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Federal District Court Rules That Special Education Students Who Have Not Received a High School Diploma Continue to be Eligible to Receive Special Education Until Age 22

Education Law Notes

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The Federal District Court of Connecticut, in *A.R. v. Connecticut State Board of Education*, recently ruled that under the Individuals with Disabilities Education Act ("IDEA") students in Connecticut have the right to special education through their twenty-second birthday or upon high school graduation – whichever comes first. This invalidates the Connecticut State Department of Education's regulation that previously allowed school districts to exit students from special education at the end of the school year during which the student turned twenty-one years old.

AR and a class of similarly situated individuals filed a law suit against the Connecticut State Department of Education ("CSDE") alleging that the regulation that allowed school district to stop providing special education services to students at the end of the school year in which they turned twenty-one violated the IDEA. Specifically, the IDEA requires states to provide a free appropriate public education ("FAPE") to children with disabilities between the ages of three and twenty-one, inclusive. The IDEA, however, allows states not to provide FAPE to students between the ages of eighteen and twenty-one if it does not provide public education to non-disabled students in this age range. Thus, the question addressed by the court was whether Connecticut, based on its laws, is required to provide education to disabled students until their twenty-second birthday or whether it can stop providing special education at the end of the school year in which the student turned twenty-one.

In Connecticut, students only have a right to attend secondary school until the end of the school year in which they turn twenty-one. Conn. Agencies Reg. §10-76d-1(a)(4). This appears to be in line with state law that allows high school enrollment through age twenty-one. Connecticut, through its local school districts, however, operates adult education programs where individuals over the age of seventeen can earn their high school diploma, GED or other high school equivalency.

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The Court first determined that adult education programs constitute "public education" within the meaning of the IDEA. The Court focused on the fact that these programs are provided at public expense, under the oversight of the CSDE and with the objective of educating students up to the level of academic proficiency associated with the completion of secondary school.

The Court then rejected the state's argument that students in Connecticut only have the right to an education up until their twenty-first birthday. The Court noted that Connecticut's adult education programs are available to any individual over the age of seventeen and do not have an upper age limit. The Court focused on the fact that students over the age of twenty-one regularly enroll in these programs and that the goal of these programs is to provide the individual with the level of education equivalent to a secondary school education. For example, adults in the GED program may earn a high school diploma issued by the local board of education upon completion. Similarly, students in the National External Diploma Program and Adult High School Credit Diploma Program may also earn a high school diploma. The Court thus held that because students over the age of twenty-one can enroll in publicly funded programs designed to earn a high school diploma, disabled students who have not yet graduated high school are entitled to continued special education services through their twenty-second birthday.

Under the IDEA, compensatory education is rarely available as a remedy to individuals over the age of twenty-one in absence of a "gross procedural violation" of the IDEA. The Court found that the exclusion of students between the ages of twenty-one and twenty-two years old from special education services is an example of such a gross violation of the IDEA. The Court awarded compensatory education to the members of the class but did not define what form that compensatory education must take. Rather, the Court directed the parties "to work together regarding identification and notice to potential class members, as well as consideration of the board's ability to provide compensatory education to class members." As the case was filed in July 2016, the potential class members include students who aged out at the end of the 2014-2015 school year through the present. It is unclear this time, what form such compensatory education would take and whether the state intends to appeal the decision. Obviously, this could represent a significant expense to cost-strapped school districts if the state were to attempt to pass the cost of compensatory education along to the districts the students attended.

As soon as an order of judgment is entered in the case (which is expected shortly) state guidance regarding exiting students from special education at the end of the school year in which the students turns 21 will no longer be valid. Unless the case is appealed and the appellate court issues a stay of the decision, districts should plan to offer continued special education services to students until they turn twenty-two years old or graduate from high school.

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If you have any questions about this decision or any other school related matters, you can contact any of the attorney in Pullman & Comley's School Law Practice.

Tags: CT State Department of Education (CSDE)