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Editor:
Robert S. Rosborough IV

Summarizing recent significant New York appellate cases

Must New York's public schools provide a free and appropriate public education under the Individuals with Disabilities Education Act to individuals with disabilities until the day before they turn 22 years old, or just until the end of the school year in which they turn 21, as the Education Law provides? The Third Department tackled that question recently, holding that the State Education Department rationally relied on an opinion from the Second Circuit to conclude that the IDEA requires IEP services to be provided until an individual's 22nd birthday, notwithstanding the contrary provision of state law. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

SECOND DEPARTMENT

FAMILY LAW, NEW YORK STATE FAMILY FIRST PREVENTION SERVICES ACT

***Matter of Joseph D.L. (Keisha T.M.)*, 2025 NY Slip Op 04178 (2d Dept July 16, 2025)**

Issue: **What factors must a court consider before placing a child in a qualified residential treatment program pursuant to the New York State Family First Prevention Services Act?**

Facts: After the child's parents had their parental rights terminated for permanent neglect and abandonment, the child was placed with a foster family, and appeared to be adjusting well until he attended school with a small bump on his forehead. The foster agency approved by New York City removed the child "on an emergency basis and transferred the child to a QRTP that specialized in working with children with developmental disabilities." The child then moved for disapproval of the QRTP placement and to direct the foster agency to find a foster placement for him. The foster agency cross-moved for approval of the QRTP placement.

At a hearing before Family Court "to determine whether the child should remain in a QRTP," a foster agency supervisor testified that "the child was placed in a QRTP because SCO did not have any other foster family homes available that could meet the child's needs." The supervisor also testified that "a QRTP was the least restrictive setting [the foster agency] could find but conceded that a QRTP was not the least restrictive setting for the child." "A qualified individual report was introduced into evidence at the hearing. The report was prepared by a qualified individual in February 2024, pursuant to Social Services Law § 409-h and Family Court Act § 1055-c(2). The report did not recommend continuing the child's QRTP placement, on the ground that a non-QRTP placement, such as a foster family home for children with developmental disabilities or a therapeutic foster family home, would be the most appropriate and least restrictive recommended placement setting for the child based on his treatment needs, treatment goals, and permanency planning goal of adoption."

Family Court granted the foster agency's motion for approval of the QRTP placement, finding that "the child's placement in a QRTP was inconsistent with his long-term permanency goal of adoption and that the child's needs could be met in a foster family home for children with developmental disabilities or a therapeutic foster family home. Nevertheless, the court determined that circumstances existed that necessitated the continued placement of the child in the QRTP, since [the supervisor's] testimony demonstrated that there were no alternative settings available that could meet the child's needs. The court determined that continued placement in the QRTP was in the child's best interest, as the QRTP was meeting the child's special needs."

Holding: The Second Department reversed, explaining that the "federal Family First Prevention Services Act, enacted in 2018, sets certain requirements for the placement of a child in a congregate care setting, such as a QRTP, as a prerequisite for federal funding. The purpose of the FFPSA is to ensure more foster children are placed with families by limiting federal reimbursement to only congregate care placements that are demonstrated to be the most appropriate for a child's needs, subject to ongoing judicial review." To implement these requirements, New York enacted Social Services Law § 409-h, which "provides that, within 30 days of the placement of a child in a QRTP, a 'qualified individual' shall complete an assessment as to the appropriateness of such placement, including an assessment of the strengths and needs of the child and a determination of 'the most effective and appropriate level of care for the child in the least restrictive setting . . . consistent with the short-term and long-term goals for the child as specified in the child's permanency plan.' Where the qualified individual determines that placement of the child in a foster family home is not appropriate, the qualified individual must specify in writing the reasons why such a placement cannot meet the child's needs. However, 'a shortage or lack of foster family homes shall not constitute circumstances warranting a determination that the needs of the child cannot be met in a foster family home.' If the qualified individual determines that the placement of the child in a QRTP is not appropriate, 'the child's placement shall continue until the court has an opportunity to hold a hearing to consider the qualified individual's assessment and make an independent determination' regarding the appropriateness of the child's placement."

Under Family Court Act § 1055-c, the appropriateness hearing must be held in Family Court within 60 days of the placement. The Court must determine "whether the needs of the child can be met through placement in a foster family home and, if not, whether placement of the child in a QRTP provides the most effective and appropriate level of care for the child in the least restrictive environment and whether that placement is consistent with the short-term and long-term goals for the child, as specified in the child's permanency plan." Notably, where the "qualified individual determines that the placement of the child in a QRTP is not appropriate, the court may approve the placement of the child in a QRTP only if the court finds that '(A) circumstances exist that necessitate the continued placement of the child in the QRTP; (B) there is not an alternative setting available that can meet the child's needs in a less restrictive environment; and (C) that continued placement in the QRTP is in the child's best interest." If, in contrast, the Court disapproves the placement, it must "determine a schedule for the return of the child and direct the local social services district to make such other arrangements for the child's care and welfare that is in the best interest of the child and in the most effective and least restrictive setting as the facts of the case may require."

Although the Court rejected the child's argument that Family Court could not consider the availability of foster homes, or lack thereof, in making its determination, it nonetheless rejected the finding that the QRTP placement was appropriate. The Court held that the supervisor's testimony that a conference hadn't yet been held to find the child an alternative placement in the two months since the placement, but failure to explain why, was insufficient to support the finding that "there was not an alternative setting available that could meet the child's needs in a less restrictive environment. Furthermore, [the supervisor's] testimony that the child had continuously lived in a foster family home setting from 2019 until January 2024, during which time his needs consistently had been met, calls into question the purported unavailability of any alternative, less restrictive settings." Thus, the Court held, "the Family Court should not have approved the child's placement in the QRTP, as the court's finding that there was not an alternative setting available that could meet the child's needs in a less restrictive environment was not supported by the record."

THIRD DEPARTMENT

EDUCATION LAW, INDIVIDUALS WITH DISABILITIES EDUCATION ACT

***Matter of Mahopac Cent. Sch. Dist. v New York State Educ. Dept.*, 2025 NY Slip Op 04214 (3d Dept July 17, 2025)**

***Matter of Katonah-Lewisboro Union Free Sch. Dist. v New York State Educ. Dept.*, 2025 NY Slip Op 04211 (3d Dept July 17, 2025)**

Issue: **Do New York's General Educational Development and National External Diploma Program programs qualify as "public education" under the Individuals with Disabilities Education Act, such that equal access must be provided to individuals with disabilities until they turn 22 years old?**

Facts: In two similar cases involving two different public school districts, the parents of individuals with disabilities filed complaints with the State Education Department after the school districts terminated their children's IEP services at the end of the school year in which they turned 21 years old. SED sustained the complaints against the school districts, determining that "under the IDEA, petitioners were required to provide [the students] with a [free and appropriate public education] until the day before his 22nd birthday." The school districts then commenced these CPLR Article 78 proceedings, arguing that their "obligation to provide a FAPE pursuant to state law terminates upon a student's 21st birthday. Supreme Court agreed, granted the petition and annulled SED's determination, finding that pursuant to state law a school has an obligation to provide a FAPE to a student until his or her 21st birthday or, if that student has educational disabilities, until the last day of the school year during which he or she turns 21."

Holding: The Third Department reversed in both cases. After rejecting the school district's arguments that SED failed to follow its own complaint procedures, the Court held that SED rationally relied on an opinion from the Second Circuit, which had held that "various adult education programs provided by Connecticut constituted a free 'public education' within the meaning of IDEA, thus triggering an obligation to provide a comparable FAPE to disabled students between the ages of 21 and 22 who had not yet received a high school diploma." In particular, following the Second Circuit's opinion, SED issued a formal opinion of counsel, which provided that the opinion "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. . . . 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 services lasts only until the conclusion of the school year in which a student turns 21. Additionally, New York, like Connecticut, offers publicly funded adult education programs to non-disabled students in this age group. As such, the holding of *A.R.* that the interaction between federal law (IDEA) and [s] tate law (services for adults) required public schools in Connecticut to provide special education and related services to resident students with disabilities at least until their 22nd birthdays *is equally applicable in New York*."

This opinion, which formed the basis for sustaining the parents' complaints against the school districts, the Court held, did not violate the separation of powers, as the schools argued. The Legislature has granted the Commissioner of Education broad powers to ensure that school districts are in compliance with federal law, including the IDEA, and the opinion was doing precisely that—interpreting the IDEA in an area where its eligibility provisions conflict with state law. Even though the IDEA provides an exception for conflicting state law, the Court nonetheless held that SED still rationally relied on the Second Circuit's opinion to determine that eligibility for IED services must run up to the day before a disabled individual's 22nd birthday. Like in Connecticut, New York's GED and NEDP adult education programs have all the hallmarks of "public education," including that they are state funded, the curricula is overseen by the state, and their goals

are to educate adults up to the levels of education associated with secondary school. Accordingly, the Court held, "to ensure equivalent education opportunities for students with and without disabilities, SED's determination that a school district should provide education services to students with disabilities until age 22 has a sound basis in reason and is supported by the record, and, thus, is not arbitrary and capricious."

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