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Time To Learn: Borrowing a Limitations Period for Actions Arising Under Section 1415(e)(2) of the Education for All Handicapped Children Act of 1975

Drew G. Peel†

Traditionally, state and local authorities have been responsible for educating the nation’s children.¹ In the 1960s, however, federal legislators became increasingly aware that many of these state authorities lacked the fiscal resources needed to provide adequately for the special educational demands of their handicapped students.² Consequently, in 1965, Congress enacted the first in a series of programs designed to assist states in meeting the costs of educating these children.³ Ten years later, enactment of the Education for All Handicapped Children Act of 1975 ("EAHCA" or "Act") expanded the federal fiscal role further.⁴

In exchange for federal assistance, the EAHCA requires schools to develop an individualized education program ("IEP") for each handicapped student within their jurisdiction.⁵ Because parents play a crucial role in the educational development of their children, the EAHCA also requires schools to consult parents when

† A.B. 1989, Davidson College; J.D. Candidate 1992, University of Chicago.
¹ See 121 Cong Rec 19498, 94th Cong, 1st Sess (June 18, 1975) (remarks of Sen Dole). See also Epperson v Arkansas, 393 US 97, 104 (1969) ("By and large, public education in our Nation is committed to the control of state and local authorities.").
² The term "handicapped" as used in this Comment includes "mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children, or children with specific learning disabilities, who by reason thereof require special education and related services." 20 USC § 1401(a)(1) (1988).
³ The Chapter 1 Handicapped Program was the first federal program enacted to assist states in meeting the needs of the severely handicapped. This program presently makes available to states approximately $151 million to assist in educating nearly 260,000 severely handicapped students. See General Accounting Office, Special Education: Congressional Action Needed to Improve Chapter 1 Handicapped Program 2 (US Gov't Printing Office, 1989) ("Special Education").
⁵ 20 USC §§ 1401(a)(18), 1401(a)(19), 1412(4), 1414(a)(5).
formulating these IEPs. Dissatisfied parents have recourse to state administrative proceedings and then to state or federal courts. To insure that these disputes do not become protracted at the student's expense, the EAHCA contains a number of procedural mechanisms designed to minimize delay and its harmful effects.

Section 1415(e)(2) of the Act gives parents the right to challenge adverse administrative rulings in state or federal district court. However, Congress did not supply a limitations period by which to judge the timeliness of such challenges. Typically, parents appear in court to plead their case, only to have state attorneys argue that the challenge has come too late.

Faced with limitations period voids in other federal statutes, courts have developed a doctrine of "borrowing." Pursuant to this doctrine, courts remedy statutory omissions by borrowing limitations periods from analogous state or federal statutes. With respect to section 1415(e)(2), the type and length of limitations period borrowed depends largely on the jurisdiction in which the case arises. Federal courts have borrowed from no fewer than four types of state statutes, giving parents anywhere from 30 days to six years in which to file their section 1415(e)(2) claims.

In most instances, this limitations period uncertainty causes inconvenience, not tragedy. Yet, the problem is particularly troublesome in the EAHCA context: most families can ill afford to spend time, energy, and money litigating limitations period issues. Such matters rarely, and never in this context, merit a disproportionate expenditure of scarce educational resources.

Congress could resolve the matter most simply by enacting a limitations period for section 1415(e)(2) actions. The next best approach is for courts to borrow limitations periods from state administrative appeals statutes. Of the alternatives courts have con-

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* Id at § 1401(a)(19).
* Id at § 1415.
* Section 1415(e)(2) provides:
  Any party aggrieved by the findings and decision made under subsection (b) of this section who does not have a right to an appeal under subsection (c) of this section, and any party aggrieved by the findings and decision under subsection (c) of this section, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.
sidered, this approach is the most consistent with congressional
intent, with handicapped students' educational needs, and with the
law of borrowing limitations periods.

Part I of this Comment sketches the history and explains the
operation of the EAHCA. Part II explains the process by which
federal courts borrow limitations periods from other statutes. Part
III examines the same enterprise as it has developed in the section
1415(e)(2) context. The Comment concludes that a unitary charac-
terization of section 1415(e)(2) claims is the most efficacious judi-
cial means of minimizing costly uncertainty in this area.

I. THE EAHCA

A. The Federal Role

The EAHCA currently makes $1.4 billion available to states to
assist them in educating approximately 4.2 million handicapped
children. In exchange for federal funds, states must comply with a
number of regulations. Most importantly, they must insure that
their handicapped students receive a "free appropriate public
education." Yet, Congress's "intention was not that the Act displace the
primacy of States in the field of education." Thus, under the Act,
states retain primary authority—both in setting educational stan-
dards and in redressing the grievances of disaffected parents. The
Act's dispute resolution machinery also reflects this allocation
of authority: it directs parties first to state administrative tribu-

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9 See Special Education at 11 (cited in note 3).
10 20 USC § 1412(1). However, respect for the state's traditional role as educator means
that a state is given substantial discretion to determine what constitutes an "appropriate"
12 Id at 208 n 30. See also Smith v Robinson, 468 US 992, 1010 (1984).
13 See 20 USC § 1415(a) ("Any State . . . which receives assistance under this sub-
chapter shall establish and maintain procedures in accordance with subsection (b) through
subsection (e) of this section to assure that handicapped children . . . are guaranteed proce-
dural safeguards with respect to the provision of free appropriate public education . . . ").
See also Dellmuth v Muth, 491 US 223 (1989) (enactment of the EAHCA did not abrogate
states' Eleventh Amendment sovereign immunity).
nals," and only thereafter does it permit recourse to federal courts.15

B. Grievance Procedures

The EAHCA makes parents partners in the education process; they participate in decisions regarding the identification, evaluation, and/or placement of their children, and they may challenge a school's provision of free and appropriate public education.16 Thus, a school must consult the parents in formulating a child's IEP.17

If the parties cannot agree on a suitable IEP, then the parents may request an impartial due process hearing.18 State, intermediate, or local administrative agencies are responsible for conducting such hearings, and they must insure that the designated tribunal renders a decision no more than 45 days after the request for a hearing has been made.19 If dissatisfied with the results, parties may appeal adverse rulings to another administrative tribunal, or, if they have exhausted their administrative remedies, they may appeal adverse rulings to a state or federal court.20 During the administrative proceedings, parties possess the following rights: (1) the right to be accompanied and advised by counsel and/or experts; (2) the right to present evidence and call witnesses; (3) the right to a written record of all proceedings; and (4) the right to have all decisions and findings of fact presented in writing.21

After exhausting administrative remedies, parents may challenge adverse rulings in state or federal court.22 The court that receives such a challenge then reviews the administrative record and, if a party requests, hears additional evidence.23 Then, basing its decision upon a preponderance of the evidence, the court grants

14 Indeed, the Supreme Court has vigorously guarded against bypass of the state administrative process, even when attempted under other legislative authorization. See Smith, 468 US at 1011 n 14 (recovery under the Rehabilitation Act will not be allowed because it would encourage parties to bypass the administrative mechanisms established by the EAHCA).
16 See id at § 1415(b)(1)(E).
17 See id at § 1401(a)(19).
18 See id at § 1415(b)(2).
19 20 USC § 1415(b); 34 CFR § 300.512(a) (1990).
20 20 USC § 1415(c). If a party seeks administrative review of an adverse ruling, the state must insure that this review is completed within 30 days of the receipt of the party's request. See 34 CFR § 300.512(b).
21 20 USC § 1415(d).
22 Id at § 1415(e)(1)-(2).
23 Id at § 1415(e)(2).
such relief as it deems appropriate.\textsuperscript{24} A reviewing court must accord the administrative proceedings due weight,\textsuperscript{26} and it must answer two questions: "First, has the State complied with the procedures set forth in the Act?"\textsuperscript{26} Second, is the IEP "reasonably calculated to enable the child to receive educational benefits?"\textsuperscript{27} If the answer to both questions is "yes", then the state prevails.\textsuperscript{28}

C. Policy Considerations

Two policy goals, prompt resolution of disputes and maintaining parental involvement in the educational process, give content to the above procedures and assist courts in filling in interstitial details left unresolved by the Act. The legislative history of the EAHCA indicates a strong preference for the prompt and informal resolution of disputes that arise between parents and school officials. Senator Williams (D-NJ), a key sponsor of the bill, put the matter most forcefully:

\begin{quote}
[I] cannot emphasize enough that delay in resolving matters regarding the education program of a handicapped child \textit{is extremely detrimental to his development}. The interruption or lack of the required special education and related services can result in a substantial setback to the child's development. In view of the \textit{urgent need for prompt resolution of questions involving the education of handicapped children} it is expected that all hearings and reviews conducted pursuant to these provisions will be commenced and disposed of as quickly as practicable consistent with fair consideration of the issues involved.\textsuperscript{29}
\end{quote}

Congress incorporated this concern into several EAHCA provisions designed to minimize delay and its harmful effects. Thus, section 1415(e) requires parents to exhaust relatively expeditious and informal administrative remedies before resorting to formal-

\begin{itemize}
\item \textsuperscript{24} Id. However, this authorization to grant appropriate relief "cannot be read without reference to the obligations, largely procedural in nature, which are imposed upon recipient States by Congress." \textit{Rowley}, 458 US at 206.
\item \textsuperscript{26} See id at 206 ("The fact that § 1415(e) requires that the reviewing court 'receive the records of the [state] administrative proceedings' carries with it the implied requirement that due weight shall be given to these proceedings.").
\item \textsuperscript{27} Id.
\item \textsuperscript{28} Id at 206-07.
\item \textsuperscript{29} \textit{Rowley}, 458 US at 207.
\item \textsuperscript{29} 121 Cong Rec 37416, 94th Cong, 1st Sess (Nov 19, 1975) (emphasis added).
\end{itemize}
ized and generally protracted judicial relief.\textsuperscript{30} The statute also requires students to remain in the most recently agreed upon program during the pendency of any administrative or judicial proceedings.\textsuperscript{31} This allows a child's education to continue, unimpeded by the dispute resolution process.

Congress's desire to involve parents in the education of their children may also prove important to understanding EAHCA grievance procedures. Recognition that a handicapped student's emotional and intellectual development depends not unsubstantially upon a congenial home environment explains Congress's policy favoring parental involvement.\textsuperscript{32} Yet, Congress also seems to acknowledge by omission that parental participation may be of more limited value in settings outside the home: little in the legislative history suggests that the EAHCA sponsors believed parents should play an active role in the prosecution of section 1415(e)(2) claims.\textsuperscript{33} This interpretation of congressional intent also seems consistent with the enactment of a later amendment to the statute—an amendment which may ultimately have the effect of promoting attorney participation in the dispute resolution process at the expense of parental participation.\textsuperscript{34}

II. The Doctrine of Borrowing

Federal statutes frequently create private rights of action without designating limitations periods to govern them.\textsuperscript{35} Most courts do not assume that this silence signifies an intent to create causes of action unbounded by any statute of limitations. Rather, they presume that Congress has merely left resolution of such "re-

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\textsuperscript{30} 20 USC § 1415(e)(2). See also 131 Cong Rec 9971, 99th Cong, 1st Sess (Nov 12, 1985) (remarks of Rep. Jeffords) ("During those discussions [about EAHCA due process measures] it was made clear that the intent was to guarantee that the proceedings would remain as informal as possible prior to a court appeal. Inherent in this construct is the belief that the process would not develop into a prolonged, adversarial confrontation between the parents and the schools.").

\textsuperscript{31} 20 USC § 1415(e)(3).

\textsuperscript{32} 121 Cong Rec 19501, 94th Cong, 1st Sess (June 18, 1975) (remarks of Sen. Williams).

\textsuperscript{33} Indeed, the virtues of parental participation are only discussed in terms of the IEP formulation process. See note 5.


medial detail[s]” to the judiciary. As a result, courts borrow limitations periods specified in other statutes, apparently believing that this minimizes judicial participation in an otherwise arbitrary enterprise. Borrowing nonetheless remains “inescapably arbitrary” because courts must often choose from among viable alternatives with no objective standards to guide their decisions.

A. Choosing between State and Federal Donor Statutes

Borrowing limitations periods from other statutes is a three-step process. First, courts must decide whether they will borrow from state or federal statutes. Generally, courts remedy legislative omissions with limitations periods drawn from state, rather than federal, statutes. Originally, courts understood the Rules of Decision Act to compel this approach. Later, they explained their state statute preference as a matter of practice or tradition; when Congress omits a limitations period, it expects courts to borrow one from a state statute.

Recently, courts have begun to borrow limitations provisions from federal, rather than state, statutes. Though some have welcomed this development, borrowing from federal statutes remains “a narrow exception.” To qualify for this exception, two conditions must be satisfied: (1) the donor federal statute must be clearly more analogous to the deficient legislation than competing state alternatives, and (2) state statutes of limitation must be

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"unsatisfactory vehicles for the enforcement of federal law." Absent these conditions, the law requires a court to borrow from state statutes.

B. Choosing between a Unitary or Case-Specific Characterization of the Claim in Question

Once this federal-state donor decision is made, courts must choose between unitary and case-specific characterizations of the claim in question. That is, courts must decide whether to apply a single, analogous statute's limitations period to all actions arising under the deficient federal statute, or whether to borrow on a case-by-case basis, choosing a unique donor statute to fit the facts before it. Traditionally, courts have favored case-specific characterizations, believing that the establishment of a more uniform limitations period was a legislative responsibility.

The Supreme Court broke with tradition in 1985, holding in Wilson v Garcia that practical considerations and legislative intent may require a unitary characterization of claims arising under a deficient federal statute. Ad hoc determinations regarding applicable limitations periods breed "uncertainty and time-consuming litigation." In subsequent decisions, the Court has emphasized that this uncertainty is particularly harmful when it deters private suits which vindicate public rights. Thus, though recent cases re-

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46 Id at 161. For example, a state statute might be an "unsatisfactory vehicle" if not all states had similar statutes. See Agency Holding Corp., 483 US at 152.

47 The Supreme Court, in a sharply divided plurality opinion, recently recast the state-federal donor decision as one in which "the court should accord particular weight to the geographic character of the claim: . . . With the possibility of multiple state limitations, the use of state statutes would present the danger of forum shopping and, at the very least, would "virtually guarantee . . . complex and expensive litigation over what should be a straightforward matter." Lampf, Pleva, Lipkind, Prupis & Petigrow, 111 S Ct at 2779 citing Agency Holding Corp., 483 US at 154 (citing Report of Ad Hoc Civil RICO Task Force of the ABA Section of Corporation, Banking and Business Law 392 (1985)).


49 What this Comment refers to as "unitary" characterization is generally identified as "uniform" characterization. However, because "uniform" characterization does not necessarily produce uniformity—as would a single, national limitations period—the phrase "unitary characterization" has been substituted to avoid confusion.


51 471 US at 275.

52 Id at 272.

reflect a preference for unitary characterization, they do not explicitly eschew case-specific approaches.64

C. Selecting the Appropriate Donor Statute from among the Remaining Alternatives

Once the unitary or case-specific decision is made, a court must narrow the field further and select the single most appropriate statute from which to borrow.55 This is generally a two-part process, although some courts give serious attention to only the second part.66 First, courts must identify the donor statute that is most analogous to the deficient federal one.57 To do this, they characterize the particular action before them and then compare the rights at issue, the statutory remedies, the procedural features, and the "practicalities of litigation" implicated by each statute.68

Second, courts must determine whether applying the most analogous donor statute's limitations period is consistent with the underlying policy objectives of the deficient statute under consideration.59 If it is not, then courts borrow from less analogous alternatives whose limitations periods are more consistent with the policy of the deficient federal statute in question. Perhaps because a clever court can draw an analogy to any number of statutes, analysis under the policy prong has proved determinative more often.60

In sum, although courts have not clearly or consistently articulated the legal principles that guide borrowing practice, several generalizations appear warranted: (1) state statutes remain the preferred donors from which to borrow; (2) as borrowing analysis has become more policy-oriented, courts have increasingly preferred unitary characterizations—especially where case-specific approaches have fostered legal uncertainty; and (3) once such mat-

65 See Wilson, 471 US at 268.
66 See, for example, Tokarcik v Forest Hills School Dist., 665 F2d 443, 448 (3d Cir 1981).
67 DelCostello, 462 US at 158.
68 Wilson, 471 US at 268, 276-79; DelCostello, 462 US at 165-68; Agency Holding Corp., 483 US at 151-52; Burnett v Grattan, 468 US 42, 50-51 (1984). Such practicalities include the relative sophistication of the parties involved, as well as the burden each type of proceeding places upon prospective litigants.
70 See, for example, Scokin v Texas, 723 F2d 432, 436-37 (5th Cir 1984) (although the most analogous state cause of action is an appeal from a state agency to a state court, application of a limitations period drawn from this context would be inconsistent with the policies that underlie the EAHCA).
ters have been resolved, courts have struggled without great success to find a principled means of choosing from among the remaining alternatives.

III. STATE ADMINISTRATIVE APPEALS STATUTES ARE THE BEST DONORS FROM WHICH TO BORROW LIMITATIONS PERIODS FOR SECTION 1415(e)(2) CLAIMS

Not surprisingly, EAHCA borrowing practice replicates the inconsistency and ambiguity that permeates the limitations period borrowing enterprise in other contexts. Although faced with essentially the same question—how much time does a parent have to take his or her child’s case from the state administrative level to the state or federal judicial system—courts have borrowed from a variety of different state statutes. These include tort, contract, catch-all, and administrative appeals statutes. As a result, claims under section 1415(e)(2) have been governed by limitations periods ranging from 30 days to six years.\footnote{Courts have borrowed limitations periods from four general categories of state statutes: (1) tort or personal injury statutes, see Tokarcik, 665 F2d 443 (two- or six-year statute of limitations applied); Scokin, 723 F2d 432 (two-year statute of limitations applied); (2) contract statutes, see Janzen v Knox Co. Bd. of Educ., 790 F2d 484 (6th Cir 1986) (three-year statute of limitations applied); (3) administrative appeals statutes, see Spiegler v District of Columbia, 866 F2d 461 (DC Cir 1989) (30-day statute of limitations applied); Adler by Adler v Education Dept., 760 F2d 454 (2d Cir 1985) (four-month statute of limitations applied); Department of Educ. v Carl D., 695 F2d 1154 (9th Cir 1983) (30-day statute of limitations applied); and (4) catch-all statutes, see Schimmel by Schimmel v Spillane, 819 F2d 477 (4th Cir 1987) (one-year statute of limitations applied). With respect to the last, “catch-all” statutes are provisions enacted by the state to provide residual limiting principles for actions that lack their own, specific statute of limitations.}

However, not all of the limitations periods that courts have borrowed are equally attractive alternatives. Administrative appeals are the closest state analogues to section 1415(e)(2) actions, and the policy goals of the EAHCA are best advanced by application of the short limitations periods that such statutes typically contain.

A. No Suitable Federal Statutes Exist from which to Borrow

The issue of whether to borrow from state or federal sources has not received much attention in the section 1415(e)(2) context. Indeed, only one court has considered the matter directly, and it rejected resort to a federal statute on the grounds that no compel-
ling federal analogue existed. Thus, borrowing from state statutes remains the norm in section 1415(e)(2) litigation.

B. Courts Should Favor a Unitary Characterization of Section 1415(e)(2) Claims

In ruling on section 1415(e)(2) limitations period issues, few courts have considered the unitary characterization inquiry of the borrowing process. Only the Sixth Circuit has considered the matter directly. In *Janzen v Knox Co. Bd. of Educ.*, the court concluded that the remedial objectives of the EAHCA prohibit a unitary characterization of actions arising under section 1415(e)(2). However, recent borrowing practice suggests that much might be gained from a unitary characterization of section 1415(e)(2) claims, and moreover, the Sixth Circuit may be wrong: the similarities between section 1415(e)(2) limitations period litigation and litigation requiring a unitary characterization of claims are difficult to ignore. Case-specific approaches to section 1415(e)(2) limitations period questions yield inconsistent results. Such inconsistency arguably chills the pursuit of civil remedies under section 1415(e)(2). Parties are unable to assess their likelihood of success before commencing litigation. Unable to assess the risks of failure, potential litigants may search for less risky means of redress, or they may simply refrain from pursuing their claims altogether. Hesitation in pursuing potentially valid claims has negative systemic effects because private suits frequently vindicate public interests—in this case, the interests of all handicapped students.

Moreover, lack of uniformity has other social costs as well. Those who persevere in their claims are first required to engage in protracted disputes over ostensibly collateral limitations period issues. This collateral litigation clearly contravenes Congress’s purpose in enacting section 1415: disputes between parents and schools should be resolved as expeditiously, cheaply, and informally as practicable.

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63 *Spiegler*, 866 F2d at 464.
64 790 F2d at 487-89. The Sixth Circuit’s holding was very fact-specific. It refused to borrow from an administrative appeals statute because, atypically, no administrative hearings preceded the filing of the section 1415(e)(2) claim in that case.
67 Id at 325-26.
Therefore, limitations period uncertainty in the EAHCA context warrants establishing a unitary characterization of claims. For all actions arising under section 1415(e)(2), courts should identify a single, analogous state statute from which to borrow a limitations period.

C. The Best State Donors Are Administrative Appeals Statutes

The D.C., Second, and Ninth Circuits have applied limitations periods borrowed from state administrative appeals statutes to section 1415(e)(2) actions. In part, these courts have borrowed limitations provisions from state administrative appeals statutes because of the compelling similarities between such actions and section 1415(e)(2) challenges.

1. State administrative appeals are the most analogous to section 1415(e)(2) challenges.

Section 1415(e)(2) challenges are similar to administrative appeals in several respects. Courts are generally empowered to hear 1415(e)(2) actions only after one or more state administrative tribunals has rendered a decision. Thus logically, such actions are little more than appeals from state administrative agency rulings. Also, in 1415(e)(2) proceedings, as in administrative appeals, the state administrative record represents the primary source of information for courts—though in exceptional cases they may hear additional evidence. In addition, like most judicial review of administrative decisionmaking, the substance of what a court may review is largely restricted to certain procedural items. Finally, a court reviewing agency decisions under section 1415(e)(2) must accord such findings due deference, just as an appeals court must respect the findings of the administrative agency.

Careful review of the landmark holding in Hendrick Hudson Dist. Bd. of Educ. v Rowley provides further evidence of the striking similarities between state administrative appeals and

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67 See, respectively, Spiegler, 866 F2d 461; Adler, 760 F2d 454; Carl D., 695 F2d 1154.
68 See Spiegler, 866 F2d at 464-68; Adler, 760 F2d at 457; Carl D., 695 F2d at 1157. Moreover, many circuits that have declined to borrow limitations periods from state administrative appeals statutes have nonetheless admitted that such statutes are the best state analogues to § 1415(e)(2). See, for example, Schimmel, 819 F2d at 481-82; Scokin v Texas, 723 F2d 432, 436 (5th Cir 1984).
69 Adler, 760 F2d at 457.
70 Spiegler, 866 F2d at 465.
72 Id.
1415(e)(2) actions. In this case, the Supreme Court held that judicial review of state decisions pursuant to section 1415(e)(2) should be largely confined to issues of procedural compliance. Additionally, courts must accord substantial deference to state administrative findings, since Congress has recognized that education remains primarily the province of state, not federal, government. Federal courts simply lack the institutional competence possessed by more specialized state administrative tribunals and thus should overrule state findings only infrequently.

Therefore, *Rowley* suggests that judicial review of state administrative decisions in the section 1415(e)(2) context is strikingly similar to the type of review conducted in most appellate proceedings. Section 1415(e)(2) actions should be understood as appeals from state administrative findings. As such, state administrative appeals statutes represent the logical source from which to borrow a limitations period.

2. Other donor statutes are less analogous to section 1415(e)(2).

A few courts, following the Third Circuit's opinion in *Tokarcik v Forest Hills School Dist.*, have held that administrative appeals statutes are not the most analogous state counterparts to section 1415(e)(2). *Tokarcik* emphasized that section 1415(e)(2) contains the term "civil action," rather than "appeal," to describe a parent's right to sue. This choice suggests that Congress intended section 1415(e)(2) actions, in which the reviewing court may hear additional evidence and in which the reviewing court has far broader remedial power than is customarily given to a court hearing a routine appeal from an administrative decision, to resemble civil suits more than appeals from state administrative determinations.

However, the EAHCA legislative history indicates that the "civil action" language in the final version of the EAHCA did not signify a fundamental shift away from the understanding that section 1415(e)(2) proceedings were essentially appellate in nature. Prior to enactment of the EAHCA, the only actions arising under federal handicap legislation were appeals—both in substance and

*Id at 208 n 30.*
*Id at 208.*
*665 F2d 443 (3d Cir 1981).*
*Id at 448.*
*Id at 450.*
*See id at 459-62 (Rosenn dissenting).*
in name. According to the conference committee responsible for drafting the final version of the EAHCA, the new language did not alter the character of the remedies made available to parents. It was introduced merely "to clarify and strengthen the procedural safeguards in existing law." The floor debates regarding such matters reflect the same intent. Thus, the significance that some courts have ascribed to changes made in the language of the bill appears unwarranted.

Tokarcik also rejected the analogy to administrative appeals statutes because of the procedural differences between administrative appeals and section 1415(e)(2) challenges. The court noted that section 1415(e)(2) differs from state appeals statutes in that it permits the introduction of additional evidence, it contains a preponderance of the evidence standard rather than an arbitrary and capricious standard, it requires less than traditional deference to administrative findings, and it makes unusually broad remedial powers available to a reviewing court.

Nevertheless, most courts are wary of transforming the proceeding into a trial de novo and have admitted additional evidence only in exceptional circumstances. Thus, as in administrative appeals, the EAHCA administrative record remains the primary evidence before the court.

Additionally, although the statute's preponderance-of-the-evidence standard is unusual for appeals, it does not alter the fundamentally appellate nature of the proceedings. As Rowley noted, this standard is not "an invitation to the courts to substitute their

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79 The relevant language originally read as follows: "[T]he decisions rendered in the impartial due process hearing... shall be binding on all parties subject only to appropriate administrative or judicial appeal." Education of the Handicapped Amendments of 1974, Pub L 93-380, Title VI, § 614(d), 88 Stat 484, 582 (1974).
81 Id at 1501.
82 See 121 Cong Rec, 94th Cong, 1st Sess at 37023-32 (Nov 18, 1975) (House debate); 121 Cong Rec, 94th Cong, 1st Sess at 37409-20 (Nov 19, 1975) (Senate debate). Co-sponsor, Representative Mink, explained that a "decision on the state level can be appealed to a State or district court." 121 Cong Rec at 37031 (emphasis added).
83 665 F2d at 448-49. See also Scokin, 723 F2d at 436-37; Janzen v Knox Cty. Bd. of Educ., 790 F2d 484, 487-88 (6th Cir 1986).
84 Tokarcik, 665 F2d at 450.
86 Rowley, 458 US at 206.
own notions of sound educational policy for those of the school authorities which they review.”87

Likewise, the court's independent review and remedial powers are limited in a section 1415(e)(2) proceeding because the court may only consider whether states have complied procedurally with the EAHCA.88 Therefore, the alleged differences between appeals and section 1415(e)(2) actions are not as great as Tokarcik might imply.

3. The short limitations periods contained in state administrative appeals statutes are fully consistent with EAHCA policy objectives.

Borrowing limitations periods from administrative appeals statutes is fully consistent with the principal policy objectives of the EAHCA. The brief limitations provisions typically prescribed by administrative appeals statutes encourage prompt resolution of disputes.89 Although parental concern may insure that many claims are filed promptly, such concern is not always an adequate surrogate for the incentive provided by a short limitations period.90 Moreover, although the EAHCA contains provisions designed to minimize the harmful effects of delay, these measures do not remove the need for short limitations periods.

Borrowing from administrative appeals statutes also promotes consistency and discourages forum shopping. Section 1415(e)(2) permits litigants to bring their claims in either state or federal court. A state court will likely apply a statute of limitations drawn from an administrative appeals provision.91 Moreover, several states that have enacted their own limitations periods for section 1415(e)(2) challenges have even chosen to denominate such periods in terms of days, rather than years.92 If federal courts adopt differ-

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87 Id at 206.
88 Id at 200-06.
89 Spiegler v District of Columbia, 866 F2d 461, 466-67 (DC Cir 1989).
90 See Schimmel by Schimmel v Spillane, 819 F2d 477, 479 (4th Cir 1987) (parents waited eight months to file their claim); Jansen, 790 F2d at 485 (parents waited nearly four years to file their claim); Scokin v Texas, 723 F2d 432, 435 (5th Cir 1984) (parents waited nine months to file their claim); Tokarcik, 665 F2d at 454 (parents waited three months to file their claim).
91 See, for example, School Committee of Franklin v Commissioner of Educ., 395 Mass 800, 482 NE2d 796, 801 (1985).
92 See, for example, Ohio Revised Code Ann § 3323.05(F) (Page 1990) (parents have 45 days within which to bring an appeal); Ill Rev Stat ch 122, § 14-8.02(j) (West, 1989) (parents have 120 days within which to pursue their claims); Adler by Adler v Education Dept., 760 F2d 454, 457 (2d Cir 1985) (parties have four months to pursue § 1415(e)(2) claims under NY Educ Law § 4403(3)). Both Ohio’s 45-day period and Illinois’s 120-day period are closer
ent, longer limitations periods, then they discourage litigants from filing in state court. Borrowing the same limitations period that state courts would apply thus gives effect to Congress's apparent intent that both state and federal tribunals remain equally competent to resolve section 1415(e)(2) disputes.  

Moreover, respecting state decisions regarding such matters is fully consistent with the EAHCA's recognition of states' continued primacy as providers of education. Because the EAHCA conditions receipt of federal funds upon a state's enactment of the procedural safeguards contained in section 1415, states should be able to supplement these protections where needed in order to clarify the rights of both their students and their schools.

Further, any injustice caused by short limitations periods is offset by annual review of a child's IEP. This statutorily mandated review enables parents to contest their child's placement or educational program each year. Thus, a multi-year limitations period makes no sense in this context; parents may pursue a new cause of action in a year's time if they allow their claims to lapse.

Lastly, equitable tolling would probably mitigate any undue harshness resulting from the application of short limitations periods. A court that borrows a limitations period from a state source also borrows that state's tolling provisions. Thus, if a parent was unaware of the availability of judicial remedies, was not apprised by the state of the appropriate limitations period, or is able to

in length to the limitations periods applied by courts that borrow from administrative appeals statutes, than they are to the length periods applied by those who have borrowed from other sources.

*See David D. v Dartmouth School Committee, 775 F2d 411, 419 (1st Cir 1985) ("[W]e think Congress contemplated, and due process requires, that a consistent body of law would be applied throughout all stages of the due process hearing system.").


*Hendrick Hudson Dist. Bd. of Educ. v Rowley, 458 US 176, 201 (1988) (the EAHCA provides the "basic floor" of opportunity to which states may add). See B. G. by F. G. v Cranford Bd. of Educ., 702 F Supp 1140, 1148 (D NJ 1988) (states have right to exceed federal standards to provide greater protection and services for their handicapped children). However, in another context the Supreme Court has ruled that such laws need not control the borrowing decisions of federal judges. Burnett v Grattan, 468 US 42, 55 (1984). But see also the forceful concurrence by Rhenquist. Id at 56.

*20 USC § 1414(a)(5). See Spiegler, 866 F2d 468 ("Each new placement decision will trigger a new 30-day period within which to file a claim. If the parents or guardians therefore decide not to seek judicial review . . . the most they would lose would be the educational placement for that school year . . . .").

*See Department of Educ. v Carl D., 695 F2d 1154, 1158 (9th Cir 1983); Spiegler, 866 F2d at 468-69; Board of Educ. of Cabell Cty. v Dienalt, 843 F2d 813, 814 (4th Cir 1988); Thomas v Staats, 633 F Supp 797, 807 (S D WVa 1985).

*Board of Regents v Tomanio, 446 US 478, 483-86 (1980); Spiegler, 866 F2d at 469.
show a special hardship that prevented timely filing, then a court may have some discretion to toll a short limitations period in such parent's favor.  

4. The longer limitations periods contained in other types of donor statutes are not consistent with the policy objectives of the EAHCA.

Courts, such as the Tokarcik and Janzen courts, have often relied on policy considerations to support their rejection of administrative appeals statutes as sources from which to borrow limitations periods. Some of these courts have even admitted that administrative appeals statutes are the most analogous state counterparts to section 1415(e)(2), but have nonetheless concluded that application of the brief limitations periods these statutes prescribe would be inconsistent with EAHCA policy objectives. They have argued that shorter limitations periods do not allow aggrieved parties enough time to prepare and research their cases.

Yet, by the time state administrative remedies have been exhausted, the parties will have presented most of the relevant evidence and should need little additional time to gather more. Also, normal discovery should remedy any evidentiary deficiencies, especially considering the types of evidence which are likely to be adduced in section 1415(e)(2) challenges.

Tokarcik and Janzen also argued that short limitations periods undermine the independence of section 1415(e)(2) judicial review. That is, short limitations periods leave the parents insufficient time to collect evidence and press issues regarding the propriety of state behavior. Yet, as noted above, judicial review of section 1415(e)(2) actions is limited; courts may not “impos[e]

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99 Tolling also has its limits, however. See Alexopoulos v San Francisco Unified School Dist., 817 F2d 551, 555 (9th Cir 1987) (allowing tolling for a child that asserts an incapacity defense is contrary to federal policy, which is designed to assure that representatives of handicapped children promptly assert their childrens' educational rights.). Compare, however, Shook v Gaston Cty. Bd. of Educ., 882 F2d 119, 121 n 2 (4th Cir 1989) (exercise of state tolling provision in favor of child should not deter parents from bringing suit at an earlier time).


101 Tokarcik, 665 F2d at 451; Janzen, 790 F2d at 488.

102 Id at 464-65 (Rosenn dissenting).

103 Id at 464-65 (the primary evidence in such cases is medical opinion, which is generally readily available and discoverable).

104 Id at 451; Janzen, 790 F2d at 487.
their view of preferable educational methods upon the States.\textsuperscript{105} And again, at this stage in the proceedings the key evidence and issues should already be apparent.

Additionally, these courts have suggested that short limitations periods discourage parents from participating in the education of their children.\textsuperscript{106} A short filing period, these courts claim, necessitates greater involvement by attorneys and results in less parental participation at both the administrative and judicial levels. However, this "injection-of-lawyers" argument is unconvincing. Although the drafters of the EAHCA intended parents to play a significant role in the education of their children, no evidence indicates that these same legislators expected parents themselves to vindicate the educational rights of their children.\textsuperscript{107} Indeed, short limitations periods are more consistent with the only EAHCA policy that is directly relevant—the prompt resolution of disputes.

Lastly, some courts argue that short limitations periods increase the risk that parents who are not represented by counsel at the administrative level will, out of ignorance or neglect, fail to bring their section 1415(e)(2) challenge in time.\textsuperscript{108} Thus, they might be "unfairly penalized by a very short limitations period."\textsuperscript{109} Yet, the significance of this risk is overdrawn. Parents are increasingly opting for representation by counsel at the administrative level.\textsuperscript{110} Moreover, the EAHCA requires school officials to notify parents of any relevant limitations that might affect their civil remedies.\textsuperscript{111} Thus, potential problems with representation are insufficiently grave to prohibit adoption of a short limitations period.

CONCLUSION

With respect to section 1415(e)(2), applying the doctrine of borrowing remains problematic. Ascertaining the appropriate crite-

\textsuperscript{105} Rowley, 458 US at 207.

\textsuperscript{106} Scokin v Texas, 723 F2d 432, 437 (5th Cir 1984). See Tokarcik, 665 F2d at 452; Janzen, 790 F2d at 487.

\textsuperscript{107} See notes 33-34 and accompanying text.

\textsuperscript{108} Schimmel by Schimmel v Spillane, 819 F2d 477, 482 (4th Cir 1987).

\textsuperscript{109} Id.

\textsuperscript{110} Special Education at 25 (cited in note 3) ("The number of administrative hearings resulting in administrative decisions for which parents had attorneys increased from 680 of 1,665 (41 percent) in fiscal year 1984 to 932 of 1,736 (54 percent) in 1988.").

\textsuperscript{111} Scokin, 723 F2d at 438 (20 USC § 1415(b)(1)(D) requires educational agencies to inform parents of all applicable limitations provisions); Spiegler v District of Columbia, 866 F2d 461, 467 (DC Cir 1989). But see Schimmel, 819 F2d at 482 (court doubts state has obligation to inform parents of running of limitations period).
ria with which to judge the suitability of a particular limitations period is difficult. Nevertheless, state administrative appeals statutes are the most appropriate sources from which to borrow limitations provisions. These statutes are the closest state counterparts to section 1415(e)(2), and the typically short limitations periods that they prescribe are fully consistent with EAHCA policy objectives.

Moreover, the need for a more uniform EAHCA limitations period—achieved through unitary characterization or through subsequent legislation—is particularly compelling in the handicapped education context. Such uniformity provides the greatest assurance that section 1415(e)(2) challenges will be resolved expeditiously and that potentially prolonged disputes will not impede a child's educational progress. Borrowing limitations periods from state administrative appeals statutes is the most effective way to insure that handicapped children receive the assistance they need in a timely fashion.