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LIMITATIONS PERIOD FOR ACTIONS BROUGHT UNDER § 1415 OF THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975

INTRODUCTION

The Education for All Handicapped Children Act of 1975 (the "EAHCA" or the "Act") was designed to fulfill the unmet educational needs of handicapped children in order to help them become independent, productive citizens. The EAHCA provides federal assistance to states that guarantee the right to a free, appropriate, public education to all handicapped children through state statutory schemes that meet the minimum requirements set forth in the Act. Section 1415(e)(2) of the EAHCA permits the parents or guardians of handicapped children to file a civil action in state or federal court for any complaint relating to their child's educational placement. Like many federal statutes, how-

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5. See 20 U.S.C.A. § 1412(1) (West 1978 & Supp. 1988); see also infra notes 18-31 and accompanying text (setting forth statutory scheme). The statute provides that the Secretary of Education determines state eligibility. A state will not receive federal assistance when the Secretary determines that the state has failed to comply with EAHCA requirements. See 20 U.S.C.A. § 1413(c) (West 1978 & Supp. 1988).

6. The term "parents" as used in this Note refers to parents and legal guardians.

7. See 20 U.S.C. § 1415(e)(2) (1982). Section 1415(e)(2) provides in relevant part: "Any party shall have the right to bring a civil action with respect to the complaint presented . . . . 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." 20 U.S.C. § 1415(e)(2) (1982).

8. Parents are entitled to bring complaints "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." 20 U.S.C. § 1415(b)(1)(E) (1982). This Note specifically refers to educational placement disputes but also encompasses all actions permitted under § 1415(b)(1)(E) except reimbursement actions. See infra note 61 and accompanying text.

ever, the EAHCA does not provide an express limitations period in which to bring an action under the Act in federal court.  

When a federal statute creates a cause of action without supplying a limitations period, federal courts generally borrow a limitations period from an analogous state statute, unless the state period would undermine the policies behind the federal statute. The federal courts of appeals that have addressed this issue in the context of EAHCA actions disagree on the appropriate limitations period governing actions brought under the Act. This disagreement stems from inconsistent application of the traditional borrowing procedures for determining the appropriate statute of limitations. As a result, the limitations periods borrowed from state statutes for EAHCA claims range from thirty days to three years.

This Note examines the confusion surrounding the limitations period governing EAHCA actions and argues that the underlying policies of the Act will be served best either by uniform characterization of EAHCA claims or by legislative action specifying a limitations period of at least one year for such claims. Part I of this Note discusses the statutory provisions of the EAHCA and its procedural safeguards designed to protect the rights of handicapped children and their parents. Part II discusses


12. See Wilson, 471 U.S. at 266-67; infra notes 37-45 and accompanying text.


15. See Janzen v. Knox County Bd. of Educ., 790 F.2d 484, 489 (6th Cir. 1986) (three-year statute of limitations); Department of Educ., Haw. v. Carl D., 695 F.2d 1154, 1157 (9th Cir. 1983) (30-day statute of limitations). A majority of the courts of appeals that have dealt with this issue seem to favor a limitations period of at least one year. See supra note 13.
the steps that federal courts must follow when borrowing state statutes of limitations. Part II also reviews the types of state statutes from which federal courts of appeals have borrowed limitations periods and argues that educational placement disputes brought under section 1415(e)(2) of the EAHCA should be characterized uniformly as personal injury actions sounding in tort. Part III examines the goals of the EAHCA, and argues that a limitations period of at least one year is necessary to further these aims. This Note concludes that the ideal solution requires legislative enactment of a one-year limitations period and that courts, in the interim, should borrow limitations periods applicable to state personal injury actions.

I. THE EAHCA

A. Statutory Scheme

Immediately prior to enactment of the EAHCA, Congress determined that many handicapped children were not receiving appropriate education due to the insufficiency of funds allocated to special educational programs by the states.16 In response, it passed the EAHCA, which provides supplemental federal funding to eligible states.17

To qualify for federal funding under the Act, a state must submit a plan that satisfies the minimum requirements of the EAHCA.18


At the time of enactment, Congress found that there were over 8 million handicapped children under the age of twenty-one in the United States whose special educational needs were not being met. See 20 U.S.C.A. § 1400(b)(1) (West Supp. 1987). Of these 8 million, 1.75 million handicapped children were not receiving any education at all, and 2.5 million handicapped children were receiving an inappropriate education. See 121 Cong. Rec. 37,417 (1975) (remarks of Sen. Schweiker, co-sponsor of the EAHCA).


18. See 20 U.S.C.A. §§ 1412-13 (West 1978 & Supp. 1988). The Act establishes a procedural framework that gives states the primary responsibility for determining whether local or intermediate educational agencies within that state are entitled to federal funds. See 20 U.S.C.A. § 1414(b)(1) (West 1978 & Supp. 1988); 121 Cong. Rec. 37,413 (1975) (statements of Sen. Williams). To be eligible, each local or intermediate educational agency must submit to the state an application for funds each fiscal year, providing assurance that the agency has established programs, policies, and procedural safeguards in accordance with the provisions of the Act delineating state eligibility requirements. See 20 U.S.C.A. § 1414 (West 1978 & Supp. 1988) (local agencies must meet state eligibility requirements set out in §§ 1412, 1413(a)). If the educational programs of a local educational agency do not meet the Act's requirements, or the local agency is entitled to less than $7,500, the state educational agency may not distribute federal funds to the local agency. See 20 U.S.C. § 1411(c)(4)(A) (1982). Instead, the state agency must provide education and related services directly to handicapped children living under the province of that local agency. See 20 U.S.C. § 1414(d) (1982).
state plan must establish an order of priority such that federal funds will be spent to provide education first to handicapped children not receiving any education and then to the most severely handicapped children who are receiving an inadequate education. The state plan also must contain a "mainstreaming" provision, requiring that, whenever possible, handicapped children be placed in educational programs with children who are not handicapped.

To determine the appropriate education for each child, the child's teacher, a representative of the local educational agency, the parents of the child, and the child, if possible, participate in formulating an "individualized educational program" ("IEP"). The IEP is a written statement that includes the present educational performance level of the handicapped child, specific educational services to be provided, the extent to which mainstreaming the child is possible, the annual educational goals, and objective criteria for evaluating whether such goals are being achieved. Local or regional educational agencies must review the IEP annually.

The Act contains certain procedural safeguards, which encompass administrative and judicial proceedings, to ensure due process protection to handicapped children and their parents. School districts must give parents prior, written notice of any decision to change the child's educational placement and an opportunity to challenge any matter pertaining to the child's evaluation and placement. In the event that parents and educational authorities disagree over the appropriate educational placement of a handicapped child, parents are entitled to request an impartial due process hearing, to be conducted by either the state or local educa-

22. See id.; see also S. Rep. No. 168, 94th Cong., 1st Sess. 29 (1975) ("no single procedure shall be the sole criterion for determining an appropriate educational program for a child"), reprinted in 1975 U.S. Code Cong. & Admin. News 1425, 1453; 121 Cong. Rec. 37,410 (1975) ("Individualized attention to educational needs [is] . . . one of the most important elements to a child's success in school.") (quoting Sen. Randolph, then chairman of the Subcommittee on the Handicapped).
23. See 20 U.S.C. § 1414(a)(5) (1982) (local agencies may review IEPs more than once a year "but not less than annually").
26. See 20 U.S.C. § 1415(b)(1)(C) (1982) ("written prior notice to the parents . . . of the child [is required] whenever [the educational] agency . . . proposes to initiate or change, or . . . 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").
tional agency, in accordance with state law. If a local educational agency conducts the due process hearing, the aggrieved party must have an opportunity to appeal to the state educational agency. Following appeal, the losing party possesses the right to bring a civil action in federal district or state court. A claimant must exhaust his administrative remedies prior to initiating a civil action under the EAHCA—unless it would be futile to do so.


Section 1415(e)(3) of the EAHCA contains a “status quo” provision that guarantees that the handicapped child will remain in the most recently agreed-upon educational program during the pendency of any administrative or judicial proceedings. See 20 U.S.C. § 1415(e)(3) (1982). The status quo provision helps to alleviate any harm to a child’s education that judicial delay might cause. See Tokarcik v. Forest Hills School Dist., 665 F.2d 443, 453 (3d Cir. 1981), cert. denied, 458 U.S. 1121 (1982).

The EAHCA also authorizes private school placement of a handicapped child at public expense when an appropriate education cannot be provided in public schools. See School Comm. of Burlington, Mass. v. Department of Educ., 471 U.S. 359, 369 (1985); Kerr Center Parents Assoc. v. Charles, 842 F.2d 1052, 1061 (9th Cir. 1988); see also 20 U.S.C.A. § 1413(a)(4)(B)(i) (West 1978 & Supp. 1988) (“handicapped children in private schools and facilities will be provided special education and related services . . . at no cost to their parents or guardian, if such children are placed in or referred to such schools or facilities by the State or . . . local educational agency”); 34 C.F.R. § 300.401 (1987) (specifically authorizing private school placements at no cost to parents pursuant to § 1413(a)(4)(B)). Parents may be reimbursed for tuitions paid for private special education if a court subsequently determines that such placement is proper under the EAHCA. See School Comm. of Burlington, Mass., 471 U.S. at 369-70 (“Congress meant to include retroactive reimbursement to parents as an available remedy in a proper case.”). Parents who, in violation of § 1415(e)(3), unilaterally change their child’s placement while proceedings are pending, do not waive their right to reimbursement. See id. at 372. Such parents, however, act at their own financial risk, since they will not be reimbursed if the court ultimately determines that the placement specified in the controverted IEP is the appropriate one for the child. See id. at 373-74; 34 C.F.R. § 300.403 (1987).


Parties need not exhaust administrative remedies when:

(1) it would be futile to use the due process procedures (e.g., an agency has failed to provide services specified in the child’s individualized educational program (IEP) or an agency has abridged a handicapped child’s procedural rights such as the failure to make a child’s records available); (2) an agency has adopted a policy or pursued a practice of general applicability that is contrary to the law; (3) it is improbable that adequate relief can be obtained by pursuing
In 1986, Congress amended the EAHCA to specify that the Act does not provide the exclusive means through which handicapped children may pursue an EAHCA, equal protection, or a due process claim to a publicly financed special education. It passed this amendment in response to a Supreme Court decision holding that Congress did not intend the EAHCA to allow aggrieved parties to resort to other judicial remedies. Thus, handicapped children may also seek relief under section 1983 of the Civil Rights Act of 1871 ("section 1983") or section 504 of the Rehabilitation Act of 1973. Further, claimants who file suit under another law that protects the rights of handicapped children must exhaust the EAHCA's administrative remedies to the same extent required

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administrative remedies (e.g., the hearing officer lacks the authority to grant the relief sought); and (4) an emergency situation exists (e.g., the failure to take immediate action will adversely affect a child's mental or physical health).


Congress enacted § 1415(f) to "re-establish statutory rights repealed by ther [sic] U.S. Supreme Court in Smith v. Robinson." H.R. Rep. No. 296, 99th Cong., 1st Sess. 4 (1985). The Smith Court held that the EAHCA was the exclusive avenue through which handicapped children could enforce their rights to a publicly financed special education, thereby prohibiting handicapped children from bringing such claims under § 1983 of the Civil Rights Act of 1871 ("§ 1983"), or § 504 of the Rehabilitation Act of 1973. See Smith, 468 U.S. at 1009, 1012-13. The Court reasoned that the detailed procedural protections of the Act indicated that Congress intended the EAHCA to be the exclusive remedy. See id. at 1019. According to Smith:

[There is no doubt that the remedies, rights, and procedures Congress set out in the [EAHCA] are the ones it intended to apply to a handicapped child's claim to a free appropriate public education. . . . Congress did not intend a handicapped child to be able to circumvent the requirements or supplement the remedies of the [EAHCA] by resort to the general antidiscrimination provision of § 504.

Id. at 1019.


Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

Id.

35. See Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794 (West Supp. 1988). Section 504, which is applicable to equal protection claims, provides: "No otherwise qualified handicapped individual . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Id.

II. \textbf{BORROWING STATE STATUTES OF LIMITATIONS}

When a federal statute, such as the EAHCA, does not provide an express limitations period for claims brought under it, federal courts generally may assume that Congress expects them to borrow state limitations periods.\footnote{37}{\textit{See} Agency Holding Corp. v. Malley-Duff & Assocs., 107 S. Ct. 2759, 2762 (1987); Wilson v. Garcia, 471 U.S. 261, 266-67 (1985); DelCostello v. International Bhd. of Teamsters, 462 U.S. 151, 158 & n.12 (1983); Board of Regents v. Tomanio, 446 U.S. 478, 485 (1980).} When the adoption of a state statute of limitations would frustrate the purpose of the federal substantive law, however, the Supreme Court has advocated adopting the limitations period of an analogous federal statute.\footnote{38}{\textit{See e.g.}, Agency Holding Corp. v. Malley-Duff & Assocs., 107 S. Ct. 2759, 2764 (1987) (adopting limitations period of Clayton Act to actions for civil RICO); \textit{DelCostello}, 462 U.S. at 154-55 (borrowing limitations period of § 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b) (1982), for actions of employees against an employer and a union); Occidental Life Ins. Co. v. EEOC, 432 U.S. 355, 367-68 (1977) (adopting federal statute of limitations for EEOC enforcement actions).} Borrowing from an analogous state statute, however, remains the norm.\footnote{39}{\textit{See Agency Holding Corp.}, 107 S. Ct. at 2762-63 (quoting \textit{DelCostello}, 462 U.S. at 171-72); Wilson v. Garcia, 471 U.S. 261, 270 n.21 (1985) (same).}

In \textit{Wilson v. Garcia},\footnote{40}{471 U.S. 261 (1985).} an action brought under section 1983, the Supreme Court provided the analytical framework that federal courts must use to determine the most analogous state statute from which to borrow a limitations period.\footnote{41}{\textit{See id.} at 268; \textit{see also Agency Holding Corp.}, 107 S. Ct. at 2762 (applying \textit{Wilson} analysis to civil RICO action); Janzen v. Knox County Bd. of Educ., 790 F.2d 484, 486 (6th Cir. 1986) (applying \textit{Wilson} analysis to EAHCA claim).} Under \textit{Wilson}, federal courts first must decide whether all actions under the federal statute in question should be characterized\footnote{42}{Characterization is the process by which federal courts classify a federal claim in terms of a state cause of action to determine the most analogous state statute from which to borrow a limitations period. \textit{See}, e.g., Wilson v. Garcia, 471 U.S. 261, 271 (1985) ("adopting the statute governing an analogous cause of action under state law"); Board of Regents v. Tomanio, 446 U.S. 478, 483-84 (1980) (courts borrow "the state law of limitations governing an analogous cause of action"); Department of Educ., Haw. v. Carl D., 695 F.2d 1154, 1157 (9th Cir. 1983) (same). The characterization of federal claims "is derived from the elements of the cause of action, and Congress' purpose in providing it." \textit{Wilson}, 471 U.S. at 268; \textit{see United Parcel Serv., Inc. v. Mitchell}, 451 U.S. 56, 60-61 (1981). The characterization of a federal claim for purposes of determining the appropri-} uniformly or whether the characterization should vary


\footnote{39}{\textit{See Agency Holding Corp.}, 107 S. Ct. at 2762-63 (quoting \textit{DelCostello}, 462 U.S. at 171-72); Wilson v. Garcia, 471 U.S. 261, 270 n.21 (1985) (same).}

\footnote{40}{471 U.S. 261 (1985).}

\footnote{41}{\textit{See id.} at 268; \textit{see also Agency Holding Corp.}, 107 S. Ct. at 2762 (applying \textit{Wilson} analysis to civil RICO action); Janzen v. Knox County Bd. of Educ., 790 F.2d 484, 486 (6th Cir. 1986) (applying \textit{Wilson} analysis to EAHCA claim).}

\footnote{42}{Characterization is the process by which federal courts classify a federal claim in terms of a state cause of action to determine the most analogous state statute from which to borrow a limitations period. \textit{See}, e.g., Wilson v. Garcia, 471 U.S. 261, 271 (1985) ("adopting the statute governing an analogous cause of action under state law"); Board of Regents v. Tomanio, 446 U.S. 478, 483-84 (1980) (courts borrow "the state law of limitations governing an analogous cause of action"); Department of Educ., Haw. v. Carl D., 695 F.2d 1154, 1157 (9th Cir. 1983) (same). The characterization of federal claims "is derived from the elements of the cause of action, and Congress' purpose in providing it." \textit{Wilson}, 471 U.S. at 268; \textit{see United Parcel Serv., Inc. v. Mitchell}, 451 U.S. 56, 60-61 (1981). The characterization of a federal claim for purposes of determining the appropri-}
with the facts presented in each case.\textsuperscript{43} Next, courts must determine the proper characterization of the federal claim and, after having done so, decide which relevant state statute provides the most appropriate limitations period.\textsuperscript{44} Federal courts, however, may not borrow a state limitations period that conflicts with the policies underlying the federal statute.\textsuperscript{45}

A. Uniform Characterization of EAHCA Actions

The Supreme Court in \textit{Wilson} noted that the lower courts had been utilizing differing methods of characterization for section 1983 actions and applying multifarious criteria for evaluating the applicability of state statutes of limitations to particular claims.\textsuperscript{46} The federal courts that have decided EAHCA actions have had similar problems.\textsuperscript{47} For example, these courts have borrowed limitations periods from several types of state statutes, including tort statutes,\textsuperscript{48} administrative appeal statutes,\textsuperscript{49} catch-all statutes,\textsuperscript{50} and statutes governing writs of certiorari.\textsuperscript{51} Indeed, the problem at the base of the borrowing conflict is that most federal courts that have considered EAHCA actions have recognized their obligation to characterize the EAHCA claims, but then have failed to do so.\textsuperscript{52} Instead, these courts simply have adopted state statutes containing

\textsuperscript{43} See \textit{Wilson}, 471 U.S. at 268; see also \textit{Agency Holding Corp.}, 107 S. Ct. at 2762 (citing the analysis set forth in \textit{Wilson}).

\textsuperscript{44} See \textit{Wilson}, 471 U.S. at 268.

\textsuperscript{45} See \textit{id. at 266-67 (1985); County of Oneida v. Oneida Indian Nation, 470 U.S. 226, 240 (1985); Occidental Life Ins. Co. v. EEOC, 432 U.S. 355, 367 (1977).}

\textsuperscript{46} See \textit{Wilson}, 471 U.S. at 266.

\textsuperscript{47} See \textit{ supra} notes 13-15 and accompanying text.

\textsuperscript{48} See \textit{Scokin v. Texas}, 723 F.2d 432, 438 (5th Cir. 1984) (adapting two-year limitations period generally applicable to tort claims); \textit{Tokarcik v. Forest Hills School Dist.}, 665 F.2d 443, 454 (3d Cir. 1981) (borrowing a two-year limitations period generally applicable to an action to recover damages for injuries caused by the wrongful act or negligence of another), \textit{cert. denied}, 458 U.S. 1121 (1982).

\textsuperscript{49} See \textit{Adler ex rel. Adler v. Education Dep't, 760 F.2d 454, 460 (2d Cir. 1985) (applying four-month limitations period applicable to administrative appeal statute for education to reimbursement action); Department of Educ., Haw. v. Carl D., 695 F.2d 1154, 1157 (9th Cir. 1983) (30-day limitation period borrowed from administrative appeals statute).}

\textsuperscript{50} See \textit{Schimmel ex rel. Schimmel v. Spillane, 819 F.2d 477, 480, 483 (4th Cir. 1987) (borrowing one-year limitations period applicable to personal actions for which no limitations period is otherwise prescribed); Kirchgessner \textit{ex rel. Kirchgessner v. Davis, 632 F. Supp. 616, 622 (W.D. Va. 1986) (adopting one-year limitations period for actions other than personal injury where no limitation is otherwise prescribed).}

\textsuperscript{51} See \textit{Thomas v. Staats, 633 F. Supp. 797, 803-06 (S.D.W. Va. 1985) (adopting four-month statute of limitations applicable to writs of certiorari).}

a limitations period that each court deemed appropriate, without ensuring that the state cause of action was itself analogous to the EAHCA action. 53

In Wilson, the Court concluded that one broad characterization covering all section 1983 claims is most appropriate. 54 The Court recognized that section 1983 encompasses many topics and subtopics. 55 If the choice of the limitations period were to depend upon the facts in each action, counsel legitimately could argue that more than one limitations period should apply to each section 1983 claim. 56 Thus, the Court held, a uniform characterization of section 1983 actions avoids uncertainty for litigants and promotes judicial economy. 57

The same policy concerns that support uniform characterization of section 1983 claims 58 are relevant to section 1415(e)(2) actions. Characterizing all EAHCA placement actions uniformly will avoid uncertainty for litigants who, because of the inconsistent results reached by the courts, have little guidance as to which statute of limitations applies. 59 Uniform characterization also will promote judicial economy by preventing the "time-consuming litigation" required to determine the proper characterization of EAHCA claims. 60 Therefore, courts should characterize EAHCA actions uniformly, rather than continuing to attempt case-by-case characterizations. 61


55. See id. at 273 (for example, discrimination in public employment on the basis of race; discharge without procedural due process; mistreatment of schoolchildren; deliberate indifference to medical needs of prison inmates).

56. See id. at 273-74.

57. See id. at 275 & n.34; see also Agency Holding Corp. v. Malley-Duff & Assoecs., 107 S. Ct. 2759, 2764 (1987) (extending Wilson's reasoning to impose a uniform statute of limitations for civil RICO claims by borrowing a limitations period from federal law).

58. See supra text accompanying note 57.

59. Cf. Agency Holding Corp., 107 S. Ct. at 2764 ("Plaintiffs may be denied their just remedy if they delay in filing their claims, having wrongly postulated that the courts would apply a longer statute."). (quoting Wilson v. Garcia, 471 U.S. 261, 275 n.34 (1985)). This concern is especially acute in the context of EAHCA actions; handicapped children may be harmed irreparably if they are barred from enforcing their right to an appropriate education.

60. Cf. Agency Holding Corp., 107 S. Ct. at 2764 ("a uniform statute of limitations is required to avoid intolerable 'uncertainty and time-consuming litigation.'") (quoting Wilson, 471 U.S. at 272).

61. In Janzen v. Knox County Board of Education, 790 F.2d 484 (6th Cir. 1986), a reimbursement action brought under § 1415(e)(2) of the EAHCA, the Court of Appeals for the Sixth Circuit found that the Wilson rationale did not apply to EAHCA actions. See Janzen, 790 F.2d at 487. Examination of the Janzen decision, however, demonstrates
B. Characterization of EAHCA Actions

According to the Wilson format, once a court concludes that all claims brought pursuant to a federal statute should be characterized uniformly, the court then must determine the proper characterization and adopt the limitations period applicable to the most analogous state statute. Although the Wilson Court did not establish guidelines for determining the most analogous state statute once the federal claim has been characterized, federal courts that have reviewed EAHCA actions have required that the state statute be procedurally analogous to the Act.

These courts rely on the scope of judicial review as the primary factor to determine whether state statutes procedurally are analogous to the EAHCA. Because a state limitations period must not undermine federal policies, where the scope of judicial review under a state statute is more restrictive than the scope of review under the Act, federal courts have refused to borrow the limitations period applicable to the state statute.

that the court misinterpreted the Wilson inquiry. The Janzen court stated that Wilson directed federal courts first to determine whether the same limitations period should apply to all actions under the federal act or whether the limitations period should vary depending on the facts of the case. See id. at 486. The proper inquiry, however, asks whether all claims under a federal act should be characterized uniformly or on a case-by-case basis. See Wilson v. Garcia, 471 U.S. 261, 268 (1985). The Wilson Court focused on the characterization of the action; only after a federal action is characterized should a federal court determine the most relevant state statute of limitations. See id. at 268.

The Janzen court also stated that each EAHCA case must be characterized individually. See Janzen, 790 F.2d at 487. As support, the court distinguished reimbursement actions from placement disputes, see id., noting that these two actions warrant different limitations periods because they raise distinct issues. This conclusion in no way conflicts with the argument of this Note, which advocates uniform characterization of educational placement disputes brought under § 1415(e)(2) of the EAHCA. Reimbursement claims are brought to recover money spent on education after the resolution of any placement dispute between parents of handicapped children and school authorities. Thus, reimbursement actions brought under § 1415(e)(2) are distinguishable, and should be characterized differently, from other § 1415(e)(2) actions.

62. See Wilson, 471 U.S. at 268; supra text accompanying notes 42-44.

Procedural differences often indicate "that the policy considerations relevant to setting the limitation period for the state suit [have] no necessary application to the federal cause of action." Tokarcik v. Forest Hills School Dist., 665 F.2d 443, 450 (3d Cir. 1981), cert. denied, 458 U.S. 1121 (1982).


65. See cases cited supra note 45 and accompanying text.
Section 1415(e)(2) provides that the court in the civil action must review the administrative determinations and any new evidence introduced by either party. In addition, the court's decision must be founded upon a preponderance of the evidence.

The Supreme Court, in *Board of Education v. Rowley* ex rel. *Rowley*, held that section 1415(e)(2) requires courts to accord a degree of deference to state administrative determinations. The federal courts of appeals, however, disagree with regard to the "due weight" that federal courts must give to state administrative proceedings under the EAHCA. Although courts must give some consideration to state administrative determinations, logic dictates that Congress, by allowing the introduction of new evidence and granting the court broad remedial powers, intended the courts to conduct an independent review.


67. See 20 U.S.C. § 1415(e)(2) (1982). Section 1415(e)(2) provides that: "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."

68. See id.


70. See id. at 206. The *Rowley* court reasoned that allowing federal courts to set aside the findings of state proceedings would frustrate Congress' intention to give state and local educational agencies, in cooperation with the parents of a handicapped child, the primary responsibility for formulating the education to be accorded. See id. at 206-07.

71. Compare Karl v. Board of Educ., 736 F.2d 873, 877 (2d Cir. 1984) ("We believe *Rowley* requires that federal courts defer to the final decision of the state authorities, and that deference may not be eschewed merely because a decision is not unanimous or the reviewing authority disagrees with the hearing officer.") with Roncker ex rel. Roncker v. Walter, 700 F.2d 1058, 1062 (6th Cir.) ("the standard of review as set out in *Rowley* requires a *de novo* review but . . . the district court should give due weight to the state administrative proceedings in reaching its decision"), cert. denied, 464 U.S. 864 (1983) with School Bd. v. Malone, 762 F.2d 1210, 1218 (4th Cir. 1985) ("While the Supreme Court in *Rowley* made it clear that due weight should be given to the results of the state administrative proceedings, the Court recognized that Congress intended the courts to make 'independent decision[s] based on a preponderance of the evidence.'" (quoting *Board of Educ. v. Rowley*, 458 U.S. 176, 205 (1982) (quoting S. Conf. Rep. No. 455, 94th Cong., 1st Sess. 50 (1975), reprinted in 1975 U.S. Code Cong. & Admin. News 1425, 1503))).

72. *Rowley* serves to caution courts that they cannot simply disregard the state administrative determination in reaching their independent decisions. See supra note 71. The state determination should be treated as a piece of evidence that, along with other new evidence, the district court must consider to reach a decision by a preponderance of the evidence. See Karl ex rel. Karl v. Board of Educ., 736 F.2d 873, 878-79 (2d Cir. 1984) (Pratt, J., dissenting). Judge Pratt, in his dissent to *Karl*, stated that:

[C]ongress commanded the courts to conduct *de novo* hearings . . . . *Rowley*'s "gloss" on a clearly written statute requires only that the district judge give "due weight" to the views of the administrators; when those views conflict, it does not require him to accept the conclusion of the state's commissioner of
1. Personal Injury Claims

An examination of the various state statutes from which courts have borrowed limitations periods demonstrates that EAHCA claims are most appropriately characterized as personal injury actions. Further, such characterization provides a sufficient procedural analogy to the EAHCA.

The Supreme Court in Wilson held that section 1983 claims are most appropriately characterized as personal injury actions. Congress enacted section 1983 to enforce the fourteenth amendment to the United States Constitution, which ensures the equal protection of the law to all people. The Wilson Court concluded that a violation of the fourteenth amendment constitutes an injury to personal rights. Thus, the relief sought under section 1983 compensates for a violation of one's individual rights.

One federal court, as a result of its failure to characterize the § 1415(e)(2) action before it, borrowed the limitations period from a state statute that prescribes a limitations period for all actions not governed by a statute of limitations ("catch-all statutes"). See Schimmel ex rel. Schimmel v. Spillane, 819 F.2d 477, 483 (4th Cir. 1987). The Supreme Court has rejected the application of catch-all limitations periods for statutory claims to § 1983 and RICO actions because not all states have a catch-all statute of limitations. See Agency Holding Corp. v. Malley-Duff & Assocs., 107 S. Ct. 2759, 2765 (1987); Wilson v. Garcia, 471 U.S. 261, 278 (1985). In Wilson, the Court also determined that Congress would not have intended catch-all statutes of limitations to apply to § 1983 actions because of the scarcity of statutory claims that existed when § 1983 was enacted in 1871. See Wilson, 471 U.S. at 278. In Agency Holding Corp., the Supreme Court rejected the borrowing of catch-all statutes of limitations for civil RICO actions, citing to Wilson without further elaboration. See Agency Holding Corp., 107 S. Ct. at 2765. As the Wilson rationale is inapplicable to RICO, which was enacted in 1970, the logical interpretation is that the Agency Holding Corp. Court concluded that Congress did not intend state catch-all statutes of limitations to be applied to any federal cause of action. Thus, catch-all statutes of limitations cannot be borrowed for EAHCA actions.

One federal district court applied the statute of limitations from a state statute governing writs of certiorari. See Thomas v. Staats, 633 F. Supp. 797, 803-06 (S.D.W. Va. 1985). Such a statute, however, provides an inappropriate analogy to EAHCA claims because the writ of certiorari is discretionary, see id. at 804, while the right to bring an EAHCA claim is guaranteed under § 1415(e)(2) to any party who has exhausted state administrative remedies, see 20 U.S.C. § 1415(e)(2) (1982); supra notes 30-31 and accompanying text. Further, the writ of certiorari is an application for appeal, see Thomas, 633 F. Supp. at 804-05, whereas actions brought pursuant to § 1415(e)(2) of the EAHCA are separate civil actions that may be brought in federal district court, see infra notes 96-106 and accompanying text (appeals statutes inappropriate for characterization purposes).

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73. Id. at 878-79 (Pratt, J., dissenting).
75. See id. at 280.
76. See id. at 277 ("[t]he unifying theme of the Civil Rights Act of 1871 is reflected in the language of the Fourteenth Amendment").
77. See U.S. Const. amend. XIV, § 1.
78. See Wilson, 471 U.S. at 277-78.
79. See id. at 271-72; Mitchum v. Foster, 407 U.S. 225, 239 (1972) (§ 1983 provides a "remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation").
EAHCA actions also should be characterized as personal injury actions sounding in tort. The Act's legislative history establishes that, like section 1983, Congress enacted the EAHCA pursuant to the enforcement clause of the fourteenth amendment to ensure equal protection of the laws and to provide equal educational opportunity to all handicapped children. The right of handicapped children to an appropriate education under the EAHCA is a right guaranteed by the federal government. Where an educational placement claim is brought under section 1415(e)(2), the nature of the claim is that a child's individual educational rights have been violated because the child has not been placed in an educational program, or has been placed inappropriately. Thus, section 1415(e)(2) claims and those brought under section 1983 overlap significantly. Further, by amending the Act in 1986 to include a nonexclusivity provision, Congress evidenced its intention to allow parents of handicapped children to bring actions under section 1983, as well as EAHCA section 1415(e)(2), to enforce the educational rights of their children.

Further, as the Wilson court noted, it is highly unlikely that the limitations periods applicable to general personal injury statutes would ever discriminate against federal actions or conflict with federal law so as to preclude their application. In addition, state personal injury statutes procedurally are analogous to the EAHCA. Personal injury actions

81. See 121 Cong. Rec. 19,485, 19,492, 37,023, 37,030, 37,413 (1975). Senator Williams, the principal author of the EAHCA, stated:

The Constitution provides that all people shall be treated equally, but we know that, while all youngsters have an equal right to education, those who live with handicaps have not been accorded this right. [The EAHCA] fulfills the promise of the Constitution that there shall be equality of education for all people, and that handicapped children no longer will be left out.

Id. at 37,413.
83. See, e.g., Schimmel ex rel. Schimmel, 819 F.2d 477, 479 (4th Cir. 1987) (parents allege improper placement); Skokin v. Texas, 723 F.2d 432, 435 (5th Cir. 1984) (same); Department of Educ., Haw. v. Carl D., 695 F.2d 1154, 1156 (9th Cir. 1983) (same).
86. See H.R. Rep. No. 296, 99th Cong., 1st Sess. 4 (1985) ("[S]ince 1978 it has been Congress' intent to permit parents or guardians to pursue the rights of handicapped children through . . . section 1983."); supra notes 32-35 and accompanying text.
88. See supra text accompanying note 45.
brought in state courts are ordinary civil actions in which the court makes its determination based upon a preponderance of the evidence. In addition, as in a personal injury action, courts reviewing EAHCA claims may hear any additional evidence offered by the parties in reaching its decision. Thus, the rules applicable to personal injury actions are at least as broad as those governing the EAHCA, given the "due weight" that federal courts must give to state administrative determinations.

2. Administrative Appeal Statutes

Some federal courts, however, improperly have characterized EAHCA actions as administrative appeals and have borrowed the limitations period applicable to state administrative appeal statutes. Because a claimant must exhaust state administrative remedies as a condition precedent to bringing a civil action for an EAHCA violation, these courts argue that section 1415(e)(2) actions essentially are appeals from administrative proceedings. Section 1415(e)(2), however, permits a separate civil action to be brought by an aggrieved party; it says nothing with respect to appeals from state proceedings. Indeed, the version of the EAHCA originally passed by the House of Representatives provided for appeals to be taken from state educational agency determinations, but the conference committee rejected this language and created instead a right to bring a civil action—the language ultimately adopted by Congress. Thus, characterizing section 1415(e)(2) claims as state administrative appeals is inappropriate because administrative appeal statutes are designed specifically to govern appeals from state administrative agencies to state courts and are not intended to apply to distinct civil actions brought in federal court.

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90. See supra note 67.
91. See supra note 67.
92. See supra notes 70-72.
93. See Adler ex rel. Adler v. Education Dep't, 760 F.2d 454, 459-60 (2d Cir. 1985); Department of Educ., Haw. v. Carl D., 695 F.2d 1154, 1157 (9th Cir. 1983).
94. See supra note 31 and accompanying text.
95. See Adler, 760 F.2d at 457; Carl D., 695 F.2d at 1157.
Further, courts should reject administrative appeal statutes because they are not procedurally analogous to civil actions brought under the Act. The scope of judicial review and the remedial powers ordinarily conferred on courts that review administrative appeals are more restrictive than those granted by the EAHCA. Section 1415(e)(2) allows a court in the civil action to grant whatever relief it deems appropriate. In addition, the bill originally passed by the House of Representatives contained a provision stating that the court must adopt state agency determinations if the administrative determination was supported by substantial evidence—the deferential standard ordinarily applied to review of administrative law. Prior to passage, however, the conference committee changed this provision to the current statutory standard applied in civil actions requiring proof by a preponderance of the evidence.

III. ONE YEAR STATUTE OF LIMITATIONS: CONSISTENT WITH FEDERAL POLICIES

Once a federal court has characterized the federal claim and found a procedurally analogous state statute, the court then must decide whether the limitations period from that state statute is consistent with the poli-
cies underlying the federal act. If the state limitations period is not consistent, the court may not borrow that statute of limitations.

A. Goals and Purposes of the EAHCA

The two foremost objectives of the EAHCA are to ensure that each handicapped child receives an appropriate, publicly funded education and to prevent erroneous educational placement. The design of the EAHCA's statutory scheme also ensures parental involvement in the educational decision-making pertaining to their child, primarily through their participation in the IEP.

Courts considering EAHCA civil actions should borrow a limitations period of at least one year in duration to promote the federal policies underlying the EAHCA. A limitations period of at least one year further the goal of providing education for all handicapped children by permitting legitimate claims of handicapped children to be brought. Such a limitations period also ensures that parents are given the opportunity to become involved in the education of their handicapped children. A short limitations period may penalize parents unfair-

107. See supra notes 44-45 and accompanying text.
108. Id.
112. Although the federal courts of appeals disagree over the appropriate limitations period to apply to § 1415(e)(2) claims, a majority favor a limitations period of one year or more. See supra note 13.
114. See Schimmel ex rel. Schimmel v. Spillane, 819 F.2d 477, 482 (4th Cir. 1987); Scokin v. Texas, 723 F.2d 432, 437 (5th Cir. 1984). The EAHCA "uses parental concern as an enforcement mechanism for the Act's provisions. It relies on parents to question the appropriateness of their child's education program, and to pursue review of that program through administrative and judicial channels." Scokin, 723 F.2d at 437; see Honig v. Doe, 108 S. Ct. 592, 598 (1988) (throughout the EAHCA, Congress emphasized the "importance and indeed the necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness").
ly,115 parents may decide that further testing of their child is necessary to evaluate the agency’s decision, leaving them with insufficient time to decide whether to bring a civil action.116 In addition, parents unrepresented by counsel in the administrative hearing may need to obtain counsel for the civil action.117 Similarly, when parents unrepresented by counsel in state administrative proceedings are unaware that they are entitled to bring a civil action after obtaining an adverse decision, equity might mandate against the strict enforcement of a short limitations period.118 The better solution, however, is to apply longer statutes of limitations rather than to rely on equitable principles to protect the rights of handicapped children.119 Because tort statutes governing personal injury actions generally contain limitations periods of at least one year,120 they

116. See Janzen v. Knox County Bd. of Educ., 790 F.2d 484, 488 (6th Cir. 1986); Scokin v. Texas, 723 F.2d 432, 437 (5th Cir. 1984).
117. See Scokin, 723 F.2d at 437. Parents also may be unaware of the applicable limitations period or even of its significance. The EAHCA imposes a duty on educational agencies to inform parents of all procedural safeguards available to them under the Act. See 20 U.S.C. § 1415(b)(1)(D) (1982). The Court of Appeals for the Fifth Circuit has “extrapolated from this provision a requirement that educational agencies inform parents of the applicable limitations period for judicial review.” Schimmel ex rel. Schimmel v. Spillane, 819 F.2d 477, 482 (4th Cir. 1987) (discussing Scokin v. Texas, 723 F.2d 432, 438 (5th Cir. 1984)). It has not been established, however, that the Act “actually imposes such a duty on educational agencies.” Schimmel, 819 F.2d at 482.
118. See Department of Educ., Haw. v. Carl D., 695 F.2d 1154, 1158 (9th Cir. 1983).
119. See Schimmel, 819 F.2d at 482 ("Rather than relying on equitable principles to relieve uninformed parents...we will simply apply a longer statute of limitations.") (quoting Scokin, 723 F.2d at 438).

Generally, a longer statute of limitations may create problems for the educational agencies and the courts, since memories fade and conditions change. With educational placement dispute claims, however, much of the evidence, such as the IEP, results of testing, and school report cards, is documented. See 20 U.S.C. § 1401(19) (1982); text accompanying supra note 22. Further, this Note advocates the adoption of a one-year statute of limitations to promote the goals of the EAHCA. See infra notes 133-34 and accompanying text. It is unlikely that these problems will be encountered by the courts within a mere one-year period.120

comport with the federal policies underlying the EAHCA.121

Some courts argue that Congress intended the courts to act as an "external check" to guard against possible deficiencies in the educational administrative system.122 For the reasons specified above, a limitations period shorter than one year would inhibit the aggregation of evidence necessary to commence an orderly review.123 Longer statutes of limitations, such as those governing personal injury actions, allow courts to fulfill their obligation of ensuring that a state is providing free, appropriate education through the states' due process mechanism,124 since placement errors often become apparent only with the passage of time.125 Therefore, administrative appeal statutes, which ordinarily are less than one year in duration,126 undermine the policies of the EAHCA.

Courts that apply administrative appeal statutes argue that short limi-


121. Cf. Wilson v. Garcia, 471 U.S. 261, 279 (1985) ("It is most unlikely that the period of limitations applicable to [personal injury] claims ever was, or ever would be, fixed in a way that would discriminate against federal claims, or be inconsistent with federal law in any respect.").


123. See Schimmel ex rel. Schimmel v. Spillane, 819 F.2d 477, 482 (4th Cir. 1987); Janzen v. Knox County Bd. of Educ., 790 F.2d 484, 488 (6th Cir. 1986); Scokin, 723 F.2d at 437; Tokarcik, 665 F.2d at 451.

124. See supra notes 24-30 and accompanying text.


tations periods satisfy the goal of prompt resolution of disputes. These courts have inferred this goal from a remark regarding prompt dispute resolution made by Senator Williams, the principal author of the Act. These courts, however, misread Senator Williams' remarks, which refer to the speed with which administrative hearings and reviews should be conducted. Further, a short limitations period is unnecessary to facilitate prompt resolution of disputes because the parents themselves, motivated by their concern for their child’s educational well-being, will seek prompt resolution of the civil action.

B. Congressional Amendment

Several states have more than one statute governing personal injuries. Unless the Supreme Court resolves the uncertainty as to the ap-

127. See Adler ex rel. Adler v. Education Dep't, 760 F.2d 454, 459 (2d Cir. 1985) (four-month limitations period); Department of Educ., Haw. v. Carl D., 695 F.2d 1154, 1157 (9th Cir. 1983) (30-day limitations period).
128. See Adler, 760 F.2d at 460; Carl D., 695 F.2d at 1157.
129. See Adler, 760 F.2d at 460; Carl D., 695 F.2d at 1157. These courts quote the following part of Senator Williams' statement to the Senate:

I cannot emphasize enough that delay in resolving matters regarding the education program of a handicapped child 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. Thus, in view of the 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.

130. See 121 Cong. Rec. 37,416 (1975).

121 Cong. Rec. 37,415-16 (1975). Senator Williams' remark about prompt resolution occurred in the midst of a discussion on strengthening procedural safeguards. See id. He did not mention judicial proceedings until later in his speech: "Ninth. The provisions of existing law with respect to judicial action are clarified and strengthened..." Id. at 37,416; see also Tokarcik v. Forest Hills School Dist., 665 F.2d 443, 454 n.20 (3d Cir. 1981) ("Significantly, the language in the legislative history addressed to 'long and tedious administrative appeals' and the need for promptness in resolving matters, appears in the context of discussions about administrative proceedings."). cert. denied, 458 U.S. 1121 (1982); 121 Cong. Rec. 37,412 (1975) (remarks of Sen. Stafford, then ranking minority member of the Subcommittee on the Handicapped) ("[T]he placement, or change of placement should not be unnecessarily delayed while long and tedious administrative appeals were being exhausted.").

In response to Senator Williams' concern, the Office of Special Education and Rehabilitative Services, Department of Education, enacted regulations requiring local educational agencies to reach a final decision in the due process hearing not later than 45 days after receipt of a request for a hearing, and requiring State educational agencies to reach a final decision in a review within 30 days after receipt of request for a review. See 34 C.F.R. § 300.512(a), (b) (1987). That these regulations only deal with administrative actions filed pursuant to § 1415(e)(2).

131. Some states have one statute that governs personal injuries in general and another that governs specific intentional torts causing personal injuries. See, e.g., Mont. Code
propriate personal injury limitations period, \textsuperscript{132} Congress should enact an amendment mandating a statute of limitations to eliminate the confusion over the appropriate limitations period applicable to section 1415(e)(2) actions. A one-year limitations period seems most appropriate. It provides for timely resolution of disputes while ensuring that parties receive a fair opportunity to obtain judicial review of state administrative determinations. \textsuperscript{133} A one-year limitations period also comports with Congress’ intention that no more than one year should lapse without reconsideration being given to a handicapped child’s educational placement, evidenced by the requirement that the IEP be reviewed annually. \textsuperscript{134}

**CONCLUSION**

Ideally, Congress should enact an amendment to the EAHCA specifying a one-year statute of limitations. Until such an amendment is enacted, courts should uniformly characterize educational placement disputes brought under section 1415(e)(2) of the EAHCA as personal injury actions sounding in tort. The limitations periods of tort statutes are consistent with and will further the goals of the Act. This interim solution ensures consistency among EAHCA claims regarding educational placement disputes and prevents arbitrary borrowing of limitations periods by the federal courts.

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\textsuperscript{132} The Wilson Court did not address the borrowing problems that arise when a state has more than one statute of limitations governing personal injury actions. \textit{See} Wilson, 471 U.S. 261, 286 (1985) (O’Connor, J., dissenting). The Supreme Court will rule on this issue in the context of \textsection 1983 actions in the near future. \textit{See} Okure v. Owens, 816 F.2d 45, 47 (2d Cir. 1987), \textit{cert. granted}, 108 S. Ct. 1218 (1988).

\textsuperscript{133} \textit{See} Schimmel \textit{ex rel. Schimmel v. Spillane}, 819 F.2d 477, 483 (4th Cir. 1987).

\textsuperscript{134} \textit{See} 20 U.S.C. \textsection 1414(a)(5) (1982).