

## TRANSFER OF RIGHTS/AGE OF MAJORITY

*The following information was excerpted from “Promoting effective parent involvement in secondary education and transition,” Parent Brief, May 2002, the National Center on Secondary Education and Transition (NCSET) and PACER Center.*

(NOTE: In the State of Florida, upon a student’s eighteenth birthday, his or her rights under Part B of the Individuals with Disabilities Education Act -IDEA 2004 will transfer from the parent to the student.)

### **Age of Majority: Preparing Your Child for Making Good Choices**

Parents want their children to have the skills they need to succeed as adults. While this is important for every young person, youth with disabilities often face extra challenges. That’s why they need to be actively involved in setting their high school goals and planning for their transition to adulthood well before they reach the age of majority.

The Individuals with Disabilities Education Act (IDEA) gives states the authority to elect to transfer educational decision-making rights to students at the age of majority. In a state that transfers rights at the age of majority, beginning at least one year before a student reaches the age of majority under State law, the student’s individualized education program (IEP) must include a statement that the student has been informed of his or her rights, if any, under Part B of IDEA, that will transfer to the student upon reaching the age of majority. The public agency shall provide any notice required by Part B to both the student and the parents. (This regulation does not apply to students who have been determined to be incompetent under state law.)

In a state that has elected to transfer educational decision-making rights at the age of majority, students become responsible for their educational program. Students, not their parents, are the primary participant in developing their IEP and they become responsible for making other decisions, such as consenting to any changes in placement or requesting mediation or due process hearings to resolve disputes.

Reaching the age of majority can be an exciting time for most students. Transferring rights to young adults who are unable to make informed decisions or take responsibility for their choices, however, carries many risks. *Will students decide to drop out of high school or accept a quick diploma and become ineligible for much-needed transition services?* Many of the decisions young adults make affect their quality of life after high school.

### **Helping Your Child Prepare for the Age of Majority**

As parents, we can begin to help our children prepare for adult-hood by looking at the role we play in their lives. *Do we try too hard to sway our children’s decisions? Do we tend to speak for our children instead of letting them speak for themselves? Can we separate our own desires from our children’s wishes?* It can be hard to let go of our parental role when we love our children and worry about their future. But we may need to step back and look at our own actions. Our role is to help our children to become comfortable making their own decisions and capable of making good choices. Children develop decision-making skills over time. Young children can practice

these skills within the family. Older children can take increasing responsibility for the decisions that affect their lives.

***Age of majority*** is the legal age established under state law at which an individual is no longer a minor and, as a young adult, has the right and responsibility to make certain legal choices that adults make.

Rights that transfer in most states—

In states that transfer educational rights at the age of majority, all of the educational rights provided to the parents transfer to the student when he or she reaches the age of majority. These educational rights may include the right to...

- receive notice of and attend individual education program (IEP) meetings.
- consent to reevaluation.
- consent to change in placement.
- request for mediation or a due process hearing to resolve a dispute about evaluation, identification, eligibility, IEP, placement, or other aspects of a free appropriate public education (FAPE).

### **Teaching Young Children How to Make Decisions**

- Include your child in purchasing decisions. Does your child help select his or her own clothing and help with grocery shopping and meal planning?
- Discuss important decisions such as vacation plans and major purchases as a family. Routinely state your thoughts out loud so your children have a model for good decision making: “We are not ready to decide on that yet, let’s talk about it tomorrow after dinner;” or “Let’s gather more information before we buy this.”
- Practice with your child what he or she should do if lost.

### **Teaching Older Children How to Make Decisions**

- Encourage your child to participate in planning his or her IEP and even leading the IEP meeting.
- Role-play IEP meetings with your child ahead of time to help him or her clarify what he or she wants from the meeting. Practice how to step out of the meeting to discuss a decision in private. Ask your child if he or she wants to invite anyone to the meeting for support.

### **Additional Tips for Helping Your Child Make Informed Decisions**

- Help your child develop good working relationships with school personnel and other IEP team members so there is little disruption when he or she reaches the age of majority.
- Avoid being overprotective. Do not interfere with your child’s desires when it is not truly necessary.
- Stay involved even after you are no longer the primary participant in the development of your child’s IEP. IDEA does not address parents’ attendance at IEP meetings once a student has reached the age of majority. The school or student could, however, invite a parent to attend the meeting as an individual who is knowledgeable about the student’s educational needs and abilities.

## Transfer of Rights

In a state that transfers rights at the age of majority, beginning at least one year prior to the student reaching the age of majority under state law, the student's IEP must include a statement that the student has been informed that his or her rights under Part B, if any, will transfer. The school must comply with IDEA notification requirements to both the student and the parents.

Families should understand how their state implements these IDEA regulations. Ideally, the student, parents, and other family members will all continue to be actively involved in planning the services and programs for the student's transition into adulthood. As parents of children with disabilities, our challenge is to seek opportunities for our children to make choices for themselves beginning at a very early age and continuing throughout their school years. Community education programs often have classes for teens on assertiveness or independent living skills. Centers for Independent Living offer workshops on self-determination and living skills for young adults. Leadership workshops and camps can also be beneficial in teaching these skills.

## Guardianship

If a state elects to transfer rights at the age of majority, IDEA requires at least one year of notice to parents and students before a student reaches the age of majority. This notice alerts families to consider whether or not their child is capable of representing him or herself.

At the age of majority, students are granted certain legal rights, such as the right to vote, marry, obtain a credit card, consent to medical treatments, make living arrangements, and sign contracts. Each of the 50 states determines what rights transfer to individuals at the age of majority within that state. Some students may not be able to recognize when a decision needs to be made, consider possible options, or recognize the consequences of their decisions without additional support. For these students, guardianship, conservatorship, or another form of representation by an advocate may be appropriate.

When the student reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

- (A) The public agency shall provide any notice required by IDEA to both the individual and the parents;
- (B) All other rights accorded to parents under IDEA transfer to the child;
- (C) The agency shall notify the individual and the parents of the transfer of rights; and
- (D) All rights accorded to parents under IDEA transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution [20 U.S.C. 1415(m)].

Under guardianship, a person is considered to be legally incompetent. The individual loses the authority to make all the decisions granted to adults. A person called the guardian is assigned by

the court to make these decisions. The guardian is usually a parent. The person under guardianship is legally referred to as the ward.

Many states also offer limited guardianship, sometimes called conservatorship. People who are granted conservatorship for another individual are assigned limited decision-making responsibility based on the individual's needs. These responsibilities are carefully outlined in a court order. Conservatorship is designed to allow a person to retain as many of his or her rights as possible. A person under conservatorship is not considered to be legally incompetent. He or she retains as many rights as deemed appropriate by the court. Different people have different limitations under conservatorship, depending on their individual vulnerabilities. The person the court appoints to make decisions on behalf of the individual is called the conservator. The person who has a conservator assigned is considered the conservatee.

Obtaining guardianship or conservatorship for a person requires a petition to be filed with a court alleging that the person needs such an arrangement, a court hearing on the case, and annual reports filed with the court regarding the status of the arrangement. The petition for guardianship or conservatorship often involves numerous complicated forms, although it is not required that an attorney be involved in the process. Petitioners can obtain necessary forms from the probate court.

Guardianship, and to a lesser extent conservatorship, severely limits an individual's right to make independent decisions and should only be considered when there is no less restrictive alternative. If your child is not able to make educational decisions but does not need guardianship or conservatorship, you may want to explore procedures within your state that may allow an advocate to represent the educational interests of your child.

In some States, there may be additional laws and procedures that allow for a lesser determination of competency for specific purposes, such as competency for providing informed consent with respect to the individual's educational program. Under the State procedures established in such cases for appointing the parent, if the parent is not available, a guardian or surrogate could be an appropriate individual to represent the educational interests of the student [34 CFR Appendix P. 12617; Federal Register Vol. 64, March 12, 1999].