

Q&A: Transfer of Parental Rights under Individuals with Disabilities Education Act (IDEA) to the Student at Age 18

The Minnesota Department of Education (MDE), Division of Compliance and Assistance has developed this document to assist school districts and parents who have raised questions about what changes occur in the individualized education plan (IEP) process when the student with a disability (student) reaches the age of majority. For purposes of this document, “student” refers to a student with a disability. The intention of this document is to provide helpful, general information to the public. It does not constitute legal advice and is not a substitute for consulting with a licensed attorney. The information below should not be relied upon as a comprehensive or definitive response to your specific legal situation. This document may not include a complete rendition of applicable state and federal law.

Question 1: Under the IDEA and Minnesota state law, when does a student reach the age of majority?

Answer: IDEA does not define “age of majority,” rather it defers to individual state law for a definition. In Minnesota, the term “majority” refers to the period of time after an individual reaches the age of 18.

Authority: Minn. Stat. § 645.451, Subds. 3 and 5 and 34 C.F.R. § 300.320(c)

Question 2: When is the IEP team required to notify the student and parent of the rights under IDEA, if any, that will transfer to the student at age 18?

Answer: Beginning no later than the student’s 17th birthday, the student and the student’s parent must be informed of those rights under Part B of IDEA, if any, that will transfer to the student on reaching the age of majority.

Authority: 34 C.F.R. § 300.320(c); Minn. R. 3525.2810, Subp. 1(A)(8); and Minn. Stat. § 645.451, Subds. 3 and 5

Question 3: Under Part B of IDEA and Minnesota state law, what occurs when a student turns 18 years old?

Answer: When a student turns 18 years of age, the IDEA rights formerly given to the student’s parents are transferred to the student.

Authority: 34 C.F.R. § 300.520(a)(1)

Question 4: What happens if the student is incarcerated in an adult or juvenile state or local correctional institution when the student turns 18 years old?

Answer: The parental rights under Part B of IDEA still transfer to the student at age 18 even if the student is incarcerated in an adult or juvenile state or local correctional institution.

Authority: Minn. R. 3525.2810, subp. 1A(8)(b); 34 C.F.R. § 300.520(a)

Question 5: Is a school district required to provide notice to the parent and the student regarding the transfer of parental rights upon a student turning 18 years old?

Answer: Yes. A school district, including a charter school, must notify the parent and the student of the transfer of parental rights upon the student turning 18 years of age. The student's IEP must include a provision documenting that the parent and the student were informed that the parental rights transfer to the student at age 18. The school district must provide parents with a copy of the IEP whenever the district proposes to change the content of an IEP; this includes when parental rights transfer to a student at age 18.

Authority: 34 C.F.R. § 300.520(a)(3); Minn. R. 3525.2810, subp. 1A(8)(a)

Question 6: Under what circumstances would parental rights under Part B of IDEA not transfer to the student at age 18?

Answer: Parental rights do not transfer to the student at age 18 if a guardian or conservator has been appointed for the student by a court of competent jurisdiction (Minn. R. 3525.2810, subp. 1A(8)). A parent or other qualified individual may seek guardianship of the student by filing a petition in court (Minn. Stat. § 524.5-303(a)). That individual would need to establish the nature and extent of the child's incapacity for purposes of being appointed as a limited or full guardian (Minn. Stat. § 542.5-303(a)(8)). If the guardianship provided that the parent retained control over educational decisions, then the parental rights under IDEA would remain with the parent and not transfer to the student at age 18.

Additionally, a parent may, by will or a document executed in the same fashion as a Minnesota Health Care Directive, appoint a guardian for an unmarried child if the parent believes that the child is incapacitated (Minn. Stat. § 524.5-302). That document can specify limitations on the powers to be given to the guardian. However, unless the court confirms this arrangement, the student retains the right to terminate the guardian's appointment at any time by filing a written objection (Minn. Stat. § 524.5-302(h)).

Authority: The Uniform Probate Code; Minn. Stat. §§ 524.5-101 to 524.5-502 and 524.5-602; 34 C.F.R. § 300.520(a); and Minn. R. 3525.2810, subp. 1A(8)

Question 7: Is it legal in Minnesota for a student who has reached the age of majority to transfer the student’s rights under Part B of IDEA to the parent through a power of attorney?

Answer: Not in Minnesota. A power of attorney is a document in which an adult gives someone else the authority to make certain financial or property decisions. Minnesota statutes specify the rights that may be transferred -- including real property, personal property, business matters, or finances. The Minnesota statute does not address rights to make decisions over the “person,” which educational decisions would fall under.

Comments to the federal regulations in 34 C.F.R. § 300.520(b) discuss that an adult student may be able to grant the parent a power of attorney or similar grant of authority to act on the student’s behalf “under applicable state law.” As discussed above, the applicable Minnesota law provides for power of attorney regarding transfer of financial, business or property rights, and does not speak of transferring decisions over the “person.”

Authority: Minn. Stat. §§ 523.23, 523.24; 34 C.F.R. § 300.520(b) cmts. at 71 F.R. 46713 (August 14, 2006)

Question 8: When the student turns 18 years old, what additional information must the student’s IEP include?

Answer: When the student turns 18 years old, unless a guardian has been appointed for the student by a court of competent jurisdiction, the following shall occur and be documented in the student’s IEP: (a) the district shall provide any notice required to the student and to the parent; and (b) all other rights accorded to the parents under Part B of IDEA transfer to the student, even if the student is incarcerated in an adult or juvenile state or local correctional institution.

Authority: Minn. R. 3525.2810, subp. 1A(8)

Question 9: What are some examples of the parental rights that are transferred to the student when the student turns 18 years old?

Answer: Examples of parental rights that transfer to the student when the student turns 18 years old include: participating in the scheduling of IEP meetings; providing consent for evaluation plans; being part of the IEP team; providing input for the development and revision of an IEP; providing consent for a proposed IEP; filing

a due process complaint; requesting a hearing; and receiving prior written notices, proposed IEPs, and a procedural safeguard notice.

Authority: 34 C.F.R. §§ 300.300, 300.321(a)(1), 300.322, 300.324, 300.501, 300.503, 300.504, 300.507(a), and 300.511.

Question 10: If a student age 18 or older, to whom Part B rights have been transferred, requests that his or her parent not be invited to the IEP meeting, must the school district exclude the parents from the student's IEP team meeting?

Answer: If the school district/charter school believes that the student's parent should be invited to the meeting because the parent has knowledge or special expertise regarding the student, the local educational agency has the right to invite the parent pursuant to 34 Code of Federal Regulations, section 300.321(a)(6). As set forth in *Letter to Bieker*, the school district could invite the student's parent to the IEP team meeting "so long as the party seeking to bring the individual to the meeting has appropriately determined that the individual possesses the requisite knowledge and special expertise regarding the child. It is difficult to imagine that a [school district] could not reasonably make this determination in the case of the student's parent, unless, for example, the parent and the student were estranged and the student had no recent contact with the parent." It is also stated in *Letter to Bieker* that the parent's presence at the IEP team meeting for the purpose of providing knowledge or special expertise regarding the student would not conflict with the Family Educational Rights and Privacy Act of 1974 (FERPA) or the confidentiality requirements in Part B of IDEA.

Authority: 34 C.F.R. §§ 99.31(a)(8) and 300.321(a)(6); and Letter to Bieker, Office of Special Educational Programs, 102 LRP 9204 (July 20, 2000)

Question 11: What is the school district's responsibility if a student age 18 or older, to whom Part B parental rights have been transferred, requests that the student's parent be invited to the IEP meeting?

Answer: The district/charter school must ensure that the IEP team includes, at the discretion of the parent, those individuals with special expertise or knowledge regarding the student. Because the student is considered the parent upon reaching age 18, if the student believes that the student's parent should be invited to the meeting because the parent has knowledge or special expertise regarding the student, the student has the right to invite the parent to the IEP team meeting.

Authority: 34 C.F.R. § 300.321(a)(6)

Question 12: Does a parent have any rights under IDEA once his or her student turns 18 if there is no documentation that the parent retains legal authority over educational decision making for the student?

Answer: If the student is claimed as a dependent for tax reporting purposes, the parent still retains the right to access the student's educational record.

Authority: 34 C.F.R. § 99.31(a)(8); and *Letter to Bieker, Office of Special Educational Programs*, 102 LRP 9204 (July 20, 2000)