

# A PEATC

Do You Know....



## Factsheet for Virginia's Parents Transfer of Rights to the Student at Age 18

### What Happens When My Student with a Disability Turns 18?

When students turn 18 (called the age of majority) they obtain certain legal rights, called the **Transfer of Rights**. The law presumes that all students are capable of making decisions at age 18. It is important to prepare for your student to assume these responsibilities well in advance.

In Virginia, **transition planning** for students receiving services under their **Individualized Education Program (IEP)** under the federal Individuals with Disabilities Education Act (IDEA) is age 14. This is younger than the IDEA requirement of 16, so there is plenty of time to plan for adulthood and to ensure that you and your student both make the best decisions to ensure a successful future after high school.

### What are the Rights that Transfer and How Can I Stay Involved?

The school must tell you and your student (and provide notice in writing) about transfer of rights one year before your student turns 18. The only time your student will not receive notification is if they have been deemed legally incompetent by a Court.

The following are the educational rights that transfer to your student at age 18:

- The right to be notified of and **attend IEP meetings**.
- The **right to consent** to reevaluation and to any change in placement.
- The **right to request mediation or a due process hearing** to resolve a disagreement about evaluation, identification, eligibility, IEP, placement, or any other area related to their right to a free appropriate public education (FAPE).

Your student may be mature enough and prepared to take on these responsibilities or they may need help to make appropriate decisions. For example, if they are frustrated with school, they may choose to drop out of school and would have the legal right to do so, which could dramatically affect their future. Of course, if your student cannot make their own educational decisions or wants your assistance with those decisions, there are plenty of ways to stay involved.

### Resources for Transfer of Rights for Students with Disabilities at Age 18

#### Virginia Department of Education

[Transfer of Rights to Students with Disabilities upon Reaching the Age of Majority in Virginia](#)

[Critical Decision Points for Parents of Students with Disabilities](#)

#### PACER National Parent Center on Transition and Employment

[Prepare Your Child for Age of Majority and Transfer of Rights](#)

#### Contact Us:

800-869-6782 / 703-923-0010

[www.peatc.org](http://www.peatc.org)

Hablamos Español

# Factsheet for Virginia's Parents

## What if My Student is Not Capable of Making Educational Decisions?

The Virginia Department of Education (VDOE) ***Guide on the Transfer of Rights to Students with Disabilities at the Age of Majority*** includes details on important processes which cannot all be included here. A link to the *Guide* is on Page 1 of this fact sheet. Depending on circumstances, there are four ways in which you or others can be involved in educational decision-making if your student cannot make their own educational decisions or wants help doing so.

OPTION	If your adult student <u>has not</u> been determined incompetent by a Court, they can appoint, in writing, you or another competent adult to make educational decisions for the by <b>executing</b> (signing) a <b>Power of Attorney (POA)</b> . This is an easy way to stay involved, but your student must understand what they are doing, or they cannot take this action (i.e., they must be able to provide informed consent). Otherwise the POA will not be valid.
OPTION	Virginia regulations (8 VAC 20-81-180 C and D) allow for the <b>appointment of an educational representative for students certified as being unable to make educational decisions</b> . Specific procedures and professionals are involved in the certification process developed by VDOE. The appointed educational representative can be a parent, family member or other competent adult; they can only make educational decisions. This is an easier and less costly process than guardianship. Your student has the right to challenge the process. For more details, see the <i>Guide</i> (link on page 1).
OPTION	You can go before a judge and <b>ask for your student to be deemed incompetent (or incapacitated)</b> and for you to be appointed as <b>their limited or full guardian</b> . Your student will be appointed a guardian ad-litem to represent their interests at the hearing. You will need a lawyer; <b>guardianship can be costly; and is the most restrictive option</b> . It can involve not just taking away your adult child's right to make educational decisions, but also other rights (e.g., voting, health care decisions, etc.). While guardianship may be the right choice for some, it is always helpful to explore other options.
OPTION	If your adult child is <b>admitted through a Court Order to a state-operated training center</b> for persons with intellectual/developmental disabilities, the state-operated program can appoint an educational representative to act on the student's behalf during their stay at that program.

## How Can I Prepare My Student to Make Their Own Decisions?

- Involve your student in making decisions at an early age.
- Encourage your student to participate in or even lead his IEP meetings. You can practice in advance.
- Ask if they want to invite someone of their own choosing to their IEP meeting and when they turn 18, ask them if you can still attend.
- Encourage them to develop good relationships with school staff.
- Allow your student to plan their own future with your help.
- If they are overwhelmed, offer help but don't take over unless you think they are being pressured to make a bad decision, like ending IEP services.
- Enroll your student in leadership development programs such as VDOE's *I'm Determined Program*, Center for Independent Living Programs, and other similar programs in the community.

PEATC's mission focuses on building positive futures for Virginia's children by working collaboratively with families, schools and communities to improve opportunities for excellence in education and success in school and community life.

For more information about us, please contact:

800-869-6782 / 703-923-0010

[www.peatc.org](http://www.peatc.org)



The contents of this factsheet were developed under a grant from the US Department of Education, **#H328M140013-18**. However, those contents do not necessarily represent the policy of the US Department of Education, and you should not assume endorsement by the Federal Government Project Officer. PEATC is not a legal services agency and cannot provide legal advice or legal representation. Any information contained in this factsheet is not intended as legal advice and should not be used as a substitution for legal advice.

