

7665	FREE APPROPRIATE PUBLIC EDUCATION UNTIL AGE 22
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The Ballston Spa Central School District recognizes the obligation to provide a free appropriate public education (FAPE) to students with disabilities pursuant to the Individuals with Disabilities Education Act (IDEA) and consistent with related state and federal law, regulation and guidance. The statutory language of the IDEA provides for a FAPE to all children with disabilities ...between the ages of 3 and 21, inclusive”¹ but includes language deferring this mandate to state law as to the applicable age range. In its relevant part, New York State Education Law section 4402 provides that eligibility for special education services continues until the conclusion of the school year in which a student turns 21².

In 2023, the State Education Department’s Office of Counsel issued a Formal Opinion of Counsel (No. 242)³ advising that the agency’s interpretation that a Second Circuit Court of Appeals decision, *A. R. v. Connecticut Board of Education*⁴, applies to New York, consequently it is the obligation of public schools in New York to provide special education and related services to resident students with disabilities until age 22 (or the day before the student’s 22nd birthday) for those students who are over the age of 21 but who have not received high school diplomas. The application and validity of the Opinion of Counsel was upheld by the New York State Appellate Division 3rd department⁵ upon review. Based on the guidance from the State Education Department, as validated by the court, the Board of Education adopts a policy affording resident students with disabilities the right to continue to receive special education and related services until their 22nd birthday, or receipt of a high school diploma, whichever occurs first.⁶

Adoption Date:

¹ 20 U.S.C. §1412 (a)(1)(A).

² NY Educ. L. §4402 additionally states that a student with a disability who turns 21 in July or August remains eligible to continue to receive special education services until the 31st day of August or the termination of the summer program, whichever occurs first.

³ Office of Counsel’s Formal Opinion No. 242 (July 2023); available at <https://www.counsel.nysed.gov/sites/counsel/files/242.pdf>

⁴ *A.R. v. Connecticut State Board of Education*, 54th 155 (2d Cir. 2021).

⁵ see *Mahopac Central School District v. New York State Education Department*, 243 A.D. 3d 87, 240 N.Y.S. 3d 534 (App. Div. 3d Dep’t 2025); *Katonah-Lewisboro Union Free School District v. New York State Education Department*, 243 A.D. 3d 66, 239 N.Y.S. 3d 336 (App. Div. 3d Dep’t 2025).

⁶ If an eligible student with a disability has received a Superintendent’s Determination of Graduation with a Local Diploma, their receipt of a local diploma and graduation terminates their eligibility to receive a FAPE.