

DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

TESTIMONY OF DANIEL EBIHARA
IN OPPOSITION TO S.B. 234

My name is Daniel Ebihara. While I am testifying today in my individual capacity, for over four (4) years, I have been a staff attorney at Clark County Legal Services. CCLS is a private, non-profit, legal service organization dedicated to serving the needs of low income individuals in Clark County. We represent victims of domestic violence, abused and neglected children, people defrauded by automobile and real estate scams, and individuals who faced discrimination based upon their disability.

For over seven years, CCLS has also protected the educational rights of parents of disabled children in administrative review, due process hearings, and federal court, when necessary. As a member of the only legal service organization dedicated to complete representation, I must state that SB 234 is a severe and unwarranted reduction of the rights of parents whose only concern is the free and appropriate education of their children.

SB 234, Section 1, reduces the applicable period of limitations from three (3) years, N.R.S. 11.190(3)(a), to one (1) year, foreclosing the possibility of remedying longstanding, continuing deficiencies with a child's education. This bill would also create an arbitrary and unnecessary duplication of state administrative procedures and a waste of limited funds of state and local school districts.

The federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq., protects parents' right to participate in the development of their disabled child's education. This participation includes an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of their child, as well as any matter related to the school's obligation to provide that child with a free, appropriate, public education. 20 U.S.C. § 1415(a).

In order to protect these rights, procedural safeguards were established providing, (1) access to educational records and the opportunity to obtain an independent educational evaluation, 20 U.S.C. § 1415(b)(1); (2) protection of the rights of the child whose parents are unknown, 20 U.S.C. § 1415(b)(2); (3) prior written notice to the parents in the their native language of any proposals or refusals

to change educational programming, 20 U.S.C. § 1415(b)(3) and (4); and (4) the availability of alternative dispute resolution.

To resolve disputes between the parent and the school district, IDEA provides an opportunity to mediate, 20 U.S.C. § 1415(b)(5), to present complaints with the State Department of Education, 20 U.S.C. § 1415(b)(6), and to file for an administrative due process hearing.

A State Complaint is filed directly to the State Department of Education for investigation. Under federal regulations, this investigation includes a review of any and all alleged violations that occurred not more than one year prior to the date of the complaint. However, that period is extended where the violation is continuing, or compensatory services are requested. In that case, the State is obligated to review the three (3) years prior to the date that the complaint is received. 34 C.F.R. § 300.662(c).

Similarly, in Nevada, if a parent elects to file an administrative due process hearing, the hearing officer is obligated to review the prior three (3) years when there is an allegation of a continuing violation or compensatory services are requested. *See, S.V. v. Sherwood Sch. Dist.*, 254 F.3d 877 (9th Cir. 2001); *G and M B Parents v. Clark Cty. Sch. Dist.*, 102 LRP 18773 (Feb. 2, 2001); NRS 11.190(3)(a).

Neither the State Complaint process nor the hearing process provide for monetary damages to the parents. Instead, the remedies are in the form of compensatory educational services enabling the child to "catch up" or "make up" the progress she would have made if the school had not violated her rights. Alternatively, the school may be required to modify procedures or practices which violate the law.

This bill seeks to change the existing law pertaining to the length of time a hearing officer may review continuing violations. This limitation only effects the due process hearing. SB 234 cannot limit the length of time the State Department of Education is obligated to investigate violations. Under federal regulations stated above, an investigation must go back three (3) years if the complaint so requires.

This proposed amendment not only curtails the federal rights of parents of children with disabilities; but also, would increase the cost of these procedures to the State Department of Education, the local school districts, and parents as well.

If parents are arbitrarily limited to a one year review in a due process hearing, they will be forced to file a State Complaint and an administrative due process hearing on the same issue at the same time, all in an attempt to receive a complete remedy under federal law. Similarly, limiting due process review for only one year creates the possibility that a parent may immediately file a court action because the administrative process is foreclosed.

Further, this amendment would create the situation where a State Complaint and a due process hearing would be pending simultaneously, with the hearing officer, limited to reviewing the first year, and the State Complaint investigating the second and third year. This process is not only a waste of limited resources but may also lead to conflicting decisions and cause substantial confusion, a result in direct contradiction with the federal regulation, see 34 C.F.R. 300.661, requiring the State Department of Education to hold in abeyance any issues to be decided by a due process hearing.

Finally, this bill will have the added effect of preventing settlement of disputes outside of the due process hearing. It is not uncommon for a parent to postpone filing for due process in an attempt to informally resolve her issues with the school district. Under the provisions of SB 234, this possibility will be eliminated. Without taking the necessary time to determine an appropriate resolution, parents will be required to file their complaints quickly or risk losing that right. More rather than less due process requests will be filed, more hearing officers will be retained, and more time will be spent managing educational goals and benchmarks, all at the same time this bill seeks to limit compensation of hearing officers.

The due process hearing is not a proceeding where parties seek monetary awards. It is a procedure for obtaining the appropriate education for a child with a disability, a child who has endured a school system unable to provide what federal law requires, a child who relies upon parents unfamiliar with federal law or the complicated administrative procedures established by the Department of Education.

It is this child and this child alone who carries the entire burden of S.B. 234, and, for her sacrifice, gains nothing.

It is for the reasons of protecting the rights of disabled children, promoting settlement of disputes, and preserving the limited resources of our schools, that I urge this committee to reject SB 234.