

# Transfer of Educational Rights at the Age of Majority

## *Frequently Asked Questions*

### **1. What does it mean to transfer educational rights at the age of majority and how does it apply to schools?**

Under the provisions of the Individuals with Disabilities Education Act [IDEA] and its implementing regulations, eligible individuals are to be treated like adults when they reach the age of majority under their state's law. This means that the student is accorded the right to make the educational decisions that had been previously made by the parent or guardian. Since this may represent a change in how schools have traditionally treated students with disabilities under the age of 21, the IDEA mandates that certain actions be taken by the district to inform students and parents of their *rights*.

### **2. What are the actions that a district must take and what actions must be documented regarding the transfer of rights?**

There are three basic activities that the district must document:

#### a) notice rights will transfer

*Beginning at least one year prior to the student's eighteenth birthday* (effective practice would begin at age 14), or at the time of the student's marriage, the IEP shall reflect that the student has been informed of the rights that will transfer to him or her. (281 Iowa Administrative Code 41.67 (3))

#### b) notice rights have transferred

Iowa Administrative Code 41.111 (1) requires that when the student turns 18, districts must also provide notice to parents and students that the rights have transferred. (*This notice does not have to be sent to the parents if the student is incarcerated in an adult prison*). Documentation of notification should be kept in the student's file.

#### c) why rights didn't transfer

If, however, the rights have not transferred, the district should document the reason why they did not transfer, e.g., establishment of guardianship or power of attorney.

### **3. When does a minor reach the age of majority under Iowa law?**

Under the provisions of Iowa code sec. 599.1, the age of majority is reached on three occasions:

- on the minor's 18<sup>th</sup> birthday,
- on the date of a minor's marriage,
- or upon being "tried, convicted and sentenced as an adult and committed to the custody of the director of the department of corrections...."

**4. What happens when a child who is already under a guardianship reaches the age of majority? Does the guardianship remain in effect?**

No. A child under the age of 18 has a guardian appointed to act in his or her behalf because the natural parents are unable to do so. The guardianship is necessary for children under 18 because they are *minors*. These guardianships automatically terminate when the child reaches the age of majority.

**5. When does the student start using the transfer of rights?**

When reaching the age of majority as outlined in Question #3. The question is: when does the school start recognizing that these rights have been transferred to the student? Because of the transition planning which will occur at age 14 (at least) or upon identification of a disability if the student is over age 14, the school and the student should be prepared to exercise these new rights as soon as the student has reached the age of majority.

**6. What is the teacher or educator's role in determining competency?**

None. There is a presumption that everyone who is of the age of majority is competent under the law. The presumption can only be rebutted by the Iowa Probate Court. It would not be appropriate for either a teacher or the IEP team members, with the exception of the parents, to determine competency. If the parents raise the issue, a teacher should advise them to seek legal advice on how to initiate guardianship proceedings.

**7. What if the student is not *legally incompetent* but he or she does not feel ready to make educational decisions? Are there any alternatives to a guardianship proceeding?**

Yes. Use of a Power of Attorney in this circumstance might be the best option for the student and parents. The IEP team should also consider including specific goals or transition activities to help the student make decisions.

**8. What is power of attorney?**

It is a method that enables a competent person who has reached the age of majority to appoint another adult to act in his or her behalf. The Department of Education has developed a form that can be used for the appointment of a *Power of Attorney for Educational Decision Making*. This form does not need to be filed in court. It is simple to execute. A copy is included in this folder.

**9. When can the Power of Attorney for Educational Decision Making form be signed? Does the student have to wait until he or she turns 18 or is married or can it be signed sometime before?**

The Power of Attorney CANNOT be signed before the student reaches the age of majority. It can be signed on the day of or after, but not before. It must be signed and notarized.



**10. To whom can the 18-year-old student transfer the rights when completing a Power of Attorney? Can it be somebody other than a parent?**

By executing a Power of Attorney, the student designates an *attorney-in-fact*. This person can be any individual over the age of 18 who is designated by the student to make educational decisions and who has consented to act on behalf of the student in that capacity. However, this person should not be an individual who is employed by the AEA or LEA serving the student. There is a potential for conflict of interest in these situations.

**11. Once the student executes a Power of Attorney, can it be revoked?**

A student can revoke the signed Power of Attorney at any time. A sample revocation form appears on the backside of the Power of Attorney form.

**12. What is the responsibility of the school after the student revokes the Power of Attorney?**

The sample Power of Attorney Revocation states that it does not become effective until the student notifies the school of the revocation. The student's notification to the school would not have to be written – it could be oral. When that occurs, the school should record the notification in the student's file. After notification, the school should notify the parents, or designee, in writing that the student has revoked the Power of Attorney.

**13. Would an X be acceptable for signature?**

Yes. According to Iowa Code section 4.1 (39) (1999):

*...A signature, when required by law, must be made by the writing or markings of the person whose signature is required. If a person is unable due to physical disability to make a written signature or mark, that person may substitute either of the following in lieu of a signature required by law:*

- a) The name of the person with a disability written by another upon the request and in the presence of the person with a disability.*
- b) A rubber stamp reproduction of the name or facsimile of the actual signature when adopted by the person with a disability for all purposes requiring a signature and then only when affixed by that person or another upon request and in the presence of the person with a disability.*

**Note:** a person who is disabled because of head injury and lacks the ability to write a signature is also included for the purposes of this Code section.

**14. What happens when a person is not 18 years of age, but is transferred to juvenile corrections? What happens when the student is released from juvenile corrections?**

Just because a person is transferred to the juvenile system prior to age 18 does not impact the transfer of rights. The parents or guardian of the juvenile would be the decision maker until the student reaches the age of majority. Many times, the student is released from juvenile corrections upon reaching the age of majority (18). If this is the case, the student is then entitled to all the rights afforded under the IDEA, which had previously been exercised only by a guardian or parent (assuming the student is competent).

**15. What happens for wards of the state when they turn 18?**

It is the same for wards of the state as it is for all others who reached the age of majority. Under the provisions of the IDEA, the state cannot be a parent, so a guardian or surrogate parent would have to act on behalf of the child in making educational decisions. However, the authority of a guardian appointed by the court terminates when the child reaches the age of majority. (See Iowa Code section 232.118 (3) 1999). If it is suspected that the 18-year-old is not competent, a competency determination would have to be done in order for the surrogate parent or guardian to continue to act on behalf of the incompetent student.

**16. What happens if an unmarried student with a disability is younger than 18, and has a child with a disability? Who signs as the parent for the child?**

Both the mother and the child in this case are children under the law. The unmarried mother would be unable to act on behalf of her child, so a guardian would have to be appointed who can act on behalf of either or both the mother, and the mother's child with a disability.

**17. What is the district of residence when a student has reached the age of majority and lives in a district other than his or her parents?**

The transfer of rights to *the child with a disability* at age 18 does not affect the manner in which the special education program of the child is funded. Section 282.31 (4) of the Iowa Code still governs the manner in which special education programs are funded. For the purposes of funding special education programs, the *district of residence* means the school district in which the parent or legal guardian of the child resides or the district in which the district court is located if the district court is the guardian of the child. This is the funding mechanism regardless of the student's age whether the student has reached the age of majority or not. There is no distinction in either federal or state law between a *child* who has reached the age of majority and one who has not. If such a distinction were made, it would effectively render *children over 18* ineligible for services. Likewise, the provisions for special education funding under Iowa Code section 282.31 (4) and 281 Iowa Administrative Code 41.5 (definition of "school district of the child's residence") have not been changed as a result of the transfer of rights to the child upon the age of majority.



- 18. What is considered reasonable notice when a student turns 18? If the student's 18<sup>th</sup> birthday is during a school break (like summer or winter break), is the school reasonable for notifying the student a couple of months in advance?**

*When an eligible student with a disability reaches the age of majority...* Both state and federal regulations require notification *when* the student reaches the age of majority. If this occurs during the summer, notification should be very close to *when* the school knows that the student has reached the age of majority. If it's a birth date, the notice should be reasonably calculated to be received within a week of that event. Plans will have to be made to notify students whose birthdays occur when school is not in session. If the student gets married or is incarcerated as an adult, the notification should be sent within a week or so after the school becomes aware of the event.

- 19. How do we prepare students to make decisions after the transfer of rights?**

Making decisions requires a variety of skills that must be learned and practiced. Many students with disabilities need direct instruction and structured experiences in areas such as self-advocacy, problem solving, goal setting, and decision making. The IEP team should consider the student's individual needs during the development of the PLEP and when planning the student's course of study.

- 20. Why do we have to notify students with disabilities about their rights at the age of majority? We don't notify all the other students of their rights upon reaching the age of majority?**

As a practical matter, we notify students with disabilities about the rights that transfer to them under the IDEA because notification is required by that statute. There is no parallel notification requirement for students who do not have an IEP. However, there is no legal impediment preventing districts from notifying *all* students of the rights that transfer to them under state and federal law when they reach the age of majority.

- 21. What if the parents are divorced? Which parent gets the notification(s)?**

If the parents are divorced and if there has been no termination of parental rights for either parent, then the required notification(s) must be sent to both parents.

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## Frequently Asked Questions

### Student and Parent Rights

Rights	Student	Parent
<ul style="list-style-type: none"> <li>■ Notice provided [300.517(a)(1)(i)]:               <ul style="list-style-type: none"> <li>• When rights transferred from parent to student [300.517(a)(3)]</li> <li>• Before each IEP meeting [300.501(b); 300.345(a)(1) and (b)(1)]</li> <li>• When agency proposes or refuses to initiate or change the identification, evaluation, placement or FAPE [300.503]</li> </ul> </li> </ul>	✓ ✓ ✓	✓ ✓ ✓
<ul style="list-style-type: none"> <li>■ Beginning at least one year before student turns 18, the IEP documents that the student has been informed of his/her rights that will be transferred. [300.347(3)]</li> </ul>	✓	✓
<ul style="list-style-type: none"> <li>■ Given procedural safeguards notice:               <ul style="list-style-type: none"> <li>• Initial referral for evaluation</li> <li>• Each notification of IEP meeting</li> <li>• Reevaluation</li> <li>• Request for hearing (state education agency [SEA] only) [300.504]</li> </ul> </li> </ul>	✓ ✓ ✓ ✓	✓ ✓ ✓ ✓
<ul style="list-style-type: none"> <li>■ Attend and participate at IEP meeting [300.501]</li> </ul>	✓	✓*
<ul style="list-style-type: none"> <li>■ Opportunity to examine records (and other rights regarding educational records) [300.507, 300.562-574]</li> </ul>	✓	<i>Depends**</i>
<ul style="list-style-type: none"> <li>■ Request independent educational evaluation [300.502]</li> </ul>	✓	
<ul style="list-style-type: none"> <li>■ Ask for preappeal [state rule]</li> </ul>	✓	✓***
<ul style="list-style-type: none"> <li>■ File complaint [300.660]</li> </ul>	✓	✓
<ul style="list-style-type: none"> <li>■ Ask for hearing before Administrative Law Judge (ALJ) [300.507]</li> </ul>	✓	✓***
<ul style="list-style-type: none"> <li>■ Agree to mediation [300.506]</li> </ul>	✓	✓***
<ul style="list-style-type: none"> <li>■ Give consent for initial evaluation, reevaluation [300.505]</li> </ul>	✓	

\* If invited by student or public agency.

\*\* Parent can examine records w/out consent if student is claimed as a dependent according to Internal Revenue Services guidelines

\*\*\* Based on Iowa Code 256B.6.