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K12: 2005-35

TO: Exceptional Student Education Directors
Student Services Directors

FROM: Bambi J. Lockman

DATE: April 1, 2005

SUBJECT: Transfer of Rights – Age of Majority

Educators, families, and service providers throughout Florida are working collaboratively to ensure students with disabilities reach the highest levels of student achievement and successfully transition to adult life. One of the important steps in students' transition is learning about the rights that transfer to them when they reach age 18, the age of majority.

The purpose of this memorandum is to provide guidance to districts regarding transfer of rights at the age of majority. This memorandum reflects current information including revisions to State Board of Education rules and replaces an earlier memorandum on this topic (BISCS Memorandum #99-89, October 26, 1999). The Individuals with Disabilities Education Improvement Act continues the requirements addressing transfer of rights at age of majority. Following a review of the legislation, no significant changes were found. Therefore, it is important for districts to continue to follow existing requirements. A summary of the statutory requirements addressing transfer of rights, as well as recommendations for districts, is attached. A sample providing information regarding the transfer of rights is also included.

BAMBI J. LOCKMAN

Chief

Bureau of Exceptional Education and Student Services

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If you have additional questions regarding this information, please contact Dr. Janet Adams, Program Specialist for Transition, by phone at 850/245-0478 (Suncom 205-0478) or via email at Janet.Adams@fldoe.org.

BJL/jar

Attachment

cc: Transition Contact Persons
Project CONNECT Site Managers
Transition to Independence Process (TIP) Project Site Managers
FDLRS Associate Center Managers
FDLRS Associate Center Transition Contacts
District Parent Liaisons
Laboratory Schools
Florida School for the Deaf and the Blind (FSDB)
State Advisory Council for the Education of Exceptional Students
Transition Workgroup Members
Advocacy Center for Persons with Disabilities
Division of Administrative Hearings
Family Network on Disabilities
School Board Attorneys

Transfer of Rights at Age of Majority Attachment

Key points addressed in the following description of transfer of rights requirements are based on the following references:

- Rule 6A-6.03311, Florida Administrative Code (FAC), Procedural Safeguards for Students with Disabilities
- Family Educational Rights and Privacy Act (FERPA)
- Sections 393.12, 743.07, and 744, Florida Statutes (F.S.)

The 1997 Amendments to the Individuals with Disabilities Education Act (IDEA) added a section of law that specifically addresses the rights of students at the age of majority. The final regulations implementing IDEA have provided additional guidance regarding the implementation of this provision. Key sections of the federal regulations and state law are cited below.

- *Section 300.517 of Title 34 of the Code of Federal Regulations states the following:*

“(a) General. A State may provide that, when a student with a disability reaches the age of majority under State law that applies to all students (except for a student with a disability who has been determined to be incompetent under state law) -

(1)(i) The public agency shall provide any notice required by this part to both the individual and the parents; and (ii) All other rights accorded to parents under Part B of the Act transfer to the student; and

(2) All rights accorded to parents under Part B of the Act transfer to students who are incarcerated in an adult or juvenile State or local correctional institution.

(3) Whenever a State transfers rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency shall notify the individual and the parents of the transfer of rights.

(b) Special rule. If, under State law, a State has a mechanism to determine that a student with a disability, who has reached the age of majority under State law that applies to all children and has not been determined incompetent under State law, does not have the ability to provide informed consent with respect to his or her educational program, the State shall establish procedures for appointing the parent, or, if the parent is not available another appropriate individual, to represent the educational interests of the student through the student’s eligibility under Part B of the Act.”

- *Volume 64, No. 48 of the Federal Register includes Attachment 1 to Part 300 of Title 34 which is entitled, “Analysis of Comments and Changes.” This attachment further clarifies the regulation cited above. Selected sections of these comments, found at page 12617, are cited below.*

“The requirement in paragraph (a) of this section regarding State provision for transfer of parental rights at the age of majority under State law generally does not require a statutory change if the State already has a State law regarding age of majority that applies to all children.”

“While the requirement in Section 300.347(c) that beginning at least one year before the student reaches the age of majority under State law the IEP must include a statement that the student has been informed of the rights that will transfer to him or her upon reaching the age of majority, does relate to this regulation, it is separate and distinct from the notice provision in Section 300.517(a)(3) requiring notice to the parent and the child at the time of transfer – when the child actually reaches the age of majority.”

“The special rule at Section 300.517(b) only applies to States who, under State law, allow for this lesser determination of competency.”

- *Section 743.07, F.S., establishes the age of majority in Florida. The statute states in part:*

“(1) The disability of nonage is hereby removed for all persons in this state who are 18 years of age or older, and they shall enjoy and suffer the rights, privileges and obligations of all persons 21 years of age or older except as otherwise excluded by the State Constitution immediately preceding the effective date of this section and except as otherwise provided in the Beverage Law.”

- *Rule 6A-6.03311(10), FAC, Procedural Safeguards for Students with Disabilities, establishes procedures for school districts to inform parents and students of the longstanding provisions of state law regarding the rights and responsibilities that transfer to an individual upon attaining the age of 18. The right to notice under this rule is retained as a shared right of the parent and the student except as provided in paragraph (10)(d) of this rule. The rule states in part:*

“(a) at age eighteen (18), all other rights afforded to parents under Part B of the Individuals with Disabilities Education Act transfer to the student, unless the student has been determined to be incompetent under state law as established by Chapter 744, F.S., or a guardian advocate has been appointed to make decisions affecting educational services as provided by Section 393.12, F.S.

(b) The school district shall notify the student and the parent of the transfer of rights, when the student attains the age of eighteen (18).

(c) The school district shall provide all notices required by Rules 6A-6.03311 and 6A-6.03028, FAC, to both the student who has attained the age of eighteen (18) and the student’s parent.

(d) For students who have attained age eighteen (18) and are incarcerated in a juvenile justice facility or local correctional facility, all rights accorded to parents under this rule transfer to the student, including the right to notice as described in paragraph (10)(a) of this rule.

(e) If a student with a disability has reached the age of majority and does not have the ability to provide informed consent with respect to his or her educational program, procedures established by statute may be used by the parent to:

1. Have their child declared incompetent and the appropriate guardianship established in accordance with the provisions of Chapter 744, F.S.;
2. Be appointed to represent the educational interests of their child throughout the child’s eligibility for a specially designed instruction and related services consistent with Rules 6A-6.03011 through 6A-6.03018, and Rules 6A-6.03020 through 6A-6.03023, FAC, in accordance with Section 393.12, F.S.; or,
3. Have another appropriate individual appointed to represent the educational interests of their child throughout the child’s eligibility for specially designed

instruction and related services consistent with Rules 6A-6.03011 through 6A-6.03018, and Rules 6A-6.03020 through 6A-6.03025, FAC, if the parent is not available in accordance with Section 393.12, F.S.”

Based on this information, districts are advised to take the following action.

- At least one year prior to the student’s 18th birthday (i.e., on or before the student’s 17th birthday), during the Transition Individual Educational Plan (IEP) meeting, the student and his or her parent must be informed of the rights that will transfer to the student upon his or her 18th birthday. The Transition IEP shall document that this information has been provided.
- When the student attains his or her 18th birthday, a notice regarding the transfer of rights must be provided to the student and parent. The Bureau has attached a sample of a notice that provides information regarding the transfer of rights. Those rights which transfer to the student include the opportunity to examine all records and other rights related to student records, the opportunity to participate in meetings, rights of consent, the rights to obtain an independent evaluation, and the opportunity to request mediation and/or a due process hearing. The right to prior written notice is a right jointly held by the student and the parent.
- The district must continue to provide any notices required by IDEA to the parent, in addition to the student who has attained the age of 18. These notices include: (1) notices of Transition IEP meetings; (2) prior written notices whenever the school district proposes or refuses to initiate or change the identification, evaluation, placement or provision of a free appropriate public education to the student; (3) procedural safeguards notices which must be provided upon initial referral for evaluation, upon each notification of a Transition IEP meeting, upon re-evaluation, and upon request for a due process hearing; and (4) the notice required to inform the student and the parent of the transfer of rights.
- The exception to this provision relates to students who have attained the age of 18 and are incarcerated in a juvenile justice facility or county jail. In these circumstances, parents no longer retain the right to notice.
- If a student has been determined to be incompetent, then rights would not transfer to the student and would be retained by the individual appointed by the court as the student’s guardian.
- In accordance with FERPA, rights relating to the student records transfer to the student at age 18, or when the student begins to attend a post-secondary institution. However, FERPA also provides that information may be disclosed, without prior consent, to the parents of a dependent student, “as defined in Section 152 of the Internal Revenue Code of 1986.”
- In circumstances where the parents and a student over the age of 18 disagree with each other on a course of action, the parents and student should be assisted in resolving their conflict. Mediation may be appropriate in such a circumstance.

- At age 18, all other rights afforded to parents under Part B of the Individuals with Disabilities Education Act transfer to the student, unless the student has been determined to be incompetent under state law as established by Chapter 744, F.S., or a guardian advocate has been appointed to make decisions affecting educational services as provided by Section 393.12, F.S.
- In circumstances where there are concerns about the student's ability to participate in the process of educational decision-making, districts should continue to work closely with the student's parents to ensure that appropriate decisions are made.

SAMPLE NOTICE

Date _____

Student's Name _____

TO: (Parent and Student)

FROM:

SUBJECT: Transfer of Rights at Age of Majority

The 1997 Amendments to the Individuals with Disabilities Education Act, (IDEA) require that when a student with disabilities reaches the age of majority under State law, both the parent and the student must be notified of the transfer of educational rights to the student. In Florida, when a student with disabilities reaches the age of eighteen (18):

- the school district must provide all notices required by IDEA, including invitations to Transition Individual Educational Plan (IEP) meetings, to both the parent and the student; and
- other rights related to the opportunity to examine all records, the opportunity to participate in meetings, rights of consent, the right to obtain an independent evaluation, and the opportunity to request mediation and/or a due process hearing, transfer to the student.

_____, is a student with a disability, who will reach the age of majority on _____. At that time, all rights pertaining to the exceptional student education program will transfer from the parent to the student unless the school district is notified of any existing court order that prevents this transfer.

If a student with disabilities is determined incompetent under State law, all rights will be afforded to the individual or agency as directed by the court.

If you have any questions regarding this notice, or wish to obtain an additional copy of your procedural safeguards you may call _____ at _____ or _____ at _____.