

## MEMORANDUM

To: Superintendents of Public Schools, BOCES District Superintendents  
From: Daniel Morton-Bentley, Counsel  
Date: August 14, 2025  
Subject: Provision of FAPE to Students with Disabilities up to Age 22

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This memorandum is to remind public schools of their obligation to provide a free appropriate public education (FAPE) to students who have not received a high school diploma through age 22.

Over two years ago, the Department issued Formal Opinion of Counsel [No. 242](#). This opinion explained that pursuant to a decision of a federal appeals court called *A.R. v. Connecticut Board of Education*,<sup>1</sup> New York school districts must provide a free appropriate public education (FAPE) to students who have not received a high school diploma through age 22.

Since that time, many school districts complied with this interpretation. These school districts should be commended, particularly because the Legislature did not amend the Education Law to allow districts to receive State aid for this purpose.<sup>2</sup> The Board of Regents has consistently advocated for such funding, which was included in its [2024-2025](#) and [2025-2026](#) Budget and Legislative Priority Proposals.

Other districts did not comply with the Department's directive. Two such districts, the Mahopac Central School District and the Katonah-Lewisboro Union Free School District, appealed State complaint determinations applying the *A.R.* decision. Two State trial court decisions found in favor of the school districts without addressing the applicability of *A.R.* The Department, represented by the Office of the Attorney General, appealed these determinations.

On July 17, 2025, the Appellate Division, Third Department upheld the Department's interpretation in its entirety.<sup>3</sup> The court reasoned that the Department has the authority to interpret federal and State law and did so appropriately. On the latter point, the court explicitly held that "SED's determination that a school district should provide education services to students with disabilities until age 22 has a

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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> Legislative amendments drafted by the Department would amend Education Law § 4402 (5) to provide that eligible students who turn 22 between July 1 and August 31 may continue to attend extended school year programming, while students who turn 22 between September 1 and June 30 can continue until the end of that school year.

<sup>3</sup> [Matter of Katonah-Lewisboro Union Free School District v New York State Education Department](#) and [Matter of Mahopac Central School District v New York State Education Department](#).

sound basis in reason and is supported by the record, and, thus, is not arbitrary and capricious.”

Given the Third Department’s detailed analysis and unequivocal holding, school districts may not continue to ignore the holding of *A.R.* As such, the Department reiterates that school districts must provide a FAPE to students up to their 22nd birthdays, which includes maintaining their enrollment at State-approved schools. Any decision not to follow this obligation, which is imposed by the interaction of State and federal law, will be considered willful within the meaning of Education Law § 306.

The Department welcomes your legislative advocacy to ensure that districts receive State aid for educating students with disabilities between 21 and 22. Please feel free to contact the Department’s Office of Governmental Relations ([govrel@nysed.gov](mailto:govrel@nysed.gov)) or your local legislators.

General questions regarding the provision of special education programs and services to students with disabilities may be directed to [SPECED@nysed.gov](mailto:SPECED@nysed.gov). Additionally, you may contact your Special Education Quality Assurance (SEQA) office for technical assistance.