

Secondary Transition under the IDEA

Transfer of Rights to the Adult Student

In Montana, a student who has turned age 18 has the right and responsibility to make certain legal choices, unless those rights have been legally taken from the student.

What are the responsibilities of the schools?

Beginning no later than one year before the student reaches 18, the school must provide notice to both the student and parents or legal guardian of the transfer of rights. The student's IEP must include a statement that the student had been informed of the rights that will transfer to him or her at the age of 18. 34 CFR § 300.320 (7)(c)

What does this mean for the students with disabilities?

The Individuals with Disabilities Education Act. (IDEA) gives Montana the authority to transfer educational decision-making rights to individuals at the age of majority. 34 CFR § 300.520 In Montana, the age of majority is 18 and at that time students become responsible for their educational program. When the student reaches age 18 of all the rights accorded to the parent under IDEA Part B transfer to the student. ARM 10.16.3502

What are the educational rights that transfer to the student at age 18?

The student has the right to:

- Receive notice of, attend and participate in Individual Education Plan (IEP) and Evaluation Report (ER) meetings. Parents still receive notice of IEP and ER meetings.
- Consent to evaluation.
- Consent to change placement.
- Review educational records.
- Request mediation.
- File a state administrative complaint.
- Request a due process hearing to resolve a dispute about evaluation, identification, eligibility educational placement, or other aspects of a Free Appropriate Public Education (FAPE).

How do we prepare students for the transfer of rights?

Beginning at the first transition IEP, the law requires that students be invited to attend their IEP meeting. 34 CFR § 300.321(b) (1) Students should be encouraged to be an active participant in their IEP meeting. This can help them acquire the decision-making skills they will need at age 18.

Can parents continue to retain educational rights after a student reaches the age of 18?

In certain circumstances a court can appoint the student's parent or another appropriate individual, as the legal guardian. If guardianship is awarded, the guardian will make educational decisions as part of the IEP team. Montana statutes provide for appointment of a guardianship under Mont. Code Ann. § 75-5-301 et seq. Guardianship is a legal process, and parents may wish to seek the assistance of an attorney to accomplish this.

Adapted from Parent Brief, NCSET and PACER Center, April 2002

If you have questions regarding the Transfer of Parental Rights process, please contact the Division of Special Education at (406)444-5661.