁸⁶ prevents defendants from defending claims when

⁸⁰ 20 U.S.C. § 1415 (2005); Allan Osborne, *Statutes of Limitations for Filing Lawsuits under the IDEA: A State by State Analysis*, 191 ED. LAW REP. 545 (forthcoming 2004).

⁸¹ See, e.g., *Amann v. Stow*, 991 F.2d 929 (1st Cir. 1993); *Curtis K. v. Sioux City Cmty. Sch. Dist.*, 895 F. Supp. 1197, 1213 (N.D. 1995).

⁸² Zirkel & Maher, *supra* note 72, at 1.

⁸³ *Id.*

⁸⁴ *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (U.S., 1945) *rev'd on other grounds*.

⁸⁵ *Id.*; see Zirkel & Maher, *supra* note 72, at 1.

⁸⁶ *Chase Sec. Corp.*, 325 U.S. at 314.

evidence has decayed,⁸⁷ and protects the expectations of parties by limiting the time in which plaintiffs can bring claims.⁸⁸

Although statutes of limitation provide predictability, Congress sometimes fails to incorporate a statute of limitations into a federal statute.⁸⁹ Before the 2004 amendments, the IDEA neglected to contain statutes of limitation for any of the potential claims parents could bring under the statute, including both the initiation of a due process hearing and the appeal to state or federal court of a due process hearing decision.⁹⁰ When Congress gives no guidelines for a limitations period, courts generally borrow a limitations period from “an analogous cause of action” in a state statute, “provided that the application of the state statute would not be inconsistent with underlying federal policies.”⁹¹ Therefore, the absence of IDEA limitation periods required courts to make two inquiries when trying to find an analogous statute.⁹² A court first determined which type of state statute was analogous, and then determined whether the chosen state statute aligned with the IDEA’s policies.⁹³

⁸⁷ See *id.*

⁸⁸ Zirkel & Maher, *supra* note 72, at 1; see 1 TENN. JURIS. LIMITATION OF ACTIONS § 2.

⁸⁹ Abner J. Mikva & James E. Pfander, *On the Meaning of Congressional Silence: Using Federal Common Law to Fill the Gap in Congress’s Residual Statute of Limitations*, 107 YALE L.J. 393, 395 (1997). Although statutes of limitation allow predictability, approximately two hundred federal statutes lack a statute of limitations. *Id.*

⁹⁰ See 20 U.S.C. § 1415; Zirkel & Maher, *supra* note 72, at 1.

⁹¹ *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 240 (1985); see *Wilson v. Garcia*, 471 U.S. 261, 268-69 (1985); *Speigler v. Dist. of Columbia*, 866 F.2d 461, 464-65 (D.C. Cir. 1989).

⁹² See *Lawson v. Edwardsburg Pub. Sch.*, 751 F. Supp. 1257, 1259 (W.D. Mich. 1990).

⁹³ See *supra* notes 90-93 and accompanying text.

B. Pre-2004: Obstacles Resulting from No IDEA Statutes of Limitations

Numerous inconsistencies across states emerged without the guidance of federal statutes of limitation for both the initiation of a due process hearing and the appeal to state or federal court of a due process hearing decision.⁹⁴ While courts found assorted applicable analogous statutes to the IDEA, some states legislatures adopted their own.⁹⁵ As statutes of limitation varied across the United States, these inconsistencies affected the equality of parental rights and the liability of schools across states.⁹⁶ Moreover, the absence of IDEA statutes of limitation resulted in both uninformed parents and schools and policies that undermined the IDEA's purpose.⁹⁷

1. Pre-2004 Amendments: Statutes of Limitation & Judicial Determinations

⁹⁴ See *Curtis K. v. Sioux City Cmty Sch. Dist.*, 895 F. Supp. 1197, 1213 (N.D. 1995) (noting that “a surprising variety of statutes of limitation[] in terms of both sources and durations” emerged as courts attempt to apply appropriate IDEA statutes of limitation); Osborne, *supra* note 81, at 1.

⁹⁵ See [N.C. GEN. STAT. § 115C-116\(k\)](#) (2005) (instituting a thirty day statute of limitations for filing an appeal of a due process decision); *Janzen v. Knox County Bd. of Educ.*, 790 F.2d 484, 488 (6th Cir. 1986). The Judicial Improvement Act of 1990 established a four year statute of limitations for federal statutes without particular time limits enacted after 1990. 28 U.S.C. § 1658 (2004). Yet, the IDEA predated this Act, so it did not apply to create a statute of limitations for the IDEA. See *Craig*, *supra* note 13, at 498. Some commentators argue that the Act could have applied to the IDEA, but the new amendments make this argument irrelevant. See Osborne, *supra* note 81, at 1 (2004).

⁹⁶ See *infra* Part II.B.

⁹⁷ See *Schimmel v. Spillane*, 819 F.2d 477, 482 (4th Cir. 1987).

The reasoning employed by judges to establish analogous statutes of limitation for IDEA claims varied broadly by court.⁹⁸ When determining analogous IDEA statutes, courts differed on both the type of statutes and the applicable length of time.⁹⁹ Zirkel and Maher aptly considered the inconsistency in length and reasoning to be “wide variety without particular consistency.”¹⁰⁰

Courts employed many types of analogous state statutes to create IDEA statutes of limitation.¹⁰¹ Differentiation within state statutory schemes escalated courts’ confusion in applying analogous statutes, because the potentially applicable statutes varied in each

⁹⁸ Osborne, *supra* note 81, at 1.

⁹⁹ Even previous judicial interpretations determining an analogous statute neglected to guarantee consistency and predictability within a single state. See *Manning v. Fairfax County Sch. Bd.*, 176 F.3d 235, 239 (4th Cir. 1999); *Cleveland Heights-Univ. Heights City Sch. Dist. v. Boss*, 144 F.3d 391 (6th Cir. 1998). When applying analogous statutes, some courts, including those in the Sixth Circuit, considered the claims on a case-by-case basis. See *Elizabeth K. v. Warrick County Sch. Corp.*, 795 F. Supp. 881, 883 (D. Ind. 1992). When courts did rely on precedents to determine the applicable statute, legislatures sometimes amended statutes that lent statutes of limitation to specific IDEA causes of actions, causing the statute’s applicable timeline for bring an IDEA claim to change as well. See *Manning v. Fairfax County Sch. Bd.*, 176 F.3d 235, 239 (4th Cir. 1999).

¹⁰⁰ Zirkel & Maher, *supra* note 72, at 1.

¹⁰¹ See, e.g., *S.V. v. Sherwood Sch. Dist.*, 254 F. 3d 877, 881 (9th Cir. 2001) (holding that the state tort claims act statute of limitations is analogous to an IDEA statute of limitations); *Wills v. Ferrandino*, 830 F. Supp. 116, 120 (D. Conn. 1993) (holding that an administrative period of review is analogous to the IDEA). For a comprehensive examination of IDEA statutes of limitation and the applicable common law pre-IDEA amendments, see Osborne, *supra* note 81, at 1; Osborne, *supra* note 12, at 959; Zirkel & Maher, *supra* note 72, at 1.

jurisdiction.¹⁰² Courts considered the type of claim being brought, including the incorrect placement and the failure of a school to provide the child a FAPE, when determining which type of statute to use.¹⁰³ For the initial filing of an IDEA due process complaint, courts compared this action to personal injury and tort claims,¹⁰⁴ actions against the state,¹⁰⁵ and general statute-created claim limitations.¹⁰⁶ Courts most often analogized IDEA due process appeals to administrative appeals statutes.¹⁰⁷

As courts selected a variety of applicable statutes, a range of time lengths developed for bringing a due process hearing or appeal.¹⁰⁸ While they performed the two-step process for finding analogous statutes described above, courts often disagreed about the measure of time

¹⁰² See *Birmingham v. Omaha Sch. Dist.*, 220 F.3d 850 (8th Cir. 2000) (discussing potential applications of *Strawn v. Mo. State Bd. of Educ.*, 210 F.3d 954 (8th Cir. 2000)).

¹⁰³ See, e.g., *Wills*, 830 F. Supp. 116 at 120.

¹⁰⁴ See, e.g., *S.V. v. Sherwood Sch. Dist.*, 254 F.3d 877, 881 (9th Cir. 2001) (applying a two year statute of limitations for the initial bringing of a due process hearing).

¹⁰⁵ *Lawson v. Edwardsburg Pub. Sch.*, 751 F. Supp. 1257 (W.D. Mich. 1990).

¹⁰⁶ *Dreher v. Amphitheater Unified Sch. Dist.*, 22 F.3d 228, 232 (9th Cir. 1994) (holding that Arizona's one year limitations period for "liabilities created by statute, other than penalty or forfeiture" applied rather than the administrative review limit).

¹⁰⁷ See *Dep't of Educ. v. Carl D.*, 695 F.2d 1154, 1157 (9th Cir. 1983). Not all states used administrative appeals statutes. New York applied Article 48, a "proceeding available to compel public officials to comply with their responsibilities." *Adler v. Educ. Dep't of New York*, 760 F.2d 454, 457 (1985).

¹⁰⁸ Zirkel & Maher, *supra* note 72, at 6 (listing various states' applicable time limitations in a chart).

that would best serve IDEA federal policies.¹⁰⁹ For the initial time frame for requesting an IDEA due process hearing, jurisdictions varied from North Carolina's sixty day statute of limitations to Arkansas' five years,¹¹⁰ and for time frames to appeal a hearing decision, jurisdictions fluctuated from Massachusetts' thirty days to Kentucky's five years.¹¹¹ While most courts found that the appropriate limitations period for the initial complaint lasted between one to three years from the time the cause of action accrued¹¹² and provided much shorter periods for the appeal time limitation,¹¹³ these variations caused incongruities among the rights of parents and schools.¹¹⁴

¹⁰⁹ See *Wilson v. Garcia*, 471 U.S. 261, 268-69 (1985)(explaining policy reasons); 51 AM. JUR. 2D *Limitations of Actions* § 17 (2004); compare *Zipperer v. Sch. Bd. of Seminole County*, 111 F.3d 847, 851 (11th Cir.) (applying a two year statute of limitations for initial due process complaints in Georgia) with *Alexopoulos v. San Francisco Unified Sch. Dist.*, 817 F.2d 551, 556 (9th Cir. 1987) (applying a three year statute of limitations for the same claim in California).

¹¹⁰ Compare *C.M. v Bd. of Educ. of Henderson County*, 241 F.3d 374 (4th Cir. 2001) *cert. denied*, 534 U.S. 818 (2001), *rev'd on other grounds* (applying a sixty day statute of limitations in North Carolina) with *Jonesboro Pub. Sch.*, 26 IDELR 1073 (Ala. SEA 1997) (applying a five year statute of limitations in Arkansas).

¹¹¹ Compare *Gertel v. Sch. Comm. of Brookline Sch. Dist.*, 783 F. Supp. 701, 707 (D. Mass 1992) with *Hall v. Knott County Bd. of Educ.*, 941 F.2d 402, 409-10 (6th Cir. 1991) (applying a five year statute of limitations in Kentucky but noting that a one year time limitation could also apply).

¹¹² See, e.g., *Dreher v. Amphitheater Unified Sch. Dist.*, 22 F.3d 228, 232 (9th Cir. 1994).

Causes of action accrue in federal law when a "[plaintiff] knew or had reason to know of the injury that constitutes the basis of their action." *Id.*

¹¹³ *Wills v. Ferrandino*, 830 F. Supp. 116, 120-21 (D. Conn., 1993) (discussing how courts prefer shorter lengths for appeals' statutes of limitation).

¹¹⁴ Osborne, *supra* note 81, at 1.

While their ultimate conclusions often differed, courts generally contemplated the same policy considerations when searching for analogous limitation periods for the IDEA.¹¹⁵ Courts sought similar state statutes to best serve the federal policies underlying the IDEA,¹¹⁶ so when considering time frames for bringing the initial due process hearing, they generally abandoned statutes with either very short or very long lengths.¹¹⁷ Short lengths of time endangered parents' ability to "protect their disabled children's rights" while long limitation periods prevented the "expeditious resolution of claims," harming the child's education by tolerating too much time between the origination of the educational problem and its resolution.¹¹⁸

Concern for the expedient solution of problematic educational situations while balancing the protection of parental rights dominated judicial decision-making.¹¹⁹ When considering the policy behind their applicable choices, courts recalled the words of Senator Harrison Williams, who, in the debate for the initial creation of the IDEA, considered the "*urgent need for prompt resolution of questions involving the education of handicapped children.*"¹²⁰ Moreover, Senator

¹¹⁵ See *Wills*, 830 F. Supp. at 120-21.

¹¹⁶ *Dreher*, 22 F.3d at 232.

¹¹⁷ See, e.g., *S.V. v. Sherwood Sch. Dist.*, 254 F.3d 877, 881 (9th Cir. 2001) (choosing a two year statute of limitations over a six year statute of limitations for the initial bringing of a due process hearing).

¹¹⁸ *Sherwood Sch. Dist.*, 254 F.3d at 882 (citing *Strawn v. Mo. State Bd. of Educ.*, 210 F.3d 954, 958 (8th Cir. 2000)).

¹¹⁹ See, e.g., *Spiegler v. Dist. of Columbia*, 866 F.2d 461, 467 (D.C. Cir. 1989).

¹²⁰ 121 CONG. REC. 37,416 (1975) (statement of Sen. Williams) (emphasis added). Senator Williams was quoted by courts in multiple states while trying to determine applicable statutes of limitation. See, e.g., *Dell v. Board of Educ., Township High Sch. Dist. 113*, 32 F.3d 1053, 1060 (7th Cir. 1994); *Spiegler*, 866 F.2d at 467; *Bow School Dist. v. Quentin W.*, 750 F. Supp. 546, 550 n.7 (D.N.H. 1990).

Williams “expected that *all hearings and reviews* conducted pursuant to these provisions will be *commenced and disposed of as quickly as practicable* consistent with a fair consideration of the issues involved.”¹²¹

Courts generally found that the statutory scheme of the IDEA coordinated well with a shorter statute of limitations for the appeals process.¹²² A shorter statute of limitations corresponded with IDEA regulations requiring an administrative hearing forty-five days after the request for an original due process hearing, with the hearing decision being made within thirty days.¹²³ Moreover, plaintiffs needed minimal time for investigation because plaintiffs have already been before a board, therefore not necessitating a longer period of time for research.¹²⁴ Most importantly, a shorter length of time prevented parents from carelessly disregarding their children’s educational issues, by “provid[ing] prompt resolution” and the receipt of “statutorily prescribed education when [children] can most benefit from it.”¹²⁵

Ultimately, the variety of statutes and time periods resulted in disparity among states as courts selected different lengths of time for applicable IDEA statutes of limitation.¹²⁶ The court in

¹²¹ 121 CONG. REC. 37,416 (1975) (statement of Sen. Williams) (emphasis added).

¹²² See *Adler v. Educ. Dep’t of New York*, 760 F.2d 454, 459 (2d Cir. 1985) (instituting a four month statute of limitations); *Elizabeth K. v. Warrick County Sch. Corp.*, 795 F. Supp. 881, 886 (S.D. Ind. 1992) (choosing a thirty day statute of limitations over a two year statute of limitations).

¹²³ *Cory D. v. Burke County Sch. Dist.*, 285 F.3d 1294, 1299 (11th Cir. 2002); see 20 U.S.C. § 1415 (2004) (previous version of the statute).

¹²⁴ *Wills v. Ferrandino*, 830 F. Supp. 116, 120-21 (D. Conn., 1993).

¹²⁵ *Cory D.*, 285 F.3d at 1299; see *Providence Sch. Dep’t v. Ana C.*, 108 F.3d 1, 5 (1st Cir. 1997); *Amann v. Stow*, 991 F.2d 929, 932 (1st Cir. 1993).

¹²⁶ See *infra* Part II.C.

Dell v. Board of Education concisely described this “exercise of judicial authority” of finding analogous statutes to be “at best uncertain and at worst arbitrary.”¹²⁷

3. Pre-2004 Amendments: Legislative Determinations

Many states, frustrated with the courts’ confusion and inconsistency on applicable statutes of limitation, created IDEA limitation periods.¹²⁸ Like judicial determinations, state-created specific time limitations for IDEA due process hearings and appeals also created disparity and reached inconsistent results across the nation by varying in length from state to state.¹²⁹

Variations dominated applicable IDEA statutes of limitation for both initial due process hearings and appeals.¹³⁰ States created specific statutes of limitation for a due process complaint that extended from California’s three year limitation on the challenging of educational placement¹³¹ to Wisconsin’s one year limitation.¹³² Even more noticeable were variations in state-created IDEA appeals statutes, with states ranging broadly.¹³³ The New Hampshire and

¹²⁷ *Dell v. Board of Educ.* 113 32 F.3d 1053 (Ill. 1994) (citing *McCartney C. v. Herrin Cmty Unit Sch. Dist. No. 4*, 21 F.3d 173, 174 (7th Cir. 1994)).

¹²⁸ See e.g., [N.H. REV. STAT. ANN. § 186-C:16-b](#) (2005).

¹²⁹ Compare [N.H. REV. STAT. ANN. § 186-C:16-b](#) (2005) (providing 120 days to appeal a hearing decision) with [N.C. GEN. STAT. § 115C-116\(k\)](#) (2005) (providing thirty days to appeal a hearing decision).

¹³⁰ See Osborne, *supra* note 81, at 1 (2004).

¹³¹ CAL. EDUC. CODE § 56505(k) (West 2005).

¹³² WIS. STAT. § 115.80(1)(a) (2004).

¹³³ Compare [N.H. REV. STAT. ANN. § 186-C:16-b](#) (2005) (providing 120 days to appeal a hearing decision) with [N.C. GEN. STAT. § 115C-116\(k\)](#) (2005) (providing thirty days to appeal a hearing decision).

Illinois legislatures introduced a statute of limitations of 120 days to bring an IDEA appeal to state or federal court,¹³⁴ while Maryland provided 180 days to appeal.¹³⁵ Other states opted for shorter lengths, with California's appeal statute prescribing ninety days,¹³⁶ and North Carolina allowing only thirty days to appeal.¹³⁷

State-created IDEA statutes of limitation appeared to remove the necessity for a judicial determination of an analogous statute and an examination of whether the statutes matched the IDEA's policies.¹³⁸ However, courts still reviewed these statutes of limitation to determine whether the state statutes complied with IDEA policies.¹³⁹ Although the legislature created these statutes, the statutes could be disregarded if judges held that the statutes failed to correspond with IDEA policy considerations.¹⁴⁰

¹³⁴ [N.H. REV. STAT. ANN. § 186-C:16-b](#) (2005); 105 ILL. COMP. STAT. 5/14-8.02 (K) (2005). The New Hampshire legislature created this statute after multiple courts in New Hampshire applied different time periods for appealing due process hearings. See *Hebert v. Manchester Sch. Dist.*, 833 F. Supp. 80, 85 (D.N.H. 1993).

¹³⁵ MD. EDUC. CODE ANN. § 8-413h (2005).

¹³⁶ CAL. EDUC. CODE § 56505 (West 2005).

¹³⁷ [N.C. GEN. STAT. § 115C-116\(k\)](#) (2005).

¹³⁸ Zirkel & Maher, *supra* note 72, at 3 n.20 (noting that the Office of Special Education Programs, which administers the IDEA, has issued a number of "policy letters emphasizing that state special educations laws that establish states of limitations for either stage of IDEA proceedings must meet the 'borrowing' analysis applied by federal courts").

¹³⁹ *M.D. v. Southington Bd. of Educ.*, 334 F.3d 217, 222 (2d Cir. 2003) (discussing whether CONN. GEN. STAT. § 10-76h(a)(3) (2005), with a two year statute of limitations to bring the initial due process complaint, is analogous to the IDEA's policies).

¹⁴⁰ See *id.*; Zirkel & Maher, *supra* note 72, at 3 n.20.

C. Pre-2004 Amendments: Implications

Without a federal statute of limitations, the time frame for enforcing the rights of parents ranged unpredictably from circuit to circuit, state to state, and sometimes even within states and circuits.¹⁴¹ The seemingly erratic decision-making and instability triggered inconsistencies and inequalities. These factors generated a lack of clarity by confusing parents and school systems, pairing parents' unawareness of the applicable amount of time to bring an action with schools' uncertainty of the length of their liability.¹⁴² The limitation periods' absence also undermined IDEA purposes by preventing parents from fully participating in their child's education.¹⁴³

1. Inequities

Although courts and state legislatures considered many of the same policy objectives when determining an analogous statute to the IDEA, the absence of a federal IDEA statute of limitation still produced inequities.¹⁴⁴ The IDEA's goals included protecting students, yet parents and schools in different jurisdictions possessed different rights by virtue of location.¹⁴⁵ Certain parents had longer to bring a complaint or appeal, depending on the state in which they lived, while some schools had shorter time frames to remain liable, hinging on their location.¹⁴⁶ Allan

¹⁴¹ See *supra* Part II.A-B.

¹⁴² See *infra* Part II.C.1-2.

¹⁴³ See *infra* Part II.C.1-2.

¹⁴⁴ See Osborne, *supra* note 81, at 1.

¹⁴⁵ See *supra* Part I.B.

¹⁴⁶ Osborne, *supra* note 81, at 1. Some circuits determined that no statute of limitations existed for students seeking compensatory education, leaving some school districts permanently liable for errors occurring deep in the past. *Amanda A. v. Coatesville Area Sch. Dist.*, 2005 U.S. Dist. LEXIS 2637 (E.D.Pa. 2005).

Osborne explained the discrepancy: “[t]he parents of a student with disabilities may only have 30 days to appeal an adverse due process hearing decision while parents in another state may have several years to do the same.”¹⁴⁷

2. Uninformed Parties

Because of judicial disorder resulting from a lack of a federal limitations period, parents, such as the Edwards,¹⁴⁸ often found themselves unaware of the time frame to begin or appeal actions.¹⁴⁹ Courts often determined the applicable statute of limitations during the proceedings and therefore neither parents nor school districts would know which statute of limitations applied until the court made the decision.¹⁵⁰ Even if federal procedural safeguards had required schools to inform parents of the timeline they had to bring an action (they did not), schools also could be unaware of the amount of time a parent had to bring the action, because the statutes of limitation were not decided until court cases applied those limitations.¹⁵¹

Schools instructed parents about existing procedural safeguards, so parents recognized their ability to pursue a due process hearing.¹⁵² However, the IDEA failed to mandate that parents be informed of applicable statutes of limitation.¹⁵³ Moreover, even if information were

¹⁴⁷ Osborne, *supra* note 81, at 1 (2004).

¹⁴⁸ See *supra* notes 1-12 and accompanying text.

¹⁴⁹ See Schimmel v. Spillane, 819 F.2d 477, 482 (4th Cir. 1987).

¹⁵⁰ See Ga. State Dep't of Educ. v. Cherry, 314 F.3d 545, 548 (11th Cir. 2002); Livingston Sch. Dist. Nos. 4 & 1 v. Keenan, 82 F.3d 912, 914-17 (9th Cir. 1996).

¹⁵¹ See, e.g., *Cherry*, 314 F.3d at 548.

¹⁵² See *supra* notes 61-65 and accompanying text.

¹⁵³ R. R. v. Fairfax County Sch. Bd., 338 F.3d 325, 330-31 (4th Cir. 2003) (“Nowhere in 20 U.S.C.A. § 1415, nor in 34 C.F.R. §§ 300.403, 300.500-300.529, 300.560-300.577, 300.660-

required, schools could not inform parents of that which they themselves did not know.¹⁵⁴ While some courts and state legislatures required that schools inform parents of the appropriate time in which to bring or appeal a claim,¹⁵⁵ judicial decision-making could cause the applicable decision to be overruled. For example, Texas' 2002 procedural handout for parents noted that the due process hearing must be brought within one year of the alleged action, but that courts currently were examining the applicability of that statute of limitations.¹⁵⁶

300.662, does Congress or the Secretary mandate that educational agencies inform parents of any procedural rules outside of those provided for in § 1415 or the regulations, and nowhere do these provisions mention limitation periods applicable to due process hearings.”); see *Schimmel*, 819 F.2d 477, 482 (4th Cir. 1987).

¹⁵⁴ See *supra* Part II.B.1.

¹⁵⁵ See CAL. EDUC. CODE § 56321(a) (West 2005) (schools must instruct parents of relevant timelines for requesting due process hearings); *Amann v. Stow*, 991 F.2d 929, 934 (1st Cir. 1993) (noting that informing parents of procedural safeguards includes informing them of the amount of time they have to appeal); see also *Speigler v. Dist. of Columbia*, 866 F.2d 461, 467 (D.C. Cir. 1989); *Gertel v. Sch. Comm. of Brookline Sch. Dist.*, 783 F. Supp. 701, 707 (D. Mass 1992); *Bow School Dist. v. Quentin W.*, 750 F. Supp. 546, 551 (D.N.H. 1990).

¹⁵⁶ DIVISION OF SPECIAL EDUCATION, TEXAS EDUCATION AGENCY, *supra* note 1, at 9.

“For due process hearings filed on or after August 1, 2002, you or the school must request a due process hearing within one year of the date you or the school knew or should have known about the alleged action that serves as the basis for the hearing request. This one-year deadline for requesting a due process hearing is currently the subject of litigation. If you have questions about the deadline that applies to your case, you may contact the TEA Office of Legal Services at (512) 463-9720.”

Id.

Because parents lacked information regarding the amount of time they had to file or appeal a claim, they would not know when their statute of limitations ended.¹⁵⁷ A parent may not realize that the statute of limitations ran as he or she attempted to work out problems with their child's schooling or placement. Bringing a claim a few days too late could cause a parent—and his child—to be time-barred from recovery, because he did not realize the statute of limitations' length.

Unawareness of applicable statutes of limitation was not limited to parents; schools also often lacked knowledge regarding the appropriate IDEA statutes of limitation.¹⁵⁸ School districts were potentially “open to litigation for all of the twelve years a child is in school. . . . School districts [were] often surprised by claims from parents involving issues that occurred in an elementary school program when the child [was] currently a high school student.”¹⁵⁹ Unaware of their liability, schools had uncertainty whether mistakes in the past would emerge in a lawsuit.¹⁶⁰ School systems, also uninformed of the length of time that they had to appeal due process hearing decisions, acted too late, causing their appeals to be time-barred and adverse decisions to remain by acting too late.¹⁶¹ In *Andalusia City Board of Education. v. Andress*, the school

¹⁵⁷ See *supra* Part II.B.1.

¹⁵⁸ *Fritschle v. Andes*, 25 F. Supp. 2d 699, 702 (D. Md. 1998) (barring school district's untimely appeal).

¹⁵⁹ 149 CONG. REC. H3,472 (April 30, 2003) (statement by Rep. Carter).

¹⁶⁰ See *id.*; 149 CONG. REC. H3,464 (statement of Rep. Davis) (April 20, 2003); Letter from Rep. John Carter & Rep. John A. Boehner, the Chairman of Education and the Committee on the Workforce, available at <http://edworkforce.house.gov/index.htm> (April 29, 2003). “IDEA currently has no statute of limitations and leaves school districts open to litigation for all of the twelve years a child is in school, whether or not the child has been identified as a child with a disability.” *Id.*

¹⁶¹ *Fritschle*, 25 F. Supp. 2d at 702.

district found the due process hearing outcome unfavorable, but because it failed to appeal in time, it lost its right to appeal.¹⁶²

3. Undermined Purpose

A lack of an IDEA statute of limitations and the inconsistency that resulted undermined a main purpose of the IDEA—to involve parents with the education of students with special needs.¹⁶³ Uninformed parents, failing to recognize the length of time they had to bring a due process complaint, therefore fell short of comprehending the entirety of their rights under the IDEA.¹⁶⁴ Without knowing their rights, parents could not be fully involved in their child's education and adequately ensure that their child received a FAPE.¹⁶⁵

While the recent amendments do much to ease the problems resulting from a lack of federal statutes of limitation, some important concerns and questions remain.

III. An Addition of Statutes of Limitation to the IDEA: Implications & Ambiguities

Recent amendments to the IDEA change the structure of the request for an impartial due process hearing and the procedural safeguards.¹⁶⁶ The amendments add federal statutes of

¹⁶² 916 F. Supp. 1179, 1185 (D. Ala. 1996).

¹⁶³ See *Amann v. Stow*, 991 F.2d 929, 932 (1st Cir. 1993).

¹⁶⁴ See *Schimmel v. Spillane*, 819 F.2d 477, 482 (4th Cir. 1987).

¹⁶⁵ See *supra* notes 61-65 and accompanying text.

¹⁶⁶ See Stephen A. Rosenbaum, *Getting Inside a New IDEA, Getting Behind No Child Left Behind and Getting Outside of It All*, 15 HASTINGS WOMEN'S L.J. 1, 7 (2004) (discussing potential amendments that eventually became the new IDEA); NATIONAL ASSOCIATION OF PROTECTION AND ADVOCACY SYSTEMS, Summary of Major Changes Proposed in House IDEA Reauthorization Bill (HR 1350) Regarding Discipline and Due Process Protections (April 7, 2003), *available at*

limitation, or “timelines,” for original claims and appeals, furthering equality in the IDEA’s application.¹⁶⁷ The new IDEA demonstrates Congress’ attention to reworking the due process procedures and issues that complicated earlier versions of the IDEA.¹⁶⁸ Additionally, Congress promotes knowledgeable schools and parents by simplifying the process of determining parental timelines to bring the initial due process claim and appeal.¹⁶⁹ Finally, Congress removes educational policy-making from the courts and places it into publicly accountable bodies.¹⁷⁰

However, questions remain regarding the application of the new amendments, specifically relating to the ability of state governments to override federal limitation periods and institute their choice of statutes of limitation. The wording of the amendment creates ambiguity by not clearly defining which state statutes apply.¹⁷¹ Congress also undermines the purpose of the IDEA by transferring control of the length of statutes of limitation to state governments.¹⁷² Finally, Congress removes judicial oversight from state legislatures’ application, creating the ability for legislatures to shortchange the rights of children.¹⁷³

Congress changed IDEA procedures and reexamined IDEA policies when instituting these changes.¹⁷⁴ This Comment will first analyze the overall changes created by the new amendments, then will consider the policies behind the applicable statutes of limitation. This

http://www.aucd.org/legislative_affairs/hr1350_due_process.htm; compare 20 U.S.C. § 1415 (2004) with 20 U.S.C. § 1415 (2005).

¹⁶⁷ Compare 20 U.S.C. § 1415 (2004) with 20 U.S.C. § 1415 (2005).

¹⁶⁸ See Rosenbaum, *supra* note 167, at 7.

¹⁶⁹ See *infra* part III.B.

¹⁷⁰ See *infra* notes 222-26 and accompanying text.

¹⁷¹ See *infra* part III.B.2.b.

¹⁷² See *id.*

¹⁷³ See *id.*

¹⁷⁴ Rosenbaum, *supra* note 167, at 7.

Comment will close with an examination of the good, bad, and unintended consequences resulting from the amendments.

A. Overall Changes to the IDEA's Due Process Proceedings

The new version of the IDEA institutes stricter procedures for parents and schools to follow during complaint proceedings.¹⁷⁵ While previous versions of the IDEA provided that parents could institute due process proceedings whenever they chose to file a complaint, with no prior contact to the local educational agency ("LEA"),¹⁷⁶ the 2004 amendments set forth necessary contacts and specific procedural meetings that must occur before authorities can hold a due process hearing.¹⁷⁷

To prevent litigation, the 2004 amendments to the IDEA require parents and school districts to complete certain steps before a due process hearing can be held.¹⁷⁸ First, if a parent or guardian of a student feels that the child lacks a FAPE or the parent disputes the school's identification, evaluation, or educational placement of the child,¹⁷⁹ the parent must present a due process complaint to the local educational agency.¹⁸⁰ The complaint must include a description

¹⁷⁵ See 20 U.S.C. § 1415 (2005); Christina Samuels, *Reauthorized IDEA Could Shift Power To School Districts*, 24 EDUCATION WEEK 1 (Dec. 1, 2004).

¹⁷⁶ 20 U.S.C. § 1415 (2005).

¹⁷⁷ 20 U.S.C. § 1415 (2005); see Rosenbaum, *supra* note 167, at 7.

¹⁷⁸ 150 CONG. REC. S5,405 (daily ed. May 13, 2004) (statement of Sen. Gregg); see Christina Samuels, *Reauthorized IDEA Could Shift Power To School Districts*, 24 EDUCATION WEEK 1 (Dec. 1, 2004); compare 20 U.S.C. § 1415 (2005) with 20 U.S.C. § 1415 (2004).

¹⁷⁹ 20 U.S.C. § 1415(b)(6)(a) (2005).

¹⁸⁰ *Id.* § 1415(c)(2).

of the problem and “a proposed resolution.”¹⁸¹ The LEA must then respond and meet with the parent to discuss the complaint and possible resolutions.¹⁸² Within thirty days, the LEA must resolve the complaint to the parent’s satisfaction.¹⁸³ If resolution fails to occur, only then will the LEA conduct an impartial due process hearing.¹⁸⁴

Once the proper course has been followed, like the previous version of the IDEA, parents are still entitled to an impartial due process hearing conducted on a local or state level by a neutral party.¹⁸⁵ The decision made in the due process hearing may still be appealed to state or federal court.¹⁸⁶

B. The New Addition: IDEA Statutes of Limitation

During the 2004 reauthorization, for the first time since its creation of the IDEA, Congress established IDEA statutes of limitation.¹⁸⁷ The amendments grant parents or guardians two years to bring a due process hearing, from the date the parent or public agency “knew or should have known about the alleged action that forms the basis of the complaint.”¹⁸⁸ The amendments

¹⁸¹ *Id.* §§ 1415(b)(7)(iii), 1415(b)(7)(iv).

¹⁸² *Id.* §§ 1415(f)(1)(a), 1415(f)(1)(b).

¹⁸³ *Id.* § 1415 (f)(1)(b)(ii).

¹⁸⁴ *See id.* § 1415.

¹⁸⁵ *Id.* § 1415(f); *see id.* § 1415(g).

¹⁸⁶ *Id.* § 1415(i)(2)(2005) (compare with previous version, 20 U.S.C. § 1415(i)(2)(2004)); 20 U.S.C. §§ 1415(b)(6), 1415(f) (2005); Theresa Bryant, *The Death Knell for School Expulsion; The 1997 Amendments to the Individuals with Disabilities Education Act*, 47 Am. U.L. Rev. 487, 490.

¹⁸⁷ *See supra* notes 2-12 and accompanying text. These statutes are called “timelines” within the text. 20 U.S.C. §§ 1415 (b)(6)(b); 1415(i)(2)(b) (2005).

¹⁸⁸ 20 U.S.C. § 1415 (b)(6)(b) (2005).

provide ninety days for schools or parents to appeal the due process hearing's administrative decision.¹⁸⁹ Congress also allows states to apply their own "explicit time limitation[s]" to either of these claims, permitting state statutes to override the federal timelines.¹⁹⁰ Judicial statutes of limitation will no longer be used.¹⁹¹

Like the earlier versions of the IDEA, parents receive a list of procedural safeguards explaining their children's rights under the IDEA.¹⁹² However, the pamphlet now includes relevant information about bringing a *timely* complaint.¹⁹³ The parental notification must contain

¹⁸⁹ *Id.* § 1415(i)(2)(b).

¹⁹⁰ *Id.* §§ 1415(i)(2)(b), 1415 (f)(3)(c). 20 U.S.C. § 1415 (f)(3)(c) reads:

"Timeline for requesting hearing. A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part [20 U.S.C. §§ 1411 et seq.], in such time as the State law allows."

¹⁹¹ See S. REP. NO. 108-185 (2004) (explaining that the Committee on Health, Education, Labor, and Pensions "does not intend that common law determinations of statutes of limitation override this specific directive or the specific State or regulatory timeline").

¹⁹² Compare 20 U.S.C. § 1415 (2004) with 20 U.S.C. § 1415 (2005). The amended IDEA reduces the frequency of parental handouts of the "procedural handouts notice" to yearly distribution rather than at every meeting.

¹⁹³ Compare 20 U.S.C. § 1415 (2004) with 20 U.S.C. § 1415 (2005). See *supra* notes 66-68 and accompanying text.

information about bringing an original complaint¹⁹⁴ and appealing a due process decision in a timely manner.¹⁹⁵

As discussed further below, Congress's recent amendments further the goals of accountability, equality, simplicity, and notification.¹⁹⁶ However, by permitting states to determine IDEA statutes of limitation via state statute, Congress risks undermining the advantages emerging from the creation of federal statutes of limitation.¹⁹⁷

1. Time Limitations: Policy

Congress struggled over the amount of time to provide for the IDEA's statutes of limitation, but the ultimate decisions reflect many of the judicial concerns regarding IDEA statutes of limitation.¹⁹⁸ Like the earlier judicial decisions that weighed the purpose of the IDEA when

¹⁹⁴ 20 U.S.C. § 1415(d)(2)(e)(i) (2005).

¹⁹⁵ See 20 U.S.C. § 1415(k)(2)(e)(i) (2005). Parental notification includes information regarding "civil actions, including the time period in which to file such actions." *Id.*

¹⁹⁶ See *infra* Part III.B.2.a.

¹⁹⁷ See 149 CONG. REC. H3,471 (daily ed. April 30, 2003) (statement of Rep. Kildee) (noting that a one year statute of limitations will harm parents by being too short); 149 CONG. REC. H3,464 (daily ed. April 30, 2003) (statement of Rep. Davis) (claiming that schools need the protection of a statute of limitations).

¹⁹⁸ See 149 CONG. REC. H3,469 (daily ed. April 30, 2003) (statement of Rep. Miller) (claiming that the only statute shorter than a one year IDEA statute of limitations is parking tickets); 149 CONG. REC. H3,472 (daily ed. April 30, 2003) (statement by Rep. Carter) (noting that a statute of limitations will protect school systems).

choosing applicable time limitations, regard for expediency in resolving issues with a child's education and parental rights dominated discussions between Congress and advocacy groups.¹⁹⁹

Legislators resisted undermining the purpose of the IDEA with a too-short statute of limitations.²⁰⁰ Representatives, including Max Sandlin, became anxious that the original House bill's one year time frame for due process complaints would preclude busy parents from learning of the issues and problems with their child's education.²⁰¹ Parents would then miss the filing deadline, subsequently waiving their ability to obtain a due process hearing and to seek appropriate remedies.²⁰² Advocacy groups also disliked the one year statute of limitations because it would lead to "increased litigation" as parents rushed to court to ensure the protection of their children's rights.²⁰³ However, advocacy groups supported the conference committee's amended two year statute of limitations for initiating a due process hearing.²⁰⁴ A two year statute of limitations limited schools liability, while allowing parents enough time to discover problems with their child's education.²⁰⁵

¹⁹⁹ COUNCIL FOR EXCEPTIONAL STUDENTS, *Analysis for IDEA Conference: H.R. 1350 and S. 1248* 38, available at <http://www.cec.sped.org/pp/IDEAConference.pdf>; 149 CONG. REC. E847 (extensions of remarks May 1, 2003) (statement of Rep. Sandlin).

²⁰⁰ 149 CONG. REC. H3,471 (daily ed. April 30, 2003) (statement of Rep. Kildee).

²⁰¹ See 149 CONG. REC. E847 (extensions of remarks May 1, 2003) (statement of Rep. Sandlin); see also H.R. 1350, 108th Cong. (2003).

²⁰² See 149 CONG. REC. E847 (extensions of remarks May 1, 2003) (statement of Rep. Sandlin).

²⁰³ See memorandum from the Autism Society, to society members, *November 2004 Action Alert: House and Senate Meet on IDEA on Nov 17* (Nov. 2004), available at <http://www.autism-society.org>.

²⁰⁴ See, e.g., COUNCIL FOR EXCEPTIONAL STUDENTS, *supra* note 200, at 38.

²⁰⁵ See *infra* notes 213-16 and accompanying text.

The recent IDEA statutes of limitation generally mimic judicial decisions determining appropriateness of length of claims arising under the IDEA.²⁰⁶ When determining analogous statutes, very few courts allowed less than a year to initially file an IDEA complaint,²⁰⁷ so Congress' choice of a two year statute of limitations keeps with the judicial norm of providing more than a year to bring a complaint.²⁰⁸ The ninety days in which to file an appeal from due process hearing decisions also reflects previously discussed judicial concerns with expediency in a child's education.²⁰⁹

While the addition of federal IDEA statutes of limitation benefits students, parents, and schools, these advantages can be undermined by the allowance of state-created statutes of limitation.

2. Implications for the New IDEA:

This Comment now will examine the new amendments to the IDEA and survey their positive and negative consequences. While the amendments promote equality, information, simple application, and political accountability, at the same time they result in inequality, ambiguity, and a loss of oversight.

a. Positive results

²⁰⁶ Compare 20 U.S.C. §1415 (2005) (instituting a two year limitations period for initial due process complaints) with *S.V. v. Sherwood Sch. Dist.*, 254 F. 3d 877, 881 (9th Cir. 2001) (also applying a two year statute of limitations for the same claim).

²⁰⁷ See *supra* Part II.B.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

Congress' addition of statutes of limitation results in positive effects benefiting students, parents, school districts, and the courts.

Equality

The new IDEA amendments creating a federal statute of limitations promote equality across the nation for both parents and school systems. As parents seek to enforce their rights, in many states their claims will have the same time limitation period as parents in other states (unless their state has an “explicit time limitation” statute).²¹⁰ Schools’ liability no longer depends on what the courts determine as their liability period, but will be consistent with many other schools across the nation so long as most states keep the federal statutes of limitation.²¹¹

Information

The new amendments increase the amount of information available for potential litigants as well—parents will comprehend the amount of time that they have to bring a claim and schools will understand the extent of their liability.²¹² Although parents in different states still may not have identical time periods in which to bring a claim or appeal a decision,²¹³ schools now must notify parents of their rights via the procedural safeguards handout by informing parents of the applicable statute of limitations.²¹⁴ Through this information, parents will appreciate when their time to bring an IDEA claim concludes.²¹⁵ Moreover, parents and schools will not learn of the

²¹⁰ 20 U.S.C. §§ 1415(b)(6), 1415(f) (2005).

²¹¹ *Id.*; see *supra* notes 97-98 and accompanying text that discusses the former state of schools’ liability without the amendments.

²¹² See 20 U.S.C. §§ 1415(d)(2)(e)(i), 1415(k)(2)(e)(i) (2005).

²¹³ See *infra* notes 234-45 and accompanying text.

²¹⁴ 20 U.S.C. § 1415(d) (2005).

²¹⁵ See *id.*

applicable time limitation during trial.²¹⁶ Schools will also grasp the limits of their liability by examining applicable statutes, rather than speculating about which analogous statute a court could possibly apply.²¹⁷

Simpler Application

The new amendments limit the role of the court system and provide for a more straightforward application of the IDEA's statutes of limitation. Because Congress restricted the applicable statutes of limitation to either the congressional statute of limitations or ones created by the state legislatures, courts must abandon the two-step process for determining an analogous statute of limitations, as the common law application will no longer be necessary.²¹⁸ This legislation releases the courts from engaging in difficult decisions regarding analogous statutes.²¹⁹ Legislative history specifically states that common law applications fail to survive the new amendments.²²⁰

Political Accountability

With the new amendments, directly elected bodies, instead of the courts, possess the ability to determine applicable IDEA statutes of limitation.²²¹ Appointed courts have long been criticized as making bad policy decisions because of a lack of accountability to the public and a

²¹⁶ See *supra* notes 151-57 and accompanying text.

²¹⁷ See *id.*

²¹⁸ See S. REP. NO. 108-185 (2004).

²¹⁹ *Id.*

²²⁰ See *id.*

²²¹ See 20 U.S.C. §§ 1415(i)(2)(b), 1415 (f)(3)(c) (2005).

misunderstanding of important educational policies:²²² “[t]hat courts sometimes struggle in the educational policy setting should not surprise. Courts are structurally ill-equipped to make the sometimes delicate policy tradeoffs incident to [certain educational decisions].”²²³ Courts’ “traditional mission” and methods take into account two private litigants and the effects on those two parties, not the realm of policy-making and the effects on the public.²²⁴ Some believe that courts making decisions lack requisite knowledge, including information about the public’s preferences and potential long-ranging effects.²²⁵ Therefore decisions concerning public policy and education, including the liability of school systems, are better left to political bodies.²²⁶

Because the statutes of limitation now rest in popularly elected groups, courts will no longer make important educational decisions regarding the IDEA and liability, when they potentially lack the requisite amount of experience and information.²²⁷ By removing decision making from the courts, some will argue that Congress placed IDEA control in a more “passionate, thoughtful, deliberate forum to consider and weigh competing policy and funding

²²² Gerald Benjamin, *Reform in New York: The Budget, the Legislature, and the Governance Process*, 67 ALB. L. REV. 1021, 1152 (2004).

²²³ Michael Heise, *Children and Education: Tensions Within the Parent-Child-State Triad: The Courts, Educational Policy, and Unintended Consequences*, 11 CORNELL J. L. & PUB. POL’Y 633, 654 (2002). The author does note that courts have been instrumental in affecting special education, but fails to mention statutes of limitation, focusing mainly on school funding. *Id.* He goes on to state that “[f]ormal litigation, designed to resolve legal disputes in an adversarial manner, was never meant to serve as a dispassionate, thoughtful, deliberate forum to consider and weigh competing policy and funding objectives and goals.” *Id.* at 654-55.

²²⁴ ANNA LUKEMEYER, COURTS AS POLICYMAKERS 205-06 (2003).

²²⁵ *Id.*

²²⁶ *See id.*

²²⁷ *See Heise, supra* note 224, at 654; 20 U.S.C. § 1415 (2005).

objectives and goals.”²²⁸ Legislators understand issues facing schools and parents, have a wide range of information available, including experts to guide them in their decision making, and can better assess the long-range impacts resulting from educational policy-making.²²⁹

b. Negative Results

Congress made important steps toward equality among parents and schools by instituting federal statutes of limitation, yet Congress provides the ability for the states to undermine the advances and positive results of the IDEA’s new statutes of limitation.²³⁰ By allowing state created exceptions to the federal IDEA statutes of limitation, Congress continues the trend of reserving state power within the IDEA.²³¹ Moreover, the exception acknowledges that enforcement of the IDEA will not be identical in every state, because the length of time to appeal or bring an original claim will differ according to individual statutes.²³² An extensive examination of legislative materials provided no insight into why Congress allowed states to continue to use “explicit time limitations” for IDEA statutes or to create new time limitations once federal statutes of limitation were adopted. By approving the state statute exceptions, Congress undermined the amendments’ purpose, creating inequality, ambiguity, and endangering individuals’ rights by a lack of oversight.

Inequities, Revisited

²²⁸ See Heise, *supra* note 224, at 654-55.

²²⁹ See LUKEMEYER, *supra* note 225, at 205.

²³⁰ See 20 U.S.C. §§ 1415(i)(2)(b), 1415 (f)(3)(c) (2005).

²³¹ See *supra* notes 33-39 and accompanying text.

²³² See *supra* note 191 discussing state-created time limitations.

By allowing states to apply their own statutes of limitation for IDEA claims, Congress diluted the strength of the IDEA's movement toward equality.²³³ State statutes will differ in length from the federal statute of limitations; states will not need to create statutes identical to those that Congress created.²³⁴ These deviations preserve the disparity of parental rights that existed before the new amendments, when courts applied a variety of analogous statutes to IDEA limitation periods.²³⁵ Like the previous state of the law, parents across America may have different rights under the IDEA based on their resident state – some with more time to address their child's educational needs, some with remarkably less.²³⁶

Congress undermined its members' and advocacy groups' concerns about parental rights by allowing state statute exceptions to the IDEA statutes of limitation. Apprehensive about the initially proposed statute of limitations' length, Congress rejected a shorter statute of limitations of one year for the initiation of a due process complaint.²³⁷ As discussed previously, legislators and advocacy groups concluded that a one-year statute of limitations for the initial filing of a due process complaint fell dangerously short and neglected to protect parents' and students' rights.²³⁸ Instead, Congress agreed on a two year statute of limitations for this claim.²³⁹ However, states' IDEA statutes of limitation may have any length; Congress' only parameter for state statutes

²³³ See 20 U.S.C. § 1415(b)(6)(b) (2005).

²³⁴ See 20 U.S.C. §§ 1415(i)(2)(b), 1415 (f)(3)(c) (2005).

²³⁵ See *supra* Part III.B.

²³⁶ Compare 20 U.S.C. § 1415 (appeals) (2005) with [N.C. GEN. STAT. § 115C-116\(k\)](#) (North Carolina parents have one-third the amount of time to appeal a claim than parents in states that use the federal statute of limitations to appeal a hearing decision).

²³⁷ H.R. 1350, 108th Cong. (2003).

²³⁸ See *supra* Part III.B.1.

²³⁹ 20 U.S.C. § 1415 (f)(3)(c) (2005).

requires “explicit time limitations.”²⁴⁰ This exception allows states to establish limitation periods equal to, or *even shorter than*, the very time length that legislators abandoned because of its potentially damaging effects.²⁴¹

Ambiguity

While the new statute will be easier for courts to apply than the previous procedure of finding analogous statutes, questions remain regarding the amendments’ wording and how this wording affects future applications.²⁴² Only state statutes that are “an explicit time limitation for presenting such a complaint” apply as an IDEA statute of limitations.²⁴³ What exactly *is* an “explicit” statute that can override the federal IDEA statutes of limitation?²⁴⁴ Courts will have to determine whether they will interpret the phrase “explicit time limitation” broadly or narrowly.

Courts that decide to apply the exception broadly may include statutes that courts regularly used for IDEA limitations period before the new amendments existed.²⁴⁵ In many states, courts used the same analogous statute of limitations for years.²⁴⁶ In these states, state legislatures likely failed to see the necessity of creating a specific statute of limitations for the IDEA when legislators knew that courts would apply the state Torts Claim Act or Administrative Procedures Act.²⁴⁷ However, legislative history suggests that that the Senate did not intend for

²⁴⁰ *Id.*

²⁴¹ See *supra* note 191 and accompanying text.

²⁴² Osborne, *supra* note 81, at 1.

²⁴³ See 20 U.S.C. §§ 1415(i)(2)(b), 1415 (f)(3)(c) (2005).

²⁴⁴ Osborne, *supra* note 81, at 1.

²⁴⁵ See *id.*

²⁴⁶ See *Speigler v. Dist. of Columbia*, 866 F.2d 461, 464-65 (D.C. Cir. 1989).

²⁴⁷ See Osborne, *supra* note 81, at 1.

any vestiges of the common law statutes of limitation to remain.²⁴⁸ In the Senate committee report on its proposed amendments to the IDEA, the committee noted that the new IDEA allows exceptions (through state statutes) to the proposed “timeline” for claims arising under the IDEA.²⁴⁹ Yet, the committee report notes that it does not intend for the previous judge-made common law limitation periods to remain.²⁵⁰

Courts that instead interpret “explicit time limitation” narrowly also must decide what statutes apply to the IDEA’s statute of limitations exception. Courts may define “explicit” as those statutes expressly referencing the IDEA or referring to special education.²⁵¹ However, while some current state statutes regarding statutes of limitation for bringing IDEA claims mention the IDEA specifically; others do not.²⁵² North Carolina’s statute cites 20 U.S.C. § 1415 when identifying the thirty days parents have to appeal a due process hearing decision, so this statute seems to fall under the “explicit time limitation” exception.²⁵³ All potentially applicable statutes are not as precise.²⁵⁴ For example, the Illinois education statute establishing an IDEA statute of limitations never mentions the words “Individuals with Disabilities Education Act,” but instead discusses special education.²⁵⁵ Will this reference be enough to qualify as an “explicit time limitation?”²⁵⁶

²⁴⁸ See *supra* note 194 and accompanying text.

²⁴⁹ See *id.*

²⁵⁰ See *id.*

²⁵¹ Courts may adopt a sort of “magic words” test. See *Buckley v. Valeo*, 424 U.S. 44 n.52 (1995) (using this test in an election law context).

²⁵² Compare 105 ILL. COMP. STAT. 5/14-8.02 (k) (2005) with [N.C. GEN. STAT. § 115C-116\(k\)](#) (2005).

²⁵³ [N.C. GEN. STAT. § 115C-116\(k\)](#) (2005).

²⁵⁴ See 105 ILL. COMP. STAT. 5/14-8.02 (k) (2005).

²⁵⁵ *Id.*

²⁵⁶ See 20 U.S.C. § 1415 (f)(3)(c) (2005).

Because of the lack of “explicit” statutory definitions, Congress’ allowance of state IDEA statutes of limitation creates a quandary for the court system. While Congress attempts to remove policy-making from the courts,²⁵⁷ it again bestows this ability on the court system through the new amendments’ ambiguity.

Safeguards, Removed

Problems relating to the allowance of state-created statutes of limitation are not limited to inequality and ambiguity; the state statute exception may potentially undermine the whole purpose of the IDEA, with no safeguards existing to stop the IDEA’s dilution. Congress places distinct power into the hands of the state legislature, with no judicial or legislative check.²⁵⁸

If states choose to employ the “explicit time limitation,” they may use it to lessen their agencies’ and local governments’ liabilities.²⁵⁹ In the current economy of shrinking tax bases and “revenue shortfalls,” state governments’ budgets are decreasing.²⁶⁰ With less money, governments cannot afford expensive litigation and damages claims.²⁶¹ By using the “explicit time limitation” mechanism, states can reduce liabilities by creating a shorter statute of limitations than any contemplated by Congress.²⁶² As statutes of limitation shrink, parent may lack adequate

²⁵⁷ See *supra* notes 222-30 and accompanying text.

²⁵⁸ See 20 U.S.C. § 1415 (2005).

²⁵⁹ See 20 U.S.C. § 1415 (f)(3)(c) (2005).

²⁶⁰ Benjamin, *supra* note 223, at 1022.

²⁶¹ See *id.*

²⁶² However, some states may extend the IDEA statute of limitations. California already employs an “explicit” statute of limitations that adds a year to the newly-adopted federal IDEA statute of limitations for the initiation of a due process complaint. See CAL. EDUC. CODE § 56505(k) (West 2005).

time to recognize their child's educational problem, so the claim will be time-barred.²⁶³ Congress established no minimum lengths on state-created statutes and no safeguards to ensure that the state statutes complied with the IDEA's original purpose—to provide disabled students with a FAPE and recourse if schools fail to provide a FAPE.²⁶⁴

By neglecting to institute a legislative or judicial check on state governments' ability to create IDEA statutes of limitation, Congress imperils individual students' rights and remedies under the IDEA. This endangerment in turn jeopardizes the entire purpose of the IDEA. While some contend that the judiciary may not be suited to creating education policy, a complaint regarding the former state of the law,²⁶⁵ courts are apt at protecting individual rights, especially those of the minority, such as disabled students.²⁶⁶ With the new amendments, courts have no power to interfere if state legislatures create overly short limitation periods that fail to comply with the purpose of the IDEA and imperil students' rights.²⁶⁷ This lack of oversight could lead to shorter state-created statutes of limitation, further endangering parents' ability to institute a due process complaint proceeding.²⁶⁸ With the advent of the new amendments and the state statute

²⁶³ See 149 CONG. REC. H3,471 (daily ed. April 30, 2003) (statement of Rep. Kildee) (noting that a one year statute of limitations will harm parents by being too short).

²⁶⁴ See *supra* notes 63-67 and accompanying text.

²⁶⁵ See *supra* notes 222-30 and accompanying text.

²⁶⁶ The IDEA even emerged from courts determining that disabled students need more protection. See *Pa. Ass'n. for Retarded Children v. Pennsylvania*, 334 F. Supp. 1257, 1262 (E.D. Pa. 1971); Robert A. Katzmann, *Making Sense of Congressional Intent: Statutory Interpretation and Welfare Policy*, 104 YALE L.J. 2345, 2352 (1995) (book review).

²⁶⁷ See 20 U.S.C. §§ 1415(i)(2)(b), 1415 (f)(3)(c) (2005).

²⁶⁸ See 20 U.S.C. §§ 1415(i)(2)(b), 1415 (f)(3)(c) (2005).

of limitations exception, the “cornerstone” of the IDEA, the due process hearing, may become inconsequential as states reduce the amount of time available to file a complaint.²⁶⁹

IV. Congressional Alternatives

While the amended IDEA improves some of the issues from the former state of the law,²⁷⁰ Congress should eliminate the possibility of unmoderated state time limitations.²⁷¹ The best outcome would allow only federal statutes of limitation to apply. Other options include amending the IDEA by inserting time limits on applicable “explicit time limitations” or by providing judicial oversight of appropriate state IDEA time limitations.

A. Federal Statutes of Limitation, Alone

Congress could have applied only federal statutes of limitation to IDEA claims. This approach would have eliminated unfettered state legislative discretion, therefore solving most potential issues with newly-added IDEA statutes of limitation.²⁷² Parental and student IDEA due process and appellate rights would be equal across the nation, while school liability also would be uniform across state lines.²⁷³ Because states would have no discretion, they would have no temptation to reduce their liabilities by limiting their statutes of limitation.²⁷⁴ This change would

²⁶⁹ See Mawdsley, *supra* note 17, at 176; see also 20 U.S.C. §§ 1415(i)(2)(b), 1415 (f)(3)(c) (2005).

²⁷⁰ See *supra* notes 211-30.

²⁷¹ See *supra* notes 259-70.

²⁷² See *supra* notes 211-30.

²⁷³ See *supra* notes 234-32.

²⁷⁴ See *supra* notes 259-70.

ease courts' application of IDEA statutes of limitation as well. Only the federal statute of limitations could be used, removing the present statutory ambiguity regarding applicable "explicit" state statutes of limitation.²⁷⁵ Still, this approach also eliminates any state input and ignores the traditional principle that educational choices belong to the state.²⁷⁶

B. State Discretion, with Oversight

If Congress believes special merit exists in allowing state legislatures to determine applicable statutes of limitation, Congress has two options to improve the present state of the law. Congress can either minimize the differentiation of applicable state statutes of limitation by establishing time limits for state limitation periods or it can provide judicially manageable standards so courts can determine whether a state statute of limitations is appropriate.

Congress still may allow states to provide IDEA statutes of limitation, but additionally could supply minimum and maximum lengths of appropriate time. While variations among jurisdictions would survive this change, this approach would reduce the massive inequities of parental rights and school liabilities across states, preventing some states' provision of statutes of limitation that are multiple years and other states' provision of merely months for the same claim.²⁷⁷ Moreover, a minimum/maximum scheme would preclude states from eradicating their liabilities through extremely short time limitations.²⁷⁸

Congress also could provide for judicial oversight of applicable state statutes of limitation. Through congressionally-provided factors, courts could determine whether state statutes of limitation align with the goals of the IDEA. With judicial oversight, states would have discretion

²⁷⁵ See *supra* notes 246-68.

²⁷⁶ See *supra* note 17.

²⁷⁷ See *supra* notes 234-42.

²⁷⁸ See *supra* notes 259-70.

regarding the applicable length of time, yet they could not shorten or lengthen their statutes of limitation to durations conflicting with the IDEA's purpose. This process would reflect the past practice of judicial determination of whether an applicable statute of limitations diverged from the purpose of the IDEA.²⁷⁹

If Congress opts to use either of these approaches allowing state discretion, it should clarify its description of applicable state "explicit time limitations" to prevent ambiguity.²⁸⁰ Rather than using the term "explicit," Congress should provide that only state statutes of limitation that specifically mention the IDEA may replace the federal statutes of limitation. Although this alternative will require some state legislatures to amend their statutes regarding applicable time limitations, this requirement will prevent litigation regarding the meaning of "explicit."²⁸¹

V. Conclusion:

The purpose of the IDEA is to protect individual student's rights and access to a FAPE. The recent IDEA amendments establishing federal statutes of limitation better serve the IDEA than allowing the judiciary to determine the most analogous state statute of limitations. Parents will have better information for bringing IDEA claims, while schools will have better information regarding their liabilities. Also, variations among state statutes of limitation will decrease.

However, when Congress amended the IDEA, it simultaneously provided a mechanism for states to undermine the new statutes of limitation, potentially undermining the entire statutory scheme. A state can create an "explicit time limitation" during its next meeting of the legislature.²⁸² States can reduce their IDEA liabilities to a matter of days, making the due

²⁷⁹ See *supra* Part II.

²⁸⁰ See *supra* notes 243-58.

²⁸¹ See *supra* notes 243-58.

²⁸² See 20 U.S.C. §§ 1415(i)(2)(b), 1415 (f)(3)(c) (2005).

process hearing meaningless, because parents may have a very short period of time to file a complaint. No state time frame is considered too short. No check exists on the rights of state governments to institute these statutes. Individual rights may fall to the side, as state legislatures limit their governments' liability.

Congress's establishment of a federal IDEA statute of limitations commenced upon the right path. However, Congress must observe the activity in courts and legislatures carefully over the next few years. If states favor protectionist legislation over the rights of disabled students, Congress should amend the IDEA by striking the "explicit time limitation" exception out of the statute and permitting only federal statutes of limitation to apply.