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Commissioner

State of Rhode Island and Providence Plantations
DEPARTMENT OF EDUCATION
Shepard Building
255 Westminister Street
Providence, Rhode Island 02903-3400

August 1, 2019

From: Rhode Island Department of Education
RE: **IDEA Eligibility Extended to Age 22**
Commissioner's 7/5/2019 Field Memo

On June 24, Chief Judge William E. Smith of the U.S. District Court for the District of Rhode Island entered judgment for the Plaintiff Class pursuant to the recent First Circuit decision which held that special education services under the IDEA must be provided until a student's 22nd birthday, a decision which effectively added as much as a year to the period during which school districts and other LEAs in Rhode Island must provide a FAPE to eligible students. Copies of the judgment recently entered by Chief Judge Smith and of the First Circuit decision in *K.L. v. Rhode Island Council on Elementary and Secondary Education*, 907 F.3d 639, 652-653 (2018), reversing sub nom. *K.S. v. R.I. Board of Education*, 251 F.Supp.3d 393 (D.R.I. 2017), petition for rehearing en banc denied April 1, 2019, have been posted to the RIDE website.

It is now clear that if they have not already done so, school districts and other LEAs must comply with the recent First Circuit decision and should make services available and give careful consideration to the cost of prospective compliance. What remains less than clear is how appropriate remedies will be provided to those eligible class members ("ECM's") whose IDEA services were prematurely discontinued in the past. It should be kept in mind that:

1. ECMs include students who were denied a FAPE between their 21st and 22nd birthdays at any time after February 21, 2012 (two (2) years prior to the filing of the Class Action Complaint) who have not: (a) been awarded a high school diploma; and/or (b) voluntarily dis-enrolled from school and/or voluntarily discontinued receiving IDEA-mandated services; and
2. since money damages are generally not available in a private suit under the IDEA, the remedy in the great majority of cases will consist of compensatory services designed to make-up for those that were prematurely discontinued.

The manner by which ECMs will be notified of their rights pursuant to the First Circuit decision and how individual remedies will be defined and paid for is in the process of being negotiated with attorneys for the Plaintiff Class, along with a host of related issues. If not the subject of an

eventual agreement, these issues will be decided by the District Court, where the case has been remanded by the First Circuit. (Chief Judge Smith has assigned the matter to Magistrate Judge Lincoln D. Almond).

RIDE will be working with the parties to identify ECMs and will provide additional information as soon as it is available.