

Transfer of Rights to Students Who Reach the Age of Majority

I. All rights accorded to the parent under the Individuals with Disabilities Education Act transfer to children upon the age of majority (age 18), including those students who are incarcerated in an adult or juvenile federal, state, regional, or local correctional institution.

II. Notification

A. The IEP Committee shall notify the parent and the student of the following:

1. That educational rights under the Individuals with Disabilities Education Act will transfer from the parent to the student upon the student reaching the age of majority. This notification must be given at least one year prior to the student's eighteenth birthday; and
2. That procedures exist for appointing the parent or, if the parent is not available, another appropriate individual to represent the educational interests of the student throughout the student's eligibility for special education and related services if the student is determined not to have the ability to provide informed consent with respect to the educational program as specified in subsection *III* of this section.

B. The IEP Committee shall include a statement on the IEP (beginning at least one year before the student reaches the age of majority) that the student has been informed of the rights that will transfer to the student on reaching the age of 18.

C. The special education teacher/case manager shall provide any further notices required under the Individuals with Disabilities Education Act addressed to the adult student.

1. A copy of any notice should also be sent to the parent.
 2. When required, the procedural safeguards document must be included with the notice given to the adult student.
- D. The special education teacher/case manager may continue to invite the parent, as appropriate, as bona fide interested parties knowledgeable of the student's abilities, to participate in meetings where decisions are being made regarding their adult student's educational program.
- E. The adult student may invite the student's parent to participate in meetings where decisions are being made regarding the student's educational program.
- III. A student who has reached the age of 18 years shall be presumed to be a competent adult, and all rights under the Individuals with Disabilities Education Act shall transfer to the adult student, unless one of the following actions has been taken:**
- A. The adult student is declared legally incompetent or legally incapacitated by a court of competent jurisdiction and a representative has been appointed by the court to make decisions for the student;
 - B. The adult student designates, in writing, by power of attorney or similar legal document, another competent adult to be the student's agent to receive notices and to participate in meetings and all other decisions related to the student's educational program. Newport News Public Schools shall rely on such designation until notified that the authority to act under the designation is revoked, terminated, or superseded by court order or by the adult student;

- C. The adult student is certified, according to the following operational guidelines, as unable to provide informed consent. Any adult student who is found eligible for special education according to operational guidelines described in this manual and does not have a representative appointed to make decisions on the adult student's behalf by a court of competent jurisdiction may have an educational representative appointed based on the following certification procedure to act on the student's behalf for all special education matters and to exercise rights related to the student's scholastic record. An educational representative may be appointed based on the following conditions and guidelines:
1. Two professionals (one from list one and one from list two, as set out below in a. and b.) shall, based on a personal examination or interview, certify in writing that the adult student is incapable of providing informed consent and that the student has been informed of this decision:
 - a. List one includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a physician's assistant whose certification is countersigned by a supervising physician; or (iii) a certified nurse practitioner.
 - b. List two includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a licensed clinical psychologist; (iii) a licensed clinical social worker; (iv) an attorney who is qualified to serve as a guardian ad litem for adults under the rules of the Virginia Supreme Court; or (v) a court-appointed special advocate for the adult student.

2. The individuals who provide the certification noted in this section may not be employees of Newport News Public Schools currently serving the adult student or be related by blood or marriage to the adult student.
3. Incapable of providing informed consent, as used in this section, means that the individual is unable to:
 - a. Understand the nature, extent and probable consequences of a proposed educational program or option on a continuing or consistent basis;
 - b. Make a rational evaluation of the benefits or disadvantages of a proposed educational decision or program as compared with the benefits or disadvantages of another proposed educational decision or program on a continuing or consistent basis; or
 - c. Communicate such understanding in any meaningful way.
4. The certification that the adult student is incapable of providing informed consent may be made as early as 60 calendar days prior to the adult student's eighteenth birthday or 65 business days prior to an eligibility meeting if the adult student is undergoing initial eligibility for special education services.
5. The certification shall state when and how often a review of the adult student's ability to provide informed consent shall be made and why that time period was chosen.
6. The adult student's ability to provide informed consent must be recertified any time that the previous certifications are challenged. Challenges can be made by

the student or by anyone with a bona fide interest and knowledge of the adult student, except that challenges cannot be made by employees of Newport News Public Schools. Challenges must be provided in writing to the Director of Special Education and Assessment Services who then must notify the adult student and current appointed representative.

- a. Upon receipt of a written challenge to the certification by the adult student, Newport News Public Schools may not rely on an educational representative, appointed pursuant to the guidelines described below (Section *IV*) for any purpose until a designated educational representative is affirmed by a court of competent jurisdiction;
 - b. Upon receipt of a written challenge to the certification by anyone with a bona fide interest and knowledge of the adult student, Newport News Public Schools may not rely on an educational representative, appointed pursuant to subsection *IV* of this section for any purpose until a more current written certification is provided by the appointed educational representative. Certifications provided after a challenge are effective for 60 calendar days, unless a proceeding in a court of competent jurisdiction is filed challenging and requesting review of the certifications. Newport News Public Schools shall not rely upon the designated educational representative until the representative is affirmed by the court; or
- D. The adult student, based on certification by written order from a judge of competent jurisdiction, is admitted to a facility for the training and treatment of the mentally

retarded in accordance with § 37.1-65.1 of the Code of Virginia or in a coma and eligible for admission to a state hospital in accordance with *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*. The state-operated program serving the adult student may rely on the judicial certification and appoint an educational representative to act on the student's behalf during the student's stay at the state-operated program.

IV. If Newport News Public Schools receives written notification of the action in subdivision III C of this section or if the state-operated program receives the judicial certification in subdivision III D of this section, the Director of Special Education and Assessment Services shall designate the parent of the adult student to act as an educational representative of the adult student (unless the student is married, in which event the student's adult spouse shall be designated as educational representative).

- A. If the parent or adult spouse is not available and competent to give informed consent, the Director of Special Education and Assessment Services or designee shall designate a competent individual from among the following:
 - 1. An adult brother or sister;
 - 2. An adult aunt or uncle; or
 - 3. A grandparent.
- B. If no family member from the previous categories is available and competent to serve as the adult student's educational representative, then a person trained as a surrogate parent shall be appointed to serve as the educational representative by the approved special education administrator.