



## Frequently Asked Questions

### What is the Age of Majority?

The age of majority is when your child obtains the rights of any Iowa citizen and is legally responsible for his or her own decision, including educational decision. In Iowa, your child reaches the age of majority when he or she turns 18 or gets married. If your child under 18 is tried, convicted, and sentenced as an adult and is confined in an adult correctional facility, your child's rights to make educational decisions transfer during the period of incarceration.

### 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 state law (age 18 in Iowa). 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 student and parents of their rights.

### Why is the school talking to my child about this?

Federal and state law requires schools to transfer educational rights to students with Individualized Education Programs (IEPs) when they reach the age of majority.

### What is required of the school district to document the transfer of rights?

The district must ensure proper documentation of the transfer of rights. This can be done by:

- *Notice that the rights will transfer.* Beginning at least one year prior to the student's eighteenth birthday or upon marriage, the IEP needs to state that the student and parents have been told that the rights will transfer and what this means. Please be aware that rights may transfer without a school's knowledge, such as marriage or incarceration. In those cases, provide this notice as soon as the school is aware that rights would transfer before age 18.
- *Notice that the rights have transferred.* When the student turns eighteen, the district must provide notice to both the student and the parents that the rights have transferred. Documentation that the student and his parents have been notified should be kept in the student's file.
- *Why the rights didn't transfer.* Documentation must be in the student's file stating the reason why the transfer of rights did not take place. An example would be the establishment of a guardianship.

### When does the student start using the transfer of rights?

When reaching the age of majority as outlined above. 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, beginning at age 14 (or before) 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.

**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 responsible for notifying the student several 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 is the student's 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.

**Why aren't students who are not on IEPs notified of the transfer of rights?**

Only the IDEA requires this notification.

**Can I still be a participant in my child's IEP?**

Under the IDEA, when the student reaches the age of majority, many of the rights and responsibilities provided to parents now transfer to the student. While parents retain many rights, the right to attend the meeting is not one of them. The student, however, may want the parents to continue being a part of his or her educational team and can invite them. Both parents and the student will receive notice of the IEP meetings. If the student does not want his or her parent(s) involved in the educational program, the student may request that the parent(s) not be invited. However, "the school" also has the option to invite the parents to the meeting because of their knowledge of the student and the student's needs.

**What if I disagree with a decision regarding my child's educational program?**

If rights have transferred, a parent no longer has the right to file a due process complaint or seek mediation. A parent may still file a written state complaint, even if rights have transferred.

**What if the parents are divorced? Do each receive notifications on the transfer of rights?**

If there has been no termination of parental rights for either parent, then notifications must be sent to both parents.

**My child turned 18. Does that mean that he or she can make all of his or her own decisions, even if my child has a significant disability?**

It is presumed that all children in Iowa who attain the age of majority and have not been deemed "incompetent" by a court or other agency with jurisdiction are afforded the same rights and responsibilities as any other citizens in Iowa.

**What is does "competent" and "incompetent" mean?**

Competent means a person possesses the strength, ability, power and capability to carry out tasks with little or no assistance.

A person can be considered incompetent if he or she is incapacitated and/or lacks the capability to carry out tasks with little or no assistance. The determination of incompetence is made in a court of law or other agency with jurisdiction.

**What if I do not believe my child is capable of making competent decisions?**

If you feel your child is incapable of making competent decisions, you can contact an attorney to petition the courts for guardianship. You may want to discuss this decision with your child to diminish or alleviate problems surrounding this issue.

### **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 in a judicial or administrative process. 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.

### **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 (see below) 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 regarding their future.

### **What is the difference between guardianship and conservatorship?**

A *guardian* is the person appointed by the court who is responsible for the personal affairs of the incompetent individual or "ward". Guardianship may be granted for the purpose of making limited decisions such as educational or medical decisions only or full guardianship, which encompasses all personal affairs. A cost is usually involved in this process.

A *conservator* is the person appointed by the court to have custody and control of the property of the ward. Therefore, a conservator is not required when discussing educational issues. A cost is usually involved in this process as well.

### **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 18 because they are minors. This type of guardianship automatically terminate when the child reaches the age of majority. Court action would be needed to address this situation.

### **What is a Power of Attorney?**

A *Power of Attorney* is a written document where a competent adult grants authority to another competent adult to act and make decisions on his or her behalf. For example, a student may give his or her parents a Power of Attorney to act on behalf of the student for educational or medical issues. 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 (separate document) does not need to be filed in court. When a Power of Attorney has been granted, the student does not give up decision making authority; rather, the student shares that authority with another.

### **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 prior?**

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**.

### **To whom can the 18 year old student transfer the rights when completing a Power of Attorney? Can it be someone other than the parent(s)?**

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. This would be a potential conflict of interest in these situations.

### **Can the student revoke the Power of Attorney?**

Yes. A student may revoke the Power of Attorney at any time. It is best practice to notify the school in writing of the revocation, but oral notification is sufficient. The school should then document, in the student file, that the Power of Attorney has been revoked and the date of the revocation. A sample revocation form is available on the backside of the Power of Attorney form.

### **What is the school's responsibility 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.

### **Can my child use an "X" for a signature?**

Yes. If a person is unable to make a written signature due to a physical disability or brain injury, an "X" may be used instead of a written signature.

Other acceptable signatures would be:

- The name of the person with a disability written by another in the presence of the person with a disability.
- A rubber stamp signature utilized by the person with a disability or by another person in the presence of the person with a disability.
- An electronic signature, as defined in Iowa Code chapter 554D.

### **What happens when a person is not 18 years of age, but is transferred to a juvenile corrections facility?**

#### **What happens when the student is released from the facility?**

Under the IDEA, "All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, state or local correctional institution." For children, this means that rights transfer upon incarceration at a juvenile corrections facility. Rights return when the child is released. For children who are incarcerated, check for sentencing orders to determine whether the sentencing order provides for educational decision-makers. If the child may lack the capacity to make educational decisions, court (either in the juvenile court proceedings or in a guardianship) or administrative action may be required. The nature of the involvement may vary based on the length of potential incarceration.

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

It is the same for ward of the state as it is for all others who reach the age of majority. Under the provisions of 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 decision. However, the authority of the guardian appointed by the court terminates when the child reaches 18. 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.

## What can I do to help prepare my son or daughter for 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 IEP and when planning the student's course of study, while taking into consideration the student's post-high school plans.

The most important preparation is for your child to practice making decisions using good coping skills. Also, it is essential that your child understand the following:

- The meaning of transfer of rights and its impact on educational decisions.
- The child's rights in the education process.
- How active participation can lead to a smooth transition to adult responsibilities.

Involve your child in as much of the IEP process as appropriate. That involvement will increase the child's self-esteem. As a result, your daughter or son will feel comfortable voicing desires about educational plans.

## What if I have additional questions or concerns regarding my child?

These are just some of the questions that you, as parents, may have regarding your child and the age of majority and educational rights. As part of your child's transition plan, you may want to discuss any of these questions with the IEP team. Your AEA, especially your AEA's Parent-Educator Connection, may be helpful in explaining these concepts and structuring appropriate IEP goals and supports.

## Glossary of Terms

**FAPE** (Free Appropriate Public Education) - rights given under IDEA for the supports and services needed to benefit from school, at no cost to the student or his/her family.

**Age of majority** - at age 18, or in special situations like marriage, all rights given in Iowa to a legal adult are transferred from the parent/guardian to the student.

**IDEA** (Individuals with Disabilities Education Act) - the law that provides special education. It also identifies educational rights and the procedures that schools must follow.

**Rights** - privileges given by law.

**Responsibilities** - things you must do to make sure you benefit or keep your rights.

**Due process** - the procedures followed if there is disagreement between the IEP team and the parent/guardian/student about the student's needs.

**Informed consent** - understanding what has been agreed upon to do or have done.

**Individualized Education Program** - also called an IEP. It states what the school will provide and what the student will work on in the coming year.

**Transition** - this term refers to the right the student has for the school to assist in preparing for the job, education and the way the student wants to live after graduation.

**Assistive technology** - this term refers to devices or services, or both, that are needed in order for the student to benefit from education.