

## Age of Majority: The Transfer of IDEA Rights to Students at Age 18

Age of majority is the legal age established by state law at which a person is no longer a minor and has the right and the responsibility to make certain legal choices that adults make. The IDEA (Individuals with Disabilities Education Act) affords parents certain rights to ensure their participation in the educational process for their child with disabilities. For many students with IEPs, their secondary education will extend beyond their 18<sup>th</sup> birthdays, when they are recognized as legal adults in Iowa. At that point, the IDEA's parental rights transfer to the student unless a parent or someone else has taken steps to become the student's legal guardian or otherwise exercise authority over decision-making.

Under Iowa law, unless a person has been legally determined to be incompetent by a court of law, an individual reaches the age of majority:

- On the person's 18<sup>th</sup> birthday, OR
- On the person's date of marriage if under age 18, OR
- When the person under age 18 is tried, convicted, and sentenced for a crime as an adult

Beginning at least one year before the student reaches the age of majority (by age 17) the student's IEP must include a statement that he or she has been informed of the special education rights that will transfer. The school is required

to provide both the student and the parents a written notice of the transfer of rights. Students should understand their rights to special education services and how to effectively advocate for themselves. Parents and students should discuss and plan for the transfer of rights before it occurs, including considering if a power of attorney, guardianship, conservatorship, or advance medical directives are needed. The law assumes that all young people are capable of making their own decisions at age 18. Only a court can determine otherwise.

### What rights transfer?

The short answer is – all of them. All IDEA rights that have been afforded to the parents transfer to the student at the age of majority. The more complete answer is that the IDEA contains many procedural safeguards (rights) for the benefit of parents. To help you think about what is involved, here are eight of the key rights families routinely exercise:

- The right to receive a complete explanation of all the procedural safeguards available under IDEA and the procedures in the state for making complaints.
- Confidentiality and the right to inspect and review the student's educational records.
- The right to participate in meetings related to the identification, evaluation, and placement of the student, and the provision of FAPE (a free appropriate public education).

- The right to obtain an independent educational evaluation (IEE).
- The right to receive prior written notice on matters relating to the identification, evaluation, or placement of the student, and the provision of FAPE.
- The right to give or deny consent before the school may take certain actions with respect to the student.
- The right to disagree with decisions made by the school on issues relating to the identification, evaluation, or placement of the student, and the provision of FAPE.
- The right to use IDEA's mechanisms for resolving disputes, including the right to appeal determinations.

### **How does this affect notices and educational decision making?**

The school district should continue to provide any notice required to both the parents and the student. Otherwise, all rights transfer to the student only. Parents can attend and participate in IEP meetings if the student invites them. Parents will be notified of IEP meetings but must be invited and granted permission to make decisions regarding the IEP.

### **Are there exceptions?**

Educational records will continue to be made available to parents as long as the student remains their "dependent" under the Internal Revenue Code.

### **What should we do to prepare?**

You have probably been preparing for a long time in terms of teaching your child how to speak up for what he or she wants, make good choices, and accept responsibility for them. By the mid-teen years, you will probably want to talk more with your son or daughter about the

new responsibilities that come with this change and what role you want to continue to have. Often students will want their parents to keep participating in meetings, planning, and educational decision-making much as they always have, even though the legal responsibilities have shifted. If that is the case, very little may change in how you all work together on educational issues. If you know that you and your child have any disagreements about the educational program, this may be a good time to see if you can work them out.

### **What if my child's disability interferes with decision-making?**

The IDEA regulations also include a special rule for children who have reached the age of majority but who do not have the ability to provide informed consent with respect to their educational programs, even though they have not been determined to be incompetent by a court. Each state must establish procedures for appointing a parent, or other appropriate person if a parent is not available, to represent the student's educational interests during the entire time of eligibility under Part B of IDEA if the student is determined not to have the ability to provide informed consent. IDEA rights are not, however, the only legal rights that a young person acquires upon reaching the age of majority. If you know that the severity of your child's disability is such that he or she will need assistance in decision-making, or if you or your child has doubts or concerns about the level of continuing support needed, there are some legal alternatives for substitute decision-making that you may want to consider.

### **Options for Substitute Decision Making:**

A substitute decision-maker is a person or entity who has been given the authority to make certain decisions on behalf of another person. Forms of substitute decision-making include:

## Power of Attorney (POA)

A power of attorney or letter of attorney is a written authorization to represent or act on another's behalf in private affairs, business, or some other legal matter. The person authorizing the other to act is the *principal*, *grantor*, or *donor* of the power. This is something the student and family can do voluntarily if the student agrees that they want the parents to continue to make decisions on educational or other matters and can give informed consent.

## Advance Medical Directives

An advance health care directive, also known as living will, personal directive, advance directive, or advance decision, is a set of written instructions that specify what actions should be taken for a person's healthcare if they are no longer able to make or communicate decisions due to illness or incapacity. The instruction appoints someone, usually called an agent, to make such decisions on their behalf. A living will is one form of advance directive, leaving instructions for treatment. Another form authorizes a specific type of power of attorney or health care proxy, where someone is appointed by the individual to make decisions on their behalf. One person may also have a combination of both.

## Guardianship

A legal guardian is a person who has been given the legal authority (and duty) to care for the personal and property interests of another person who has been found to be fully or partially incapable of providing these necessities for himself or herself. Personal interests include things such as food, health care, housing, and other necessities. The person who has had a guardian appointed is referred to as a "ward."

## Conservatorship

A conservator is a person who has been given the legal authority to be responsible for the assets and financial interests of a person who has been found to be fully or partially incapable of providing these necessities for himself or herself. One person may serve as both a guardian and conservator for another person. Having either a guardian or a conservator means that the individual has had limits placed on his or her ability to make personal decisions, so such actions must be taken thoughtfully, and with the review and approval of a court of law.

Generally speaking, guardianships and conservatorships are used only when the person's decision making capacity is so impaired that the person is unable to care for his or her own personal safety or to provide for his or her necessities of life. Guardianship or conservatorship should not be used simply because the person has a certain disability or diagnosis, or because a person makes decisions that other people do not agree with or understand.

Most of us generally accept that when a person becomes an adult he or she is able to make decisions, even decisions that family members or others may think are unwise or just plain wrong. Personal decision-making is such a basic freedom, it can only be taken away for a very good reason. Even then, the court can only take away the smallest amount of decision making necessary to protect the person from a high risk of physical injury or illness.

Courts must consider the least restrictive alternative or the least intrusive option when curtailing a person's rights to make decisions. For example, a court might appoint a guardian for make medical decisions or a conservator

to make financial decisions, and yet the individual would retain all other personal rights. The burden of proof that such an action is necessary is always on the person asking the court to appoint a guardian or conservator. The court must try to strike a balance between areas where the person just needs some assistance in doing things for him or herself and areas where the person actually needs someone else to make the decisions.

If any of these options need to be explored, legal advice is recommended.

### **Resources:**

Families may locate attorneys through the American Bar Association Lawyer Referral Program (800-532-1108). Legal fees should be discussed and clarified prior to consultation.

Iowa Legal Aid may be able to provide free or low cost legal services to families who meet income guidelines: [www.iowalegalaid.org](http://www.iowalegalaid.org) or (800) 532-1275

A Guide to “Guardianship and Conservatorship in Iowa: Issues in Substitute Decision Making” (Iowa Developmental Disabilities Council) is available online at:

<http://www.state.ia.us/ddcouncil/Guardianship%20pdfs/Guardianship-Conservatorship%20Papers.pdf>