



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

OFFICE OF SPECIAL EDUCATION  
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June 27, 2024

Dear Parents of Students with Disabilities:

RE: Provision of Special Education Programs and Related Services to Students with Disabilities Under the Age of 22

On July 6, 2023, the New York State Department of Education (NYSED) Office of Counsel issued [Opinion No. 242](#) describing that a Second Circuit Court of Appeals' decision, *A.R. v. Connecticut Board of Education*,<sup>1</sup> requires New York State public schools to provide special education and related services to resident students with disabilities at least until the day before their 22nd birthdays. Recently, in a narrow ruling, a New York Supreme Court in Albany County found that NYSED's reliance on *A.R. v. Connecticut Board of Education* was "misplaced." NYSED disagrees with the analysis used, has appealed the decision, and has no plans to, nor did the Supreme Court's decision require, a stay of the Opinion of Counsel No. 242.

It is NYSED's position that federal law requires districts in New York State to provide special education and related services to resident students with disabilities until the day before the student's 22nd birthday. NYSED has monitoring responsibilities under the Individuals with Disabilities Education Act (IDEA) that cannot be superseded by a New York State trial court decision.<sup>2</sup> School districts that refuse to provide these educational services will likely be liable for compensatory education claims.

NYSED has received reports that some school districts are choosing to end special education programs and services prior to age 22. A school district does not have this authority as its obligation to continue to provide a free appropriate public education (FAPE) until age 22 applies to all students with disabilities. In some situations, the parent or person in parental relationship may decide that their student, who is no longer subject to compulsory attendance requirements but remains eligible for education, is instead

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<sup>1</sup> *A.R. v. Connecticut State Board of Education*, 5 F.4th 155 (2d Cir 2021)

<sup>2</sup> Although New York State law has not yet been changed to reflect the holding in *A.R. v Connecticut Board of Education* and provides that eligibility for special education ends at the conclusion of the school year in which a student turns 21, that provision appears to violate IDEA.

ready to exit education in consideration of transitioning to adult services or other life opportunities. This decision is a student-specific choice informed by individual preferences, goals, and options to reflect the student's interests and to support their post-school adult living objectives. If the parent or person in parental relationship elects to exit education for a student who is seeking to transition, the school district committee on special education (CSE) must provide a [Student Exit Summary](#) and maintain documentation of the parent's choice to end education services prior to age 22.

If the parent or person in parental relationship has not elected to exit education to transition their student to adult services/opportunities prior to age 22, the CSE must develop an individualized education program (IEP) based on the student's present levels of performance and annual goals, including the determination of the special education program and services as well as transition services that are needed to enable the student to receive FAPE until age 22. The parent or person in parental relationship retains all rights and protections for [dispute resolution](#) if a new IEP is not adopted or if they disagree with the recommendation reflected in the new IEP.

NYSED has received reports that certain school districts have not developed IEPs to continue placement of students in approved residential programs until age 22. This may be of increased concern for those students who are eligible for adult service opportunities through other New York State agencies after completion of their education program. The gap between the school district choosing to end education services at age 21 and the start of adult services may leave some students without day or residential programs during this gap. Students returning to home while waiting for adult day or residential opportunities may create a substantial hardship for parents or persons in parental relationships. If this is the case, NYSED encourages that this be brought to the CSE's urgent attention as the school district continues to be programmatically and fiscally responsible for students and must arrange for the continuation of reimbursement for education and residential services if necessary for the continuation of FAPE until age 22. As previously stated, [dispute resolution](#) options may be pursued by the parent or person in parental relationship if a new IEP is not adopted or if they disagree with the recommendation reflected in the new IEP.

Questions regarding this letter may be directed to [SPECED@nysed.gov](mailto:SPECED@nysed.gov) or you may contact the Special Education Quality Assurance Unit in your region for further technical assistance:

Central Region - (315) 428-4556

Eastern Region - (518) 486-6366

Hudson Valley Region - (518) 473-1185

Long Island Region- (631) 952-3352

New York City Region - (718) 722-4544

Western Region - (585) 344-2002

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher Suriano". The signature is fluid and cursive, with a large initial "C" and "S".

Christopher Suriano