

Age of Majority Guidance for Parents and Youth



A partnership between





What Does Age of Majority Mean?

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.

Thus, when people use the term *age of majority*, they are generally referring to when a young person reaches the age where one is considered to be an adult. In Iowa, this happens at age 18. At this juncture in a child's life, the State transfers to the child all the educational rights that the parents have had up until that time.

In this booklet you will find frequently asked questions for both parents and students as they relate to the age of majority.

The information in this booklet is provided by the Iowa Department of Education. The most up-to-date information can always be found on the Department's website at www.educateiowa.gov. At the site, do a search for "Age of Majority."

Also available on the Department's website are parent and student guidance in Arabic, Bosnian, Laotian, Serbo-Croatian, Spanish and Vietnamese.





Age of Majority: Questions and Answers for Parents

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 decisions, including educational decisions. 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 students 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 18th 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 18, the district must provide notice to both the student and the parents that the rights have transferred. Documentation that the student and his or her 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 that 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 18th 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 his or her 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 on 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. This type of guardianship automatically terminates 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 wards 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 decisions. 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,



Age of Majority: Questions and Answers for Youth

The federal law guaranteeing your right to a free, appropriate public education ensures that all rights accorded to your parents through that law transfer to you at the age of 18.

What does that mean?

Here are some explanations that might help you understand what that means. If you have other questions, you should ask your parents, your teacher or anybody else who can help you.

According to the law in Iowa, you become legally responsible for your own actions when you turn 18, and you gain all the rights given to citizens in Iowa. This is called reaching the “age of majority,” which is just a fancy way of saying that you’ve turned 18. If you marry before you turn 18, you are also given these rights.

The Individuals with Disabilities Education Act, called IDEA, is the law that guarantees that you have an education program to meet your unique learning needs. The IDEA states that when a student reaches the age of majority (remember, that’s 18 in Iowa), all of the rights and responsibilities provided to parents in the IDEA transfer to the student.

What rights do you have?

First, these are rights that were put in the law to guarantee that students with disabilities have the chance to get a public education like all children in our country. Up until you turn 18, those rights were handled by your parents. At 18 they become your rights. These are rights to make sure that you get an appropriate public education. It becomes your responsibility to make sure that your education program is appropriate.

What is a right?

A right is a power or a privilege to which a person is legally entitled, like the power to sign a contract to purchase something or the privilege of driving. “Entitled” means that you are given that power or privilege until you lose it. You can lose the privilege of driving if you have too many tickets or accidents and your license can be taken away. You can lose the power of signing a contract if you enter into a contract and then don’t do your part (make a payment).

Rights come with responsibilities. If you have the right to drive, you have the responsibility to drive safely and within the laws that cover motor vehicles.

At the age of majority (age 18), you gain the right to make sure that you have an educational program provided for you that meets your needs. You also have the responsibility of using those rights to make sure you benefit from them.

What kind of rights and responsibilities are we talking about?

Basically, the IDEA provides two types of rights: (1) provisions to make sure that students with disabilities receive a free, appropriate public education and (2) rights to protect you and your parents in getting that free, appropriate public education. Those are called protection or due process rights.

What's a free, appropriate public education?

Free means at no cost to you. (The school can charge fees, if it does so for all students).

Appropriate means that your education program is based on your needs, taking into account your interests and preferences, and allows you to make progress toward outcomes that are important to you.

Public education means a set of services designed to address your needs as a student with a disability and to help you to learn what you need to make a life for yourself as an adult.

We call that FAPE (Free Appropriate Public Education).

What rights are included in the right to FAPE?

There are several rights, too many to really go into here. Those rights are explained in the Procedural Safeguards pamphlet. Some of them are related to testing and evaluation to make decisions about your special education program. Some of them relate to how your education program is developed. Some relate to resolving and preventing disputes.

What is consent?

To give consent means that you give permission to have something happen to you. Under age of majority rules, you are now given the right to provide informed consent. Informed means that you know what is happening to you and approve it. Informed consent is always given voluntarily. That means that people cannot make you give permission to do something you do not want to do.

What are your assessment rights?

You become the person who is responsible for making sure you have a good education. Sometimes the best way to do that is to get some tests to show that you have some unique learning needs. That way educators can treat you like an individual, not like everyone else. Remember, these rights are about assessments that are used to make decisions about your special education program, not general classroom tests.

- You have the right to testing or evaluation that is fair and does not discriminate against you because of race, culture, gender or disability.
- You have the right to be tested with tests that are valid, given by someone trained to use the test and used correctly.
- You have the right to be a member of the team that is to supervise the testing and make decisions about the results.
- You have the right to get a copy of the evaluation report about your eligibility for services.
- You have the right to get some other test information and provide that to the evaluation team.
- You may give or withhold consent to perform any testing related to your individualized education program.
- You have the right to request a reevaluation (to have the test done again).

The idea of individualization is also an important part of the law. Individualization just means that decisions about your education program are based on you, your wants, your needs and your preferences.

What's an IEP?

IEP means *Individualized Education Program*. Each student receiving IDEA services has to have an IEP. The IEP is a written

plan that describes your special education program. The IEP lists the goals you will work on, the supports you need to reach those goals and who is responsible for helping you do that.

Your IEP is developed every year at an IEP meeting that is required by the law. So, you have the right (and responsibility) to plan your education program. You have the right to ask for an IEP meeting at any time if you believe the current IEP isn't working. There is a lot of information that needs to be included in your IEP. Some of these things include:

- information about your educational needs
- measurable goals
- services and supports you need to address your unique needs
- where you will receive your educational services
- when the services will be provided
- information about transition services

There are many things that have to be included in an IEP. Remember, you are responsible for making sure they are there so you can get a good education. Ask your teacher or parents if you want more information.

The IEP team is a group of people, like your teachers, other people from the school system, people who work in adult services and your friends and family, who meet to make a decision about the IEP. You have a right to invite your parents, your friends, other family members, your employer or service provider or anyone else you feel could help make decisions about your education. You have the right to be an equal member of your IEP team.

What other rights do you have related to your education program?

You have the right to specially designed instruction, to support services (speech and language, occupational or physical therapy, adaptive physical education, etc.) and to related services that are needed to make sure you advance toward your annual IEP goals.

You have the right to have the supports that help you learn to behave in a positive way if you are having problems with your behavior.

You have the right to have the IEP team consider your language needs if you speak a different language.

You have the right to have assistive technology considered to meet your unique needs, including communication needs.

State law also requires that from age 14 your IEP includes information about services and supports you will need to learn how to get from where you are now to where you want to be.

What are transition services?

Transition skills are the skills you need to get a good job, move you to a home you prefer, do things in the community you like and other things that will be important for you to know after you leave school.

Transition services must be based on your needs, interests and preferences. That is a right in the law, but it is your responsibility to make sure it happens!

What is assistive technology?

Assistive technology is any device or service that can help you learn what is in your education program. It can be as simple as a grip to help you hold a pencil, as complex as a machine that produces speech or anything in between.

What about the right to due process?

The due process rights in the IDEA allow you to be involved in actions or decisions about your educational program and take steps when you disagree with those actions or decisions. Those are explained below.

What? You thought you had the right to make all your own decisions about your IEP?

You have the right to be a team member. Actual decisions about your IEP are made together with all members of the team trying to agree. This does not mean that you get to do only what you want! The team has the responsibility to plan the educational program based on your needs, not only your interests.

Due process rights are those that are provided to protect your right to a free, appropriate public education. These protections are related to rights to notification, consent, access to records and confidentiality.

What do notification, consent, access and confidentiality mean?

They refer to the types of rights that make up the due process rights. We talked about your right to provide consent already.

You have the right to be notified whenever a school wants to update, change or end your educational services.

Notification means letting you know. Schools have to give you notice, usually by sending you a letter, about things like your IEP meeting date and time or if they want to hold an IEP meeting to make changes in your education program.

Schools also have to notify you in writing about the rights that will transfer to you at the age of majority.

You have the right to have these notifications in language you can understand.

You have the right to be notified of the procedural safeguards that are available to you. Procedural safeguards means the process that you would use to protect your rights to a free, appropriate public education. That notification should include information about all the rights in the IDEA.

You also have the right of access to the school's written records about you. That means you have the right to look at written papers that the school collects about you. If you cannot get to reports, you have a right to copies. These records may include tests, new and old IEPs, reports and other information the school needs to provide educational services.

As well as having access to those records, you have the right to those records being confidential. Confidential means private. You have a right to have the school keep those records private and not available to anyone without your permission unless they work for the school and need the records to provide your educational services. Your parents also have the right to access your records if you are claimed as a dependent on their income taxes.

What due process rights do you have if you disagree with a team decision?

You have multiple options if you disagree with a decision about your identification, evaluation (assessment), placement or provision of FAPE. Among other rights, you have the right to a due process hearing in front of an administrative law judge; the

right to mediation, a chance to negotiate with the school district to resolve your complaint and the right to file a complaint with the Iowa Department of Education.

These procedures make sure you can protest an action of the school. They do not mean that just by doing so you will win. These procedures are hard on everyone. For that reason, most people use these options only when the school and the IEP team have been unable to solve the problem.

Yes, this is a lot of work.

Luckily, you have many people who can help you. There are teachers who want to work with you to design an educational program that is appropriate for you. There is the IEP team to work with you to make sure you know more about your rights and responsibilities. Plus, just because you have these rights, does not mean your parents are going away! They can still be a part of your IEP team if either you or the school invite them. It is smart to keep them on board to help you as you learn how to be an adult!

All this is about making sure you have the chance to have an education that meets your needs. Now you see how hard others have had to work all these years! Sure, it's hard work, but it's worth it. After all, it's your future, right?

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.



6500 Corporate Drive, Johnston, IA 50131
(515) 270-9030 • (800) 362-2720
Fax: (515) 270-5383

www.heartlandaea.org



heartlandaea



@HeartlandAEA



iowaaea

Heartland Area Education Agency 11 does not discriminate based on race, color, creed, national origin, religion, age, sex, sexual orientation, gender identity and/or expression, genetics, pregnancy, disability, military or veteran status, parental, family or marital status. Direct inquiries to the Human Resources Director, 6500 Corporate Dr., Johnston, IA 50131-1603, the Director, Iowa Civil Rights Commission, Des Moines, Iowa 50319-1004 or Director, Office for Civil Rights, Kansas City, MO 64106.