



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

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April 26, 2024

Dear Executive Officers and Superintendents of Approved Residential Programs:

RE: Approved residential programs serving students with disabilities who are eligible to transition to adult services through the Office for People with Developmental Disabilities

On July 6, 2023, the New York State Department of Education (NYSED) Office of Counsel issued [Opinion No. 242](#) regarding the effect of a Second Circuit Court of Appeals' decision in *A.R. v. Connecticut Board of Education*.<sup>1</sup> NYSED's Office of Counsel concluded that the holding of *A.R.*, that the interaction between federal law (Individuals with Disabilities Education Act - IDEA) and State law (services for adults) required public schools in Connecticut to provide special education and related services to resident students with disabilities at least until their 22nd birthdays, is equally applicable in New York State. Therefore, regardless of New York State law, federal law requires districts in New York State to provide special education and related services to resident students with disabilities until age 22, or the day before the student's 22nd birthday. The obligation to continue to provide a free appropriate public education (FAPE) until age 22 applies to all students with disabilities, including those students placed by a school district committee on special education (CSE) in an approved in-state or out-of-state residential program (operated by an approved private school for the education of students with disabilities or Special Act School District) and to those students in a residential program following appointment to a State-Operated or State-Supported school. As such, NYSED has recommended amending New York State laws to align with the Second Circuit ruling and advocated for changes to the State Aid formulas to extend existing funding streams ([Board of Regents Advances Budget and Legislative Priorities for the 2024-25 School Year | New York State Education Department \(nysed.gov\)](#)).

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." The court's decision, however, did not engage with the federal authority analyzed by NYSED's Office of Counsel in its July 6, 2023, opinion. While the court indicated that the statutory scheme in

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

New York was different than A.R., it did not fully analyze New York State's statutory scheme of publicly funded adult education programs that are provided to non-disabled students through a student's 22nd birthday. The decision is also factually erroneous: while the court stated that New York State law limits education "to students under the age of 21," that provision is superseded by Education Law § 4402 (5), which provides a greater entitlement to students with disabilities. NYSED has no plans to, nor did the Supreme Court's decision require, a stay of the Opinion of Counsel No. 242. NYSED has appealed and is confident that it will receive a more fulsome analysis of this issue from the Appellate Division. Therefore, the legislative and budget proposal advanced by NYSED to address this issue remains the same.

In the interim, the federal law continues to supersede and NYSED expects that school districts will continue to abide by the *A.R. v. Connecticut Board of Education* decision and continue to provide education services to students until age 22. NYSED has monitoring responsibilities under the IDEA that can't be superseded by a New York State trial court decision. School districts that refuse to provide these educational services will likely be liable for compensatory education claims.

For students with disabilities who are enrolled in residential programs, and who are eligible for adult service opportunities through the Office for People with Developmental Disabilities (OPWDD), the CSE must consider each student's transition goals and services in its recommendation for the continuation of FAPE until age 22. 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 ready to exit education in consideration of transitioning to adult services. 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 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 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 CSE must also determine whether the student will continue to need placement in their existing residential program to ensure FAPE or whether it will recommend alternative programs and services. Absent the adoption of a new IEP, the prior IEP containing the residential placement remains in effect for students who have not graduated with a diploma, not exited education in consideration of transitioning to adult services, and not yet reached age 22. The school district continues to be programmatically and fiscally responsible for these students and must arrange for the continuation of reimbursement for education and residential services as reflected on the IEP. 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.

Questions regarding this letter may be directed to [SPECED@nysed.gov](mailto:SPECED@nysed.gov) or you may call your Special Education Quality Assurance Regional Associate for further technical assistance.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Christopher Suriano". The signature is fluid and cursive, with the first name being the most prominent.

Christopher Suriano

c: Joanne LaCrosse  
Suzanne Bolling  
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