HOUSE RESEARCH ORGANIZATION bill analysis — 4/29/2003

HB 1225
Eissler
(CSHB 1225 by Eissler)

SUBJECT: Time limits for requesting and appealing special education hearings

COMMITTEE: Public Education — committee substitute recommended

VOTE: 9 ayes — Grusendorf, Oliveira, Branch, Dawson, Dutton, Eissler, Griggs, Hochberg, Madden

0 nays

WITNESSES: For — Chris Borreca, Texas Council of Administrators of Special Education, Texas Association of School Boards, Texas Association of School Administrators, and Texas Elementary Principals and Supervisors Association; Mary Beth King, Texas Association of School Boards and Plano ISD; JoHannah Whitsett, Association of Texas Professional Educators

Against — Kathy Byrd; Louis H. Geigerman; Christopher Jonas; Martha Robbins; Rona Statman, The Arc of Texas

On — David Anderson, Texas Education Agency; Richard LaVallo, Advocacy, Inc.; Susan Maxwell, Texas Council for Developmental Disabilities

BACKGROUND: Statutes of limitations for requesting due-process hearings when a student has been denied special education services have been the subject of litigation throughout the country. Federal laws are unclear, and state laws set limitations ranging from 30 days to six years. In the absence of clear federal provisions, the 5th U.S. Circuit Court of Appeals recognized a two-year statute of limitations.

In August 2002, the Texas Education Agency (TEA) adopted rules establishing a one-year statute of limitations for requesting a due-process hearing after special education services have been denied and a 90-day limit on filing a civil action to appeal a hearing officer's decision. The rule was challenged in the 53rd District Court in Travis County. In a recent decision, now on appeal, the district court found that TEA had the authority to adopt the one-year statute of limitations but not to limit the time for filing a civil action.

DIGEST:

CSHB 1225 would specify that a person who wants to request a due-process hearing because of a school district's failure or refusal to identify, evaluate, or place a child properly in special education, or to provide other special education services, must request the hearing by the first anniversary of the date the person knew or should have known about the failure to provide these services. A party could raise claims involving the denial of special education services that initially occurred two years before the filing of a request for a hearing if the hearing officer determined that the school district's failure or refusal continued to occur during the year preceding the filing.

A school district would have to notify a parent in writing of the time limit for requesting a due-process hearing if the district and parent did not agree on the adequacy of the child's admission, review, and dismissal committee's recommendations or if the district provided notice to the parent as required by federal law when a district has denied special education services. The notice would have to include a "sufficiently detailed" report of the district's final decision, including the date of the decision, and describe the applicable rights and procedures relating to a request for a special education impartial due-process hearing.

A civil action to appeal a decision of a hearing officer in a special education due-process hearing would have to be filed within 180 days after the date on which the hearing officer issued a written decision.

The bill would take effect September 1, 2003.

SUPPORTERS SAY:

CSHB 1225 would establish in statute reasonable limitations for requesting due-process hearings and appeals of hearings decisions. It would include protections to ensure that parents were made aware of their rights and responsibilities in requesting a due-process hearing. The one-year statute of limitations, with allowances for up to two years for related claims, would represent a reasonable compromise between the interests of school districts and parents. Districts would not have to devote scarce resources to defending decisions made as long as two years previously. Parents would receive clear notification of the date services were denied and the date by which a due-process hearing would have to be requested, eliminating any confusion or misunderstanding about their rights and responsibilities.

OPPONENTS SAY:

CSHB 1225 should maintain the two-year statute of limitations for requesting a due-process hearing that federal courts allowed before TEA adopted rules setting the statute of limitations at one year. Parents who have been denied special education services are at a great disadvantage. They may spend months trying to work within the system to resolve disagreements before deciding to request a hearing, which can be time-consuming and expensive for the family as well as the school district. While school districts have attorneys who specialize in this area of the law, very few private practitioners are available to take these cases, and parents may spend months trying to find an attorney to represent them before deciding to represent themselves. Given these disadvantages, parents should have as long as possible to file a request for a due-process hearing and to file a civil action if a hearing officer denies the request.

NOTES:

The committee substitute would modify the original bill by allowing a party to raise claims involving incidents that occurred within two years before the request for a hearing and by increasing the time period for filing a civil action to from 90 to 180 days. The substitute also added the requirement that the school district provide parents with a detailed report of the district's decision to deny services, including the date that the decision was provided to parents.