

Formal Opinion of Counsel

The State Education Department (SED) has received multiple questions regarding the effect of the Second Circuit Court of Appeals' decision in *A.R. v. Connecticut Board of Education*¹ on the responsibility of public schools to provide special education to students over the age of 21 who have not received high school diplomas. As described herein, that decision requires that public schools in New York provide special education and related services to resident students with disabilities until age 22, or the day before the student's 22nd birthday.

In the *A.R.* decision, the Second Circuit held that Connecticut was required to provide a free appropriate

New York State law defining eligibility for special education is materially indistinguishable from the Connecticut law challenged in *A.R.* Education Law § 4402 (5) provides that eligibility for special education

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

² *St. Johnsbury Acad. v. D.H.*

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The fact that students' 22nd birthdays may fall at any point during a school year, however, is a complication not addressed by the *A.R.* decision. While not required by the 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 occurs first. This issue should be part of the larger discussion between schools and families concerning students' transition "from school to post-school activities."⁴

Dated July 6 , 2023

⁴ 34 CFR 300.43 (a) (1) N.Y. State Educ. Dep. Office of Special Education, "Transition from School to Post School for Students with Disabilities" <https://www.nysed.gov/specialeducation/transition/school-post-school-students-disabilities> (last accessed Jul, 2023).