1997-98 SESSION COMMITTEE HEARING RECORDS

Committee Name:

Senate Committee on Education(SC-Ed)

Sample:

Record of Comm. Proceedings … RCP
- 05hrAC-EdR_RCP_pt01a
- 05hrAC-EdR_RCP_pt01b
- 05hrAC-EdR_RCP_pt02

- *Appointments … Appt*
- **

- *Clearinghouse Rules … CRule*
- **

- *Committee Hearings … CH*
- **97hrSC-Ed_Misc_pt18**

- *Committee Reports … CR*
- **

- *Executive Sessions … ES*
- **

- *Hearing Records … HR*
- **

- *Miscellaneous … Misc*
- **

- *Record of Comm. Proceedings … RCP*
- **

PRESENTATION
TO THE
SENATE COMMITTEE ON EDUCATION
ON ASSEMBLY BILL 261
OCTOBER 22, 1997
BY
JoANN M. HART

My Vantage Point:

I am an attorney. Over the last 12 years, I have represented school districts on a variety of school law matters, including special education issues. With regard to special education, my usual role is to counsel district administrators and directors of special education to help school districts comply with the state and federal special education laws. I have also defended school districts in special education due process hearings when parents have challenged districts' decisions about their child's programming or placement. The views I express today are my personal views developed from my experiences as a lawyer defending school districts in special education disputes. I do not speak on behalf of any other group our individual.

Background of current state and federal special education laws:

1. Each child's program is spelled out by an Individual Educational Plan (IEP) developed by the school and family together. Each IEP is usually designed to continue for one school year. The school and the family then decide the child's "placement", which is the type of program and location of program through which the child will receive the services spelled out in the IEP.

2. State law (Chapter 115) and federal law (Individuals with Disabilities Education Act (IDEA)) presently allow parents and school districts to request a due process hearing before an administrative law judge to decide disputes about a child's IEP or placement. Parents are repeatedly informed of their right to request a due process hearing throughout the process leading to the development of an IEP and placement.

3. The present Wisconsin and federal laws do not include a specific time limit by which a parent must request a due process hearing. Federal courts usually "borrow" the statute of limitations (time limit) from a state statute which the court decides is most analogous to IDEA.

Why I support Assembly Bill 261:

1. State and federal special education laws are intended to encourage the family and the school to work together to develop the child's program. Allowing parents to go back years before the current and/or prior year's program focuses the time, attention, and financial and human resources of a school district on issues long past which will do nothing to improve the child's current educational program. Adoption of a specific one year statute of limitations would

give districts and parents the certainty they need to focus their attention on the issues which are still open for discussion and, if necessary, litigation.

2. School districts are entitled to the same protection a statute of limitations provides other entities against litigating stale claims. District employees leave the district under many circumstances: retirement, death, employment with another district or in another profession. Witnesses who are still available can't recall factual details that may be relevant to claims about procedures and documents that were implemented or created long before the hearing.

3. Due process hearings, even when limited to issues arising in the past year, are lengthy and expensive, in part because very technical educational issues are litigated, using expert witnesses. Extending the period of time which can be the subject of litigation in a due process hearing adds additional days of hearing to an already expensive and time consuming process.

4. Parties to a special education due process hearing have very limited access to prehearing "discovery", the process by which parties to civil litigation narrow the issues to be tried, and learn the facts of the other party's case. Expanding the period of time which is under scrutiny in the due process hearing makes preparation and defense in a due process hearing even more difficult and expensive.

5. No one is served by delays in the resolution of disputes about a child's educational program. During a due process proceeding, the child's educational placement is "frozen", pending the outcome of the hearing and appeals. In upholding a 120 day statute of limitations in which to file an **appeal** of a due process decision in Illinois, the Seventh Circuit quoted the chief author of the Individuals with Disabilities Education Act, and stated its belief that children are better served by a short statute of limitations for special education claims:

> We agree that the principal goal of the IDEA is to protect the educational rights of the handicapped student and to maintain the involvement of that child's parents in the educational choices for their child. However, to succeed in safeguarding the student, the IDEA's policies encourage the prompt, rather than protracted, resolution of disputes concerning the disabled student's education. See, 121 Cong. Rec. 37416, 94th Cong., 1st Ses. (Nov. 19, 1975) (Statement in final Senate debate by Senator Williams, the principle author of the Bill, stating that delay in resolving education matters is detrimental to the development of a handicapped child).

Dell v. Board of Education Township High School District 113, et al., 32 F.3 1053, 1060-1061 (7th Cir. 1994).

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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DATE: October 21, 1997

TO: SENATOR CALVIN POTTER, CHAIRPERSON; MEMBERS OF THE SENATE EDUCATION COMMITTEE; AND INTERESTED LEGISLATORS

FROM: Russ Whitesel, Senior Staff Attorney

SUBJECT: Assembly Amendment 1 to 1997 Assembly Bill 261, Relating to Statute of Limitations for Special Education Pupils

This memorandum, prepared at your request, describes Assembly Bill 261 and Assembly Amendment 1 to Assembly Bill 261, relating to statute of limitations for special education pupils.

1. Legislative Background and History

Assembly Bill 261 was introduced on April 9, 1997 by Representative M. Lehman and others; and cosponsored by Senator Panzer. The Bill was referred to the Assembly Education Committee and a public hearing was held on the Bill on May 6, 1997. At an Executive Session on June 3, 1997, the Committee voted to introduce and to adopt Assembly Amendment 1 on a vote of Ayes, 13; Noes, 0. The Committee voted to recommend passage of the Bill, as amended by Assembly Amendment 1, on a vote of Ayes, 13; Noes, 0.

The Assembly, on September 17, 1997, adopted Assembly Amendment 1 on a voice vote and passed the Bill, as amended, on a voice vote.

The Bill was referred to the Senate Education Committee on September 18, 1997 and scheduled for a public hearing to be held October 22, 1997.

2. Current Law

Under current law, a parent of a child with exceptional educational needs (EEN) may file a written request with the Department of Public Instruction (DPI) for a hearing whenever a school board proposes or refuses to initiate or change the child's multidisciplinary team evaluation, individualized education program, educational placement or the provision of an appropriate special education program. [s. 115.81 (1) (a), Stats.]

In addition, under current law, a school board must fully inform the parent of any action it plans to take regarding the parent's child and of all procedural safeguards available to the parent. [s. 115.81 (2), Stats.] Administrative rules promulgated by the DPI specify the contents of the notice that must be given at various stages during the special education evaluation and placement process, which include notice of procedural rights which must be given whenever a school board proposes or refuses to initiate or change a child's multidisciplinary team evaluation, individualized education program or placement offer. [ss. PI 11.04 (1), 11.05 (7) and 11.06 (6) (b), Wis. Adm. Code.]

3. Assembly Bill 261

Assembly Bill 261 provides that a parent's written request for a hearing must be filed within ***one year*** after the refusal or proposal of a school board to initiate or change the child's multidisciplinary team evaluation, individualized education program, educational placement or the provision of an appropriate special education program.

4. Assembly Amendment 1

Assembly Amendment 1 provides that the one-year time limit under the Bill does not apply if the school board has not previously provided the parent with notice of his or her right to request a hearing. If a parent has not received such notice, the parent may file a request for a hearing within one year after the school board provides such notice.

The amendment also makes a technical correction to the Bill by inserting "the" before "school" on page 2, line 1.

If you have any questions regarding this legislation, please contact me directly at the Legislative Council Staff offices.

RW:kjf:wu:rv;kjf;wu