

AGE OF MAJORITY

Transfer of Rights for Students with Disabilities

Office of Federal Programs and Support
Special Education Services
West Virginia Department of Education



SUMMARY

School-age students who receive special education services are protected under the Individuals with Disabilities Education Improvement Act 2004 (*IDEA*). A school representative must provide written notice of the transfer of rights at the age of 18. Both parent and student must be informed that special education rights will automatically transfer to the student on the student's 18th birthday. This document describes what Individualized Education Program (*IEP*) Team members need to know and do before a student reaches the age of majority.

WHAT HAPPENS WHEN A STUDENT REACHES THE AGE OF MAJORITY?

In West Virginia, students with disabilities who reach the age of majority (*i.e., age 18*) may begin making educational decisions that were previously handled by their parents. This includes students who have an *IEP* or a Section 504 plan. It also applies to students with disabilities in a juvenile or adult correctional facility.

Turning 18 is a milestone for many students. But for a student with a disability, it can come with a responsibility for which they may not be prepared: the transfer of educational decision-making rights, also known as "parental rights."

WHAT IS MEANT BY TRANSFER OF RIGHTS?

Adult students will begin:

- » Receiving *IEP* meeting notices as an adult student
- » Participating in *IEP* meetings as a decision-making adult student
- » Giving permission or refusing an evaluation for disability determination
- » Giving permission or refusing a change in placement
- » Requesting dispute resolution (*mediation, due process, state complaint*) about a Free Appropriate Public Education (*FAPE*)
- » Requesting or reviewing educational records

WHY IS THIS IMPORTANT?

It is important students understand the choices they will have to make when turning 18. Students can prepare for this responsibility by talking to parents, teachers, and other trusted adults about the supports they need for adult life.

Teachers, parents, or other adults can help students learn more about special education laws. Participating in the development of their *IEP* and transition plans helps students make informed decisions about their educational program when they reach the age of majority. Transition planning begins at age 14 and happens annually until students exit special education or graduate with a regular high school diploma.

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WHO HANDLES NOTIFYING STUDENTS ABOUT THE TRANSFER OF RIGHTS?

A school representative must give written notice of the transfer of rights at 18. Per WVBE (*West Virginia Board of Education*) Policy 2419, this must happen no later than the student's 17th birthday and must be provided to both the parent and the student. Both parent and student must be informed that special education rights will automatically transfer to the student on the student's 18th birthday. This requirement gives families time to prepare for the transfer of parental rights.

Because students need to fully understand what is expected of them and what they can expect from their LEA (*Local Educational Agency*), parental rights must be presented in writing and verbally explained to students. All student questions should be answered so to make sure adult students have a thorough understanding of the process.

WILL PARENT(S) STILL TAKE PART IN SPECIAL EDUCATION MEETINGS?

If the adult student gives permission, parents can continue to receive notice of meetings and written information related to special education services. The actual level of parental involvement in the special education process is up to the individual student after the student turns 18. Sometimes students ask their parent or another adult to continue helping them make decisions. Asking for help does not mean students are giving up their decision-making authority.

WHAT IF A STUDENT IS NOT READY TO MAKE THESE DECISIONS?

Preparing students to make their own educational decisions is a process that can be overwhelming for some students. IEP teams should consider starting these discussions early for transition-age students (*ages 14-21*) as part of the transition planning process. Students may need time to develop self-advocacy skills as they prepare to make their own educational decisions. Parental rights are often difficult to understand, so IEP teams should consider the student's disability when beginning these conversations as families may need support with this part of transitioning into adulthood.

If a student is unwilling or unable to assume educational decision-making rights, there are other options that should be discussed with the parents before a student's 18th birthday. The adult student can ask their parent to informally continue helping them make decisions until they are comfortable making them on their own. If a student is unable to make independent decisions, other options may include supported decision-making or filing a legal process for court-appointed guardianship. Seeking guardianship of an adult is a removal of an individual's decision-making rights and should only be considered when all other options have been exhausted. IDEA also includes an option for states to appoint an educational surrogate if the student has been determined unable to make informed educational decisions and does not have a court appointed guardian.

THE FOLLOWING RESOURCES MAY BE HELPFUL IN GUIDING THESE CONVERSATIONS:

West Virginia Resources

- [Family and Community Engagement - West Virginia Department of Education \(wvde.us\)](https://www.wvde.us/family-community-engagement)
- [Home | WV Parent Training and Information \(wvpti-inc.org\)](https://www.wvpti-inc.org/)
- [County Family Resource Centers - West Virginia Department of Education \(wvde.us\)](https://www.wvde.us/county-family-resource-centers)
- [WV Developmental Disability Council](https://www.wvde.us/wv-development-disability-council)
- [Disability Rights | Disability Rights of West Virginia | United States \(drofwv.org\)](https://www.drof.wv.gov/)

Additional Parent and Student Resources

- [Parental Rights When Your Child with an IEP Turns 18 \(Understood.org\)](https://www.understood.org/en/learning-attention-issues/child-learning-disorders/parental-rights-when-your-child-with-an-iep-turns-18)
- [Transitioning to Life After High School \(pacer.org\)](https://www.pacer.org/transitioning-to-life-after-high-school/)
- [Getting Ready for When Your Teen Reaches the Age of Majority: A Parent's Guide | Center for Parent Information and Resources \(parentcenterhub.org\)](https://www.parentcenterhub.org/getting-ready-for-when-your-teen-reaches-the-age-of-majority-a-parents-guide/)

Guardianship Resources

- [Adult Guardianship / Conservatorship: What Do I Need to Know? - Legal Aid WV](https://www.legalaidwv.org/adult-guardianship-conservatorship-what-do-i-need-to-know/)
- [Guardianship Fact Sheet - PDF.pdf \(wv.gov\)](https://www.wv.gov/guardianship-fact-sheet-pdf)
- [West Virginia Code | §44A-1-8 \(wvlegislature.gov\)](https://www.wvlegislature.gov/west-virginia-code-s44a-1-8)
- [Guardianship Services \(wvdhhr.org\)](https://www.wvdhhr.org/guardianship-services)

If you need further information, please email WVDE at ssip.wvde@k12.wv.us

