No. 00-1101

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

M.E., et al.,

Plaintiffs-Appellants

v.

BOARD OF EDUCATION FOR BUNCOMBE COUNTY

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING APPELLANTS URGING REVERSAL

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STATEMENT OF THE ISSUES

1. Under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 et seq., what notice must the school district provide to parents to commence the running of the limitations period for filing a request for a due process hearing?

2. Whether a 60-day statute of limitations for a request for a due process hearing is consistent with the IDEA, 20 U.S.C. 1400 et seq.?

IDENTITY AND INTEREST OF THE UNITED STATES AS AMICUS CURIAE

This case poses questions regarding the proper interpretation and application of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 et seq., an important civil rights statute for children with disabilities.

The statute is enforced by the United States Department of Education, which also is authorized to promulgate regulations and interpretive letters. 20 U.S.C. 1406, 1417. Because of its interest in the proper interpretation of the statute, the United States has participated in a number of IDEA cases. See, e.g., Cedar Rapids Community Sch. Dist. v. Garrett F., 119 S. Ct. 992 (1999); Board of Educ. v. Rowley, 458 U.S. 176 (1982); Marie O. v. Edgar, 131 F.3d 610 (7th Cir. 1997); Hartmann v. Loudoun Coounty Bd. of Educ., 118 F.3d 996 (4th Cir. 1997), cert. denied, 522 U.S. 1046 (1998). The United States files this brief pursuant to Fed. R. App. P. 29(a).

STATEMENT OF THE CASE

A. Proceedings Below

M.E. and P.E. filed this action in January 1999 on behalf of their minor child, C.E., pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 et seq.[1] M.E. v. Board of Educ., No. 99CV3, 1999 WL 1532375, at *1 (W.D.N.C. Dec. 17, 1999). Plaintiffs claimed that the Individualized Education Program (IEP) the Buncombe County Board of Education (Board) proposed for C.E. denied him the free appropriate public education to which he was entitled under the IDEA, 20 U.S.C. 1401(a)(18), and that the Board failed to provide

[1] Congress amended the IDEA in 1997 and the relevant sections of the amended version became effective June 4, 1997. Because the district court assumed that the earlier version of the statute applied to the events at issue here and the differences between the two versions are not critical to the analysis here, we cite to the pre-1997 version unless otherwise noted.

plaintiffs with the requisite notice. The district court granted summary judgment for the defendant Board, finding that plaintiffs had failed to request a due process hearing within 60 days of the contested action as required by the North Carolina Administrative Procedure Act, N.C. Gen. Stat. § 150B-23, and therefore could not challenge the IEP in court. M.E., 1999 WL 1532375, at *6.

B. Statement of Facts

1. In March 1996, plaintiffs notified the Board that their then four-year-old son, C.E., had been diagnosed with autism. M.E. v. Board of Educ., No. 99CV3, 1999 WL 1532375, at *2 (W.D.N.C. Dec. 17, 1999). C.E.'s parents asked the Board to reimburse them for the 35 to 40 hours per week of Lovaas therapy they were providing C.E. in their home. Ibid. Lovaas therapy is a form of treatment for autistic preschoolers that requires intensive one-on-one instruction for as much as 40 hours per week. Id. at *6 n.3. The Board initiated the evaluation process for providing special education services, provided the parents a handbook on parental rights, and the parents signed a consent to the evaluation. Id. at *2.

The parents rejected the Board's proposed placement of C.E. in a preschool special education classroom in May 1996 and the Board's later offer of other special education services during the summer. In September 1996, the parents agreed, on behalf of C.E., to accept the Board's recommendation that C.E. receive 90 minutes of special education and speech therapy per week. Ibid. In October, the parents again asked the Board to reimburse them

for the Lovaas therapy and in January 1997, presented a draft IEP to the Board that was prepared by a Lovaas facility. Ibid. The Board presented a counter-IEP in late January and in February 1997, sent a letter asking if the Board's IEP was acceptable, to which the parents did not respond. Ibid.

At a meeting in June 1997, the Board determined, and the parents agreed, that C.E. no longer needed special education services. Ibid. The Board removed C.E. from the program and gave his parents a copy of the parental rights handbook. One version of the handbook provided to the parents contained a notice that a request for a due process hearing must be filed within 60 days of written notice of the contested action. Id. at *3.

On July 29, 1997, the parents wrote again to the Board suggesting that the Board avoid a costly due process hearing by providing reimbursement for the Lovaas therapy the parents had provided C.E. at their expense. Id. at *2. The Board's attorney responded by letter dated August 7, 1997, that the school board would not pay the full amount requested and that any amount would have to be approved by the school board. The letter stated: "You, of course, have the right to file a due process petition at any time, however, the reality of school systems requires that the governing board be consulted and that process takes time." Id. at *3. The letter did not explain the Board's reasons for rejecting the parents' proposed IEP for the period when C.E. was eligible for services. Nor did the letter explain the basis for

the IEP the Board instead implemented during that same period. The letter also did not contain a statement of the procedural safeguards provided under the IDEA except for noting that the IDEA, a copy of which was enclosed, was reauthorized in June 1997 and contains "new notice provisions and provisions regarding attorney's fees". Ibid. The Board's attorney sent the parents another letter on August 8, 1997, rejecting the request for full payment and making a counter-offer.[2]

2. Eight months later, in April 1998, the plaintiffs filed a request for a due process hearing. Ibid. In October 1998, the state administrative law judge (ALJ) found that the request for the due process hearing was untimely because it was not filed within 60 days as the North Carolina Administrative Procedure Act, N.C. Gen. Stat. § 150B-23, requires. Id. at *1. The North Carolina special education statute explicitly incorporates the time requirements of the North Carolina APA for review of special education services decisions. N.C. Gen. Stat. §§ 115(C)-116(d). The ALJ also found that the IDEA's notice provisions, 20 U.S.C. 1415(b)(1)(c); 34 C.F.R. 300.504-505 (requiring an explanation of the agency's decision and the procedural safeguards), were not applicable. The decision was affirmed at the administrative appeal stage, where the review officer also determined that the IDEA's notice provisions were inapplicable because the child was

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[2] In reciting the facts, the district court did not mention the August 8 letter. The district court did cite the August 7 letter as Exhibit E to the Stephens Affidavit, ibid., and the August 8 letter is Attachment F to that affidavit.

ineligible for services in August 1997 and April 1998. 1999 WL 1532375, at *1.

3. Plaintiffs filed this action in January 1999. The district court agreed with the administrative determination that the 60-day statute of limitations applied and that the request for a due process hearing was not timely filed. Id. at *3. The district court found that the school district has a "legitimate interest in the speedy resolution of disputes," and that the 60 days provided under the North Carolina Administrative Procedure Act for contesting administrative determinations is not so short as to undermine the purposes of the IDEA. Id. at *5. The district court also found it relevant that one of the parents is a lawyer who practices education law and that the case did not involve a request for ongoing services but for reimbursement for services previously incurred. Ibid. The district court did not address the plaintiffs' claim that the Board failed to provide notice as the IDEA requires.

SUMMARY OF ARGUMENT

The district court erred in dismissing plaintiffs' claims under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 et seq. In enacting the IDEA, Congress intended to ensure that school districts provide children with disabilities a free appropriate public education and that parents have a full and informed opportunity to contest placement decisions. These purposes were thwarted by the Board's failure here to provide the written notice the IDEA requires, 20 U.S.C. 1415(b)(1)(C); 34

C.F.R. 300.504-505, and by the district court's decision finding the plaintiffs' request for a due process decision untimely, in spite of the absence of a final written notice. The district court also failed to consider the purposes of the IDEA when it erroneously determined that North Carolina's 60-day statute of limitations applicable to state administrative actions can be appropriately applied to a request for a due process hearing under the IDEA.

ARGUMENT

I

THE STATUTE OF LIMITATIONS DID NOT BEGIN TO RUN BECAUSE THE BOARD FAILED TO COMPLY WITH THE IDEA'S WRITTEN NOTICE REQUIREMENTS[3]

In enacting the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 et seq., Congress sought to ensure "that all children with disabilities have available to them * * * a free appropriate public education" and to ensure "that the rights of children with disabilities and their parents or guardians are protected." 20 U.S.C. 1400(c). To fulfill those purposes, Congress enacted procedural safeguards providing for administrative and judicial review of state and local educational agency decisions regarding special education services. See 20 U.S.C. 1415. The statutory scheme emphasizes the role of the parents or guardians in the special education decision-making process and guarantees their right to contest the decisions of

[3] The merits of plaintiffs' request for reimbursement is not at issue here and will not be addressed in our brief.

the state and local educational agencies that they feel may not serve the best interests of their child. See, e.g., 20 U.S.C. 1415(b)(1)(E); 20 U.S.C. 1415(b)(2); see also Board. of Educ. v. Rowley, 458 U.S. 176, 205 (1982) (procedures emphasize parental participation "at every stage of the administrative process").

Under the IDEA's notice provisions in effect at the time of the events at issue here, a local educational agency such as the school board here was required to provide "written prior notice to the parents * * * whenever [it] (i) proposes to initiate or change, or (ii) refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child." 20 U.S.C. 1415(b)(1)(C). The written notice, which is critical to informed parental participation in the IDEA process, must include:

> (1) A full explanation of all of the procedural safeguards available to the parents under [the IDEA regulations];
>
> (2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and why those options were rejected;
>
> (3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and
>
> (4) A description of any other factors that are relevant to the agency's proposal or refusal.

34 C.F.R. 300.505 (1997)[4]; see also Gadsby v. Grasmick, 109 F.3d 940, 956 (4th Cir. 1997) (describing the IDEA's notice provisions).

This Court has found the written notice requirement to be a "most important" procedural provision under the Act, noting that it "requires advance written notice of all procedures available under the section * * *." Hall v. Vance County Bd. of Educ., 774 F.2d 629, 634 (4th Cir. 1985) (considering the written notice provisions of the Education of the Handicapped Act (EHA),[5] 20 U.S.C. 1415(b)(1)(C)-(D)); see also Board of Educ. v. Rowley, 458 U.S. 176, 205-206 (1982) ("Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process, see, e.g., §§ 1415(a)-(d), as it did upon the measurement of the resulting IEP against a substantive standard"). A school board's failure to comply with the IDEA's written notice provision deprives a child of a "free appropriate education" when the failure "actually interfere[s] with the

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[4] These regulatory requirements governing the contents of the written notice became part of the statute itself when Congress amended the IDEA in June 1997. See 20 U.S.C. 1415(c) (1999). The current regulations, revised in response to the 1997 amendments, require essentially the same notice as the prior version quoted above. 34 C.F.R. 300.503 (1999).

[5] As this Court noted in Gadsby, Congress changed the name of the EHA to the IDEA in 1990. 109 F.3d at 942 n.1. Since the EHA and the IDEA are the same legislative act, this Court has referred only to the IDEA, even when discussing cases interpreting the statute before the name change. Ibid. We follow that convention here.

provision of free appropriate public education." Gadsby, 109 F.3d at 956, citing Hall, 774 F.2d at 635.

A parent's obligation to contest the local educational agency's action cannot accrue until receipt of the written notice. Although this Court has expressed doubt that the notice requirements obligate a local education agency to notify parents expressly of the time within which they must seek judicial review,[6] it has emphasized the agency's "duty to inform parents or guardians of all procedural safeguards available to them under the [IDEA]." Schimmel v. Spillane, 819 F.2d 477, 482 (4th Cir. 1987). Cf. Powers v. Indiana Dep't of Educ., 61 F.3d 552, 559 (7th Cir. 1995) (holding that the statute requires the local education agency to give written notice of the applicable statute of limitations); Spiegler v. District of Columbia, 866 F.2d 461, 469 (D.C. Cir. 1989) (same).[7] Such notice is critical to parents' understanding of the substantive basis of the agency's decision, thereby allowing them to make a meaningful

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[6] It is clear, however, that the North Carolina statute of limitations the district court found analogous here requires the agency to provide written notice to the "persons aggrieved" by the agency action of "the right, the procedure, and the time limit to file a contested case petition." N.C. Gen. Stat. § 150B-23(f) (emphasis added). In fact, the limitations period does not begin to run until such notice is received. Ibid.

[7] In other parts of their decisions, the courts in Spiegler and Powers adopted short limitations periods for filing IDEA claims in federal court. For the reasons stated later in this brief, a similarly abbreviated limitations period for requesting a due process hearing is inconsistent with the IDEA. See pp. 13-22, infra.

determination as to whether to request a due process hearing to challenge that decision.

The Board's August 1997 letters did not comply with the IDEA's written notice requirements and cannot serve to commence the running of the statute of limitations. The letters did not explain the procedural safeguards applicable to the process or describe the actions the Board proposed and rejected, the evaluation procedures on which it relied, or other factors considered in rejecting the proposed IEP C.E.'s parents thought most appropriate for their child. The letters did not say that the Board had made a final determination of the type of services appropriate for C.E. or notify the parents that, at that point, their option was to agree or institute formal review procedures. Rather, the Board's letters appeared to be part of ongoing negotiations.

If the district court's decision is permitted to stand, the Board's failure to provide the written notice will have had a material impact on the parents' efforts to secure a free appropriate public education for C.E. Even though, as the district court found, one of the parents is a lawyer familiar with this subject matter, the parents apparently were unaware that the Board considered the August letters to be final written notice of the contested action. They claim to have relied on the Board's statement that "[y]ou, of course, have the right to file a due process petition at any time * * *." See Memorandum in

Support of Plaintiff's Motion for Summary Judgment at 2 (R. 42).[8] If parents apparently versed in this area did not understand the significance of the informal letters, parents without that background certainly cannot be expected to infer from such letters that their time for requesting a due process hearing has commenced. Failure to provide formal written notice is particularly troubling where the State, as here, purports to apply short time limits on seeking a due process hearing. The fact that one parent is a lawyer does not absolve the Board of its responsibility to comply with the IDEA's notice regulations. An explanation of the bases of the Board's decision may, in some cases, obviate the need for a hearing or litigation.

Although the district court did not explicitly address the notice argument, the issue was raised and dismissed during the administrative proceedings and the record of those proceedings was supposed to be part of the district court record.[9] The ALJ found that the IDEA's written notice provision was inapplicable and the administrative review officer agreed: "Since the child was a child without disabilities on August 8, 1997, and April 22, 1998 [the date the due process hearing request was filed], the Respondent was not required to provide the Petitioners with

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[8] "R. __" refers to entries in the district court's docket sheet.

[9] Under the IDEA, the district court "shall receive" the administrative record and "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." 20 U.S.C. 1415(e)(2).

'prior written notice.'" State Hearing Review Officer Decision (Dec. 3, 1998). This conclusion is contrary to the statute. Nothing in the IDEA makes the written notice requirement contingent on whether the child was considered to have a disability at the time the parents contested the school's action as long as the child was eligible for services at the time they were requested and there are contested issues that could result in relief with respect to that child's placement or services. Here, there was no dispute that C.E. was eligible for special educational services under the IDEA for at least a 15-month period. As a result of C.E.'s eligibility for services, C.E.'s parents were entitled to the required written notice explaining the Board's reasons for its proposal, the evaluations on which it relied, and its reasons for rejecting the parents' proposed IEP to provide services during that period. Without that notice, the time within which the parents were obligated to contest the Board's actions did not commence.

II

THE DISTRICT COURT IMPROPERLY APPLIED THE STATUTE OF LIMITATIONS PROVIDED UNDER THE NORTH CAROLINA ADMINISTRATIVE PROCEDURE ACT

Even if the Board had supplied the required written notice, the 60-day statute of limitations provided under North Carolina's Administrative Procedure Act, N.C. Gen. Stat. § 150B-23(f), is inconsistent with the IDEA's purposes and this Court's cases interpreting the statute. The IDEA does not set time limitations

for requesting a due process hearing.[10] The due process hearing is a de novo proceeding during which the parties may be represented by counsel or others well-versed in the IDEA, and may present witnesses and evidence, including expert testimony, relating to the educational needs of the child. 20 U.S.C. 1415(d). "[W]hen a federal statute, such as [the IDEA], creates a right of action, but federal law provides no controlling statute of limitations, 'the general rule is that a state limitations period for an analogous cause of action is borrowed and applied to the federal claim, provided that the application of the state statute would not be inconsistent with underlying federal policies.'" Schimmel v. Spillane, 819 F.2d 477, 481 (4th Cir. 1987), quoting County of Oneida v. Oneida Indian Nation, 470 U.S. 226, 240 (1985). In the context of IDEA claims, the limitations period must not frustrate or interfere with Congress's stated purposes to ensure "that all children with disabilities have available to them * * * a free appropriate public education" and that "the rights of children with disabilities and their parents or guardians are protected." 20 U.S.C. 1400(c); see Schimmel, 819 F.2d at 482-483.

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[10] A 1990 federal statute provides a four-year statute of limitations for civil actions "arising under an Act of Congress enacted after the date of the enactment of this section" for which no statute of limitations is otherwise provided. 28 U.S.C. 1658. Because the IDEA was enacted before 1990 and was amended and reauthorized in 1997, see Pub. L. No. 105-17, 111 Stat. 37 (1997), 28 U.S.C. 1658 is inapplicable. It also is not clear that the limitations period in 28 U.S.C. 1658 would apply to the request for administrative review at issue here since that statute applies to "civil action[s]".

In Schimmel, this Court carefully considered the appropriate statute of limitations for judicial actions in light of the IDEA's purposes. 819 F.2d at 479-483. The Court found that Virginia's Administrative Process Act (APA), Va. Sup. Ct. R. 2A:2, was the most analogous statute because, as under the IDEA, in Virginia the court reviews administrative decisions de novo and the parties are allowed to present evidence in addition to that in the administrative record. The Court nevertheless rejected the Virginia APA's 30-day limitation for judicial actions because it "would conflict with the federal policies underlying the [IDEA]." 819 F.2d at 482. The Court found that a 30-day statute of limitations was too short to allow parents, who may be unrepresented at the administrative stage, to find counsel and decide whether to file a judicial action. Ibid. The Schimmel Court also noted that other courts of appeals have found that a short statute of limitations limits the independent review that Congress intended the district courts to exercise, inhibits the collection of evidence necessary for orderly and thorough review, and frustrates the statutory policy of encouraging parental participation in decisions affecting the education of their children, potentially leading to inappropriate placement decisions. Ibid., citing Janzen v. Knox County Bd. of Educ., 790 F.2d 484 (6th Cir. 1986) (rejecting 60-day limitations period and applying three-year statute of limitations); Scokin v. Texas, 723 F.2d 432 (5th Cir. 1984) (rejecting 30-day limitations period in favor of two-year tort limitations period); and Tokarcik v.

Forest Hills Sch. Dist., 665 F.2d 443 (3d Cir. 1981) (rejecting 30-day statute and applying two-year tort limitations period), cert. denied, 458 U.S. 1121 (1982).[11] This Court found that "[t]hese additional concerns bolster our conclusion that application of the very short limitations period of the Virginia Administrative Process Act would be inappropriate in this case." 819 F.2d at 483.

Considering the reasons for a shorter statute, the Court in Schimmel found that although Congress intended to encourage the prompt resolution of questions regarding the appropriate placement of the child, this interest was not more important than the other policies reflected in the IDEA "that could be undermined by application of a very short limitations period." 819 F.2d at 843. Agreeing with other courts that parents' interest in securing an appropriate education for their children will encourage parents to seek prompt judicial review, the Court affirmed the district court's choice of Virginia's one-year statute for all personal actions for which no other limitations period is prescribed, Va. Code Ann. § 8.01-248 (1984). In so doing, the court rejected an alternative suggestion that sixty days would be an appropriate limit: "[W]e are not convinced that

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[11] This court in Schimmel cited other appellate decisions in which the limitations periods for filing a complaint in federal court were at issue. Although this case involves the limitations period for requesting an administrative due process hearing, the analysis and rationale of those cases is relevant here. Furthermore, as noted infra, no court of appeals decision has held that a limitations period as short as 60 days is appropriate for requesting a due process hearing under the IDEA.

application of a 60-day limitations period would so far ameliorate the problems of unrepresented parties as to obviate the concerns expressed in this opinion." 819 F.2d at 482 n.4.

The only case in which this Court considered the applicable statute of limitations for filing IDEA actions in North Carolina -- either administrative due process hearing requests or judicial actions -- is Shook v. Gaston County Board of Education, 882 F.2d 119 (4th Cir. 1989), cert. denied, 493 U.S. 1093 (1990). In that case, the Court stated that the three-year statute of limitations under N.C. Gen. Stat. § 1-52(2), the limitations period that applies to "a liability created by statute, either state or federal," applied to actions for reimbursement under the IDEA. 882 F.2d at 122. The Court did not discuss the statute of limitations under the North Carolina Administrative Procedure Act that the district court applied here.[12]

In Manning v. Fairfax County School Board, 176 F.3d 235 (4th Cir. 1999), this Court followed the Schimmel analysis in determining the applicable limitations period under Virginia law for requesting an administrative due process hearing under the

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[12] The precise limitations period was not dispositive, however, because the Court went on to find that even though the action in that case had not been initiated within three years of the written notice of the proposed placement, North Carolina's tolling provision, N.C. Gen. Stat. § 1-17(a), also applied and the child was allowed to bring an action under the IDEA within three years after reaching majority. 882 F.2d at 122. The Court considered the IDEA's policy that "representatives of educationally handicapped children promptly assert the child's educational rights" and found that "the exercise of a state tolling provision in favor of the child should not deter the parents from bringing suit at an earlier time." 882 F.2d at 121 n.2.

IDEA -- the precise question at issue here. Plaintiffs in Manning argued that there was no limit on the time for requesting a due process hearing under the IDEA, or, in the alternative, that the statute of limitations should be five years. This Court found that the same statute of limitations should apply both to the request for the due process hearing and to filing the judicial action, and was unpersuaded that the disputes in the administrative IDEA proceedings were so different from those in judicial proceedings "as to justify application of disparate limitations periods." 176 F.3d at 239. This Court thus noted in Manning that Virginia's one-year statute of limitations for personal actions was an appropriate time limit for administrative actions as well, and that the one-year period did not "undermine[] the IDEA's policy of providing parents an opportunity to protect their disabled children's educational rights." Ibid.; see also Murphy v. Timberlane Reg'l Sch. Dist., 22 F.3d 1186, 1194 (1st Cir.), cert. denied, 513 U.S. 987 (1994) (rejecting the four-year statute of limitations for personal injuries and applying a six-year catch-all limitations period to the request for a due process hearing, finding that "the more abbreviated the limitation on compensatory education claims the greater the disincentive to parents to shed an adversarial posture and get on with the business of cooperating with school officials to further the special-education needs of the child").

The district court here gave almost no consideration to the concerns expressed in Schimmel and Manning, and did not mention

Shook. The primary purpose of a statute of limitations is to prevent evidence from growing stale. See Wilson v. Garcia, 471 U.S. 261, 271 (1985). The 60-day limitation provided for administrative actions under North Carolina law is not required by this purpose. At the same time, such a short deadline is significantly inconsistent with the IDEA's purposes and the rights it protects. This Court noted in Schimmel, with regard to the time limits for filing judicial actions under the IDEA, that many parents are acting pro se, and a decision to seek a due process hearing may involve a search for counsel and expert witnesses or research on the processes for contesting the State's denial of services.

These concerns are magnified at the administrative due process hearing stage since parents seldom have counsel at the IEP stage, where they deal generally with teachers and others in the school, and will need time to find counsel and expert witnesses and prepare evidence for the due process hearing. The record developed at the due process hearing is part of the record if judicial review is sought, and the district court is required to give "due weight" to that record, and any conclusions of the hearing officers informed by that record, in its determination. Rowley, 458 U.S. at 206. Many of the issues arising under the IDEA are substantively complex and may not be evident until significant time has passed. It is thus critical that parents

have a full opportunity at the administrative stage to develop the record properly. 458 U.S. at 205-206.[13]

For these reasons, a 60-day statute of limitations is inconsistent with the IDEA's purposes because it ensures that many legitimate claims will be forfeited through inadvertence or inability to locate representation in such a short time, rendering ineffective the protections Congress created for children with disabilities and their families. Moreover, a short statute of limitations will likely interfere with attempts by the parents and school to seek an amicable resolution short of litigation by forcing administrative review almost immediately upon completion of the IEP process. Although few cases address the appropriate limitations period for requesting a due process hearing under the IDEA, no court of appeals, including this Court in Manning, has upheld application of a statute of limitations as short as 60 days. See, e.g., Bernardsville Bd. of Educ. v. J.H., 42 F.3d 149, 158 (3d Cir. 1994) (finding that one year is an appropriate time limit for requesting a due process hearing); Murphy, 22 F.3d at 1190 (applying six-year statute of

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[13] It is also not clear that in the typical administrative hearing under North Carolina law, individuals protesting agency action must put on the sort of technical, expert evidence that parents may need to present in an administrative hearing under the IDEA. In at least some state proceedings, the agency review process is not de novo and the hearing officer simply reviews the record presented to the agency decision-maker. See, e.g., Britthaven, Inc. v. North Carolina Dep't of Human Resources, 455 S.E.2d 455, 382-383 (N.C. Ct. App. 1995) (in a certificate of need proceeding, "[t]he judge determines [the] issues based on a hearing limited to the evidence that is presented or available to the agency during the review period").

limitations); Alexopulos v. San Francisco Unified Sch. Dist., 817 F.2d 551, 555 (9th Cir. 1987) (applying the three-year statute).

Because this case involves a request for reimbursement, speedy resolution is of less concern than where, for example, the current placement of a child is at issue. Even when there is a special need for prompt resolution of a dispute, however, a 60-day statute of limitations is unnecessary and counterproductive. There are already significant incentives for quick action by parents, including the parents' presumed interest in protecting the legal rights of their child and getting an appropriate educational plan in place as quickly as possible. Any marginal benefit that accrues to children whose claims are more quickly resolved because of a short time limitation must be weighed against the harm that will inevitably befall children whose claims are permanently foreclosed by their parents inadvertently missing an unnecessarily short deadline. And although the district court based its decision at least in part on the school district's "legitimate interest in the speedy resolution of disputes," 1999 WL 1532375, at *5, there is nothing in the IDEA that suggests that Congress was interested in ensuring that school districts are relieved from liability under the IDEA as speedily as possible. To the contrary, the express concern is for the appropriate education of the child.

Finally, rejecting a 60-day limitations period for requesting a due process hearing is also consistent with the long-standing position articulated by the federal agency Congress

designated to interpret and enforce the IDEA. The United States Department of Education is given statutory authority to interpret the IDEA through regulations and interpretive letters. 20 U.S.C. 1406, 1417 (1999). The agency's legal interpretations expressed in its interpretive letters are entitled to deference. See Honig v. Doe, 484 U.S. 305, 325 n.8 (1988). Over the past ten years, the Department of Education has consistently expressed its opinion in such letters that a 60-day limitations period for requesting a due process hearing is inconsistent with the IDEA. See Letter to J. Raskin, 17 Education for the Handicapped Law Rep. 1116 (June 19, 1991) (Addendum at p. 1); Letter to J. Pawlisch, 29 Individuals with Disabilities Education Law Rep. 1088 (Oct. 22, 1997) (Addendum at p. 5).

Because the 60-day limit applied to administrative causes of action under North Carolina law is too short, the court must borrow a limitations period from a more analogous state statute. As this Court found in Shook, 882 F.2d at 121, in North Carolina, the catch-all statute of limitations for statutory actions for which no statute of limitations is otherwise provided is three years. See N.C. Gen. Stat. § 1-52(2). It was this type of statute this Court found most analogous in Schimmel and Manning. We do not argue, however, that three years is the only appropriate limitations period, just that under North Carolina law, it is one that would fall into place as an alternative to the 60-day statute.

CONCLUSION

The district court's judgment should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify on April 3, 2000, that I caused to be served two copies of the foregoing Brief for the United States as Amicus Curiae Supporting Appellants Urging Reversal by first-class mail, postage prepaid, on:

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