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TRANSFER OF RIGHTS



Answers for Students, Parents, and Teachers

TRANSFER OF RIGHTS

When students reach age 18, they legally become adults with all the rights, privileges and responsibilities of adulthood. These rights include those associated with special education services and Individualized Education Programs (IEPs). There are two exceptions to age 18 being the age of majority. If a student marries or is incarcerated in an adult facility prior to age 18, then he/she is considered a legal adult at that point in time.

For students up to age 18, parents have specific rights concerning their children's special education services. These same rights transfer to students when they reach age 18. While this transfer of rights does not necessarily exclude parents from the educational planning process, it does allow students much more control over their special education programming. Parents maintain some rights along with the student such as receiving notices and making certain decisions. Some rights are the student's alone, such as the right to request an independent evaluation and the right to consent to an evaluation.

In the case of the student whose rights have been transferred, both the student and parents must still be notified of all IEP meetings. The law does not require that the student's parents be invited. Unless there is a significant reason not to invite the parents, however, it will be the expectation and practice within Heartland AEA 11 that parents will continue to be invited to all IEP meetings.

This is an important step for all students. Parents and students should discuss and plan for the transfer of rights before it occurs. This pamphlet is provided to notify families of the transfer and prompt them to prepare for it.

In situations where a student and/or family is unsure about a student's ability to make adult decisions in his or her best interest, there are some other alternatives that can be considered. The first of these alternatives is for the student to sign a Power of Attorney form, and have it notarized. This will give the parent (or whomever the student chooses) continuing authority to act on his/her behalf in the educational setting. This authority can be revoked, if the student wishes, through the signing and notarizing of the Revocation form. The Revocation form is also available from the student's teacher or Heartland AEA Case Coordinator.

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 the 18-year-old is not competent, and a competency determination has not previously been made, that would have to be done so that the surrogate parent or guardian could continue to act on behalf of the incompetent student.

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.

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.

What happens when a child who is already under 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.

The information in this pamphlet is not a substitute for legal advice. You should contact an attorney if you have questions about the transfer of rights and related issues.

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 in writing that the student has revoked the Power of Attorney.

Would an "X" be acceptable for a 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:

The name of the person with a disability written by another upon the request and in the presence of the person with a disability.

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.

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).

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 reach the age of majority. Under the provisions of the IDEA, the state cannot be

The other alternative is the appointment of a guardian and/or conservator. A guardian is an individual whom is court appointed to make decisions for the student whom the court calls a ward. A conservator is an individual whom is court appointed to make decisions for the ward only in matters relating to the ward's property or finances. Although a guardian and conservator make different types of decisions for the ward, the same person can serve as both.

In Iowa, there are several types of guardianship and conservatorship. Some allow the guardian or conservator to have only specific powers or time-limited powers over the ward. Others allow the guardian or conservator to make most decisions relating to the ward.

While guardianship and conservatorship arrangements are intended to protect individuals by making certain decisions that affect their well being, they also result in the loss of some of their rights. Therefore, the appointment of a conservator or guardian should be considered carefully by the student and his or her family. Exploring these options should take place approximately six months before a student reaches age 18.

When exploring guardianship and conservatorship, families should seek legal advice. Families may wish to start with their family attorney. If the family attorney is unable to assist, he or she may be able to recommend another attorney that may be better qualified to assist.

Another resource for locating an attorney is the Iowa State Bar Association Lawyer Referral Program (1-800-532-1108). This program refers you to a lawyer in your area who is qualified to meet your needs. When you meet with this attorney, you will be charged a set fee for a consultation. Through the consultation, you should be able to decide if you wish to continue working with this attorney, If you choose to continue, you will be informed of the cost of the additional legal services.

If the cost of legal services is a concern, another resource is Iowa Legal Aid (1-800-532-1275). This service may be able to provide free legal services to families who meet low-income guidelines. If the student has a Department of Human Services worker, that student may be eligible for legal services through his or her local county attorney's office.

Frequently Asked Questions and Answers

What if the student doesn't really seem to be competent?

What is the teacher's 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 other IEP team members to determine competency. If the parents raise the issue, a teacher should advise them to seek legal advice on how to initiate guardianship proceedings.

When does the transfer of rights go into effect?

The transfer of rights goes into effect when the student reaches the age of majority (age 18 under Iowa law). If a student marries or is incarcerated in an adult facility prior to age 18, then he or she is considered a legal adult at that point in time.

What are the district's obligations to document the transfer of rights?

There are three basic activities that the district must document: a) notice rights will transfer, b) notice rights have transferred and c) why rights didn't transfer. Beginning at least one year prior to the student's eighteenth birthday or at the time of the student's marriage, the IEP shall reflect that the nature of the rights that will transfer has been described to both the parents and student, pursuant to 281 Iowa Administrative Code 41.67 (3).

Iowa Administrative Rule 41.111 (1) requires that once the student turns 18, districts must also provide notice to parents and students that the rights have transferred. If this occurs during the summer, notification should be very close to when the school knows that the student reached the age of majority. If it's a birthdate, the notice should be 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. Documentation of notification should be kept in the student's file. If, however, the rights have not transferred the district should document the reason why they did not transfer, i.e., establishment of guardianship or power of attorney.

What if the parents are divorced? Which parent gets the notification(s)?

If parents are divorced and if there has not been termination of parental rights for either parent, then the required notification must be sent to both parents.

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 IEP and address these skills as needed.

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?

This may be a fairly common situation, 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.

What is a 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 can be obtained from your Heartland case coordinator.

To whom can an 18-year-old student transfer his or her rights when completing a Power of Attorney? Can it be someone other than a parent?

By executing a Power of Attorney, the student designates an "attorney-in-fact". This person can be any individual 18 or older 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 that is serving the student. There is a potential for conflict of interest in these situations.

When can the Power of Attorney 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 date of, or after, but not before.

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.