

Special Education Obligations:

Implications of service provision to age 22

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Background

- In July 2023, NYSED issued a Formal Opinion of Counsel advising school districts to provide special education services to some students with disabilities through age 22 – an additional year that is likely to continue impacting school district budgets

A.R. v. Connecticut State Bd. of Education

5 F.4th 155 (2d Cir. 2021)

- Based on Connecticut statutes and federal IDEA – but the Second Circuit Court of Appeals also has jurisdiction over NY
- Connecticut requirements are similar to NY in that students with disabilities have a right to receive FAPE until they earn a high school diploma or the conclusion of the school year in which they turn 21, whichever occurs first

A.R. v. Connecticut State Bd. of Education 5 F.4th 155 (2d Cir. 2021) (cont.)

- Connecticut provides public education to nondisabled students over the age of 21 to age 22 through its adult education programs (GED high school equivalency course)
- Second Circuit found the state is therefore required to provide educational programming to students with disabilities in the same age range, *i.e.*, up to age 22
 - Such educational programming would be FAPE, thus extending the FAPE entitlement from the conclusion of the school year in which the student turns 21 to when they reach age 22

July 6, 2023 NYSED Formal Opinion of Counsel

- Based on a U.S. Second Circuit Court of Appeals decision (*A.R. v. Connecticut*) holding that Connecticut must make available a FAPE until age 22 for students with disabilities who had not received a high school diploma
- Extended the previous longstanding requirement in NY that students with disabilities are entitled to special education programs and services until they either receive a Regents or local high school diploma, or upon the conclusion of the school year in which they turn 21, whichever occurs first

July 6, 2023 NYSED Formal Opinion of Counsel (cont.)

- Fully embraced the *A.R.* decision as applicable to NY
- Explains that NY law defining eligibility for special education is “materially indistinguishable” from Connecticut law
- NY also offers publicly funded adult education programs to nondisabled students in the same age group as CT
- Therefore, NYSED Counsel concludes that the holding in *A.R.* regarding the interaction between federal law as set forth in the IDEA and state law requires NY public schools to provide special education and related services to resident students with disabilities at least until their 22nd birthday if they have not received a high school diploma

July 6, 2023 NYSED Formal Opinion of Counsel (cont.)

- NYSED Office of Counsel went even further, stating that the students' 22nd birthdays may fall at any point during a school year which creates a complication not addressed in the *A.R.* decision
 - Office of Counsel admits that, while not required by the applicable federal court decision, “SED’s Office of Special Education recommends that school districts consider providing such services through the end of the school year in which the student turns 22 or upon receipt of a high school diploma, whichever comes first.”

Katonah-Lewisboro UFSD v. New York State Educ. Dept., (Sup. Ct., Albany Co. Mar. 8, 2024)

- In an Article 78 proceeding, the school district challenged the obligation to provide a FAPE to a student after the conclusion of the year in which the student turned 21 years old.
- The Court found that under the provisions of Article 89 of the New York State Education Law and the IDEA, a school district is not obligated to educate a student after the termination of the school year in which the student turns 21.

Katonah-Lewisboro UFSD v. New York State Educ. Dept., (Sup. Ct., Albany Co. Mar. 8, 2024)

- The Court ruled that SED's reliance on *A.R.* was misplaced, indicating that unlike Connecticut law, "New York Education Law expressly limits the right to a free public education in New York State to students under the age of 21."
- The case did not address the Office of Counsel's Formal Opinion directly.

Takeaways

- The NYSED Formal Opinion of Counsel which essentially effectuates the movement from age 21 to age 22 for the provision of services to students with disabilities has been questioned by a State Court decision; a Notice of Appeal has been filed.
- Even before the *Katonah-Lewisboro* decision, it was unclear whether the Board of Regents and NYSED program offices will provide additional funding and guidance to support districts in meeting the new special education programming and service requirements