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Schools

# Appellate Court Upholds Right of CT Students with Disabilities

### State Law Had Cut-off Special Education Services at 21 in "Gross Violation" of Federal Law; Decision Affirms Eligibility Continues to Age 22

**Express Strategies**, Community Contributor

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A federal appellate court has ruled that the federal court in Connecticut was correct when it decided last year that special education students have a right to a free, appropriate public education until they reach the age of 22. The ruling, by the U.S. Court of Appeals for the Second Circuit, came today in a lawsuit that had challenged Connecticut's state law as being in conflict with the Individuals with Disabilities Education Act (IDEA), a federal law that protects the rights of students with disabilities.

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The IDEA requires a state to provide a free and appropriate public education to students up until their 22nd birthday. Connecticut law had ended special education eligibility for a student at the end of the school year in which the student turned 21. Now, with the Court's ruling, students will remain eligible for potentially an additional year of education.

The parties in the lawsuit will now turn to the award of compensatory education for members of the class. Compensatory education is designed to provide a remedy for the years Connecticut denied these special education students their education. The class includes individuals who were over 21 years old and under 22 years old within two years before the filing of the lawsuit, or individuals who turned 21 during the lawsuit, and who would have been eligible for a free appropriate public education but for "aging out" under Connecticut's law, because they had not yet earned a high school diploma. Students who may be affected by this decision may contact Disability Rights Connecticut.

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The parties will work with a federal Magistrate Judge so that the process of identifying class members, likely hundreds of students, and determining how the education they were denied can be provided, moves forward. This will help ensure that students who were wrongfully denied an education can begin to

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who were prematurely cut off from special education services will be able to receive the educational services to which they're entitled," said Deborah Dorfman, Executive Director of Disability Rights Connecticut (DRCT).

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"This is wonderful news for special education students," said Kasey Considine, a Staff Attorney at DRCT who worked on the lawsuit. "Students want to continue building their skills, want to continue attending school with their classmates and instructors, and benefit from having additional time to do so."

"The Court recognizes that this is part of the purpose of the IDEA, to provide students with disabilities the education and related services they need to meet their needs and prepare them for further education, employment, and independent living," Considine added. "This decision reaffirms this important educational benefit for students with special educational needs."

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Last year's Court decision, now affirmed, noted that while Connecticut provides opportunities for students without disabilities to continue working toward their diploma beyond the age of 21, it did not provide the same opportunity to students with disabilities. The Court also agreed Connecticut's existing system, which for the past 40 years has ended special education for students before they turned 22, "constitutes a gross violation of the IDEA" and Connecticut's "'systemic' disregard of the IDEA's age provisions ... deprived some students of IDEA rights entirely." The Court also agreed with the award of compensatory education for students who have been exited from special education because they had turned 21. The 29-page decision by the U.S. Court of Appeals for the Second Circuit was issued on July 8, 2021.

Attorney Nancy Alisberg at DRCT's predecessor agency, the Office of Protection and Advocacy (OPA), filed the class-action lawsuit in 2016 in collaboration with co-counsel Jason Kim, of Schneider Wallace Cottrell Konecky LLP, a California-based law firm and Sonja Deyoe a solo practitioner based in Rhode Island. Attorney Kim has successfully filed a similar lawsuit in Hawaii and worked with Attorney Deyoe in filing a similar successful lawsuit in Rhode Island challenging state laws that limited special education eligibility in those states. DRCT has proceeded with the lawsuit since 2017, when it succeeded OPA.

"This is a win for DJ and AR, and all the other students who were being shortchanged by the Connecticut Board of Education all these years," said Attorney Alisberg, now retired, when asked of her impressions regarding the Court's decision.

Students who were exited from special education because they turned 21 between 2014 and the present are welcome to contact DRCT if they have

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advocates for the human, civil, and legal rights of people with disabilities in Connecticut. DRCT is the Protection & Advocacy System for Connecticut, and provides legal advocacy and rights protection to people of all ages with disabilities. This includes assisting individuals with problems such as abuse, neglect, discrimination, access to assistive technology, community integration, voting, and rights protection issues. DRCT also addresses issues through policy advocacy, education, monitoring, and investigation. More information is available at the DRCT website, [www.disrightsct.org](http://www.disrightsct.org)

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