



What Parents Should Know... About Reaching Age 18

**“Promise me you’ll always remember:
You’re braver than you believe,
stronger than you seem
and smarter than you think.”**

**A.A. Milne, Author
Winnie the Pooh Books**



Age 18 Brings Changes

by John A. Hamilton, South Dakota Advocacy Services

Nationwide, most youth look forward to the day they become “legal” adults, meaning reaching the “age of majority.” The age of majority is determined on a state-by-state basis and South Dakota has set it at eighteen. When youth reach the age of majority, their legal relationship with their parents and society changes dramatically, probably in several ways in which youth (and parents) are unaware. Additional changes, which are described in the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), take place for students with disabilities. The IDEA sets out how a number of “parental rights” will transfer to the student upon reaching the age of majority, including students who are incarcerated in an adult or juvenile correctional institution. **No later than a student’s seventeenth birthday in South Dakota, the IEP must document that the student has been informed of the rights (under IDEA) that will transfer to the student at age eighteen. In addition, both students and parents must be given notice when the transfer of rights occurs.**

Turning Age 18 and the IEP

Parents and students should understand that the following parental rights will transfer at age eighteen:

- ◆ The student becomes solely responsible for his or her educational program, not the parents or guardian (guardianship of a minor would end when the student turns age eighteen unless the guardianship order states otherwise);
- ◆ The student is responsible for reviewing and/or seeking copies of school records. Students must understand they have a right to review all educational records and request a copy (and be informed whether there are reasonable copying charges);
- ◆ The student, not the parents or guardian, will receive notices of IEP Team meetings and must contact the school if the day and time do not work and the meeting needs to be rescheduled;
- ◆ The student, not the parents or guardian, is responsible for attending and participating in IEP Team meetings;

- ◆ The student may, but is not required to, invite his or her parents to IEP Team meetings, as parents no longer are mandatory IEP Team members when the student turns age eighteen;
- ◆ The student is responsible for inviting other people to IEP Team meetings, such as an advocate, Navigator, or other desired professionals;
- ◆ The student is responsible for requesting evaluations, if needed, and signing consent for all evaluations sought by the district or requested by the student;
- ◆ The student is responsible for determining whether he or she disagrees with any evaluations completed by the district and whether to engage his or her right to independent educational evaluations;
- ◆ The student is responsible for consenting to persons from participating agencies participating at IEP Team meetings and for consenting to any release of information;
- ◆ The student is responsible for determining whether he or she agrees with IEPs the IEP Team develops, and for deciding whether to request mediation or contest IEP provisions (and/or identification, eligibility, placement, evaluations, or other aspects of a free appropriate public education) through filing a Due Process Complaint;
- ◆ The student is responsible for locating and hiring legal representation if desired; and
- ◆ The student is responsible for addressing discipline issues relating to his or her own behaviors.

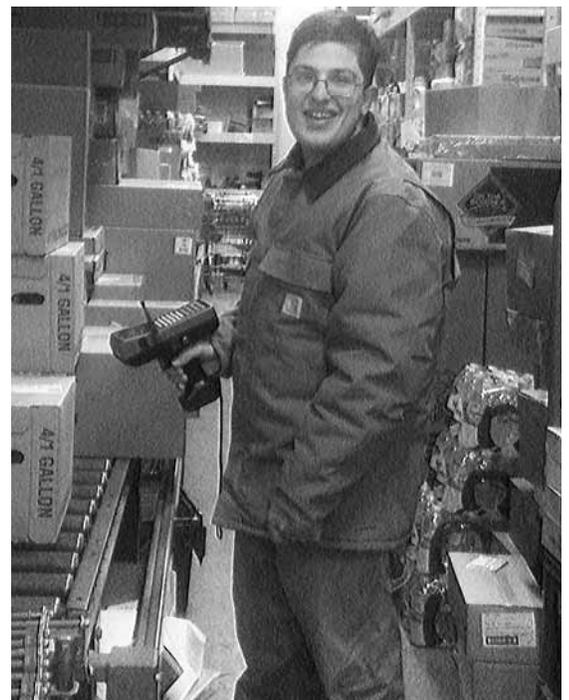
Beyond the IEP

While significant rights transfer to students with disabilities under IDEA at age eighteen, they are essentially the “tip of the iceberg” compared to the rights that transfer or otherwise attach at age eighteen for all youth. There is no specific IDEA requirement that districts inform students and parents of the non-special education rights that attach at age eighteen; nonetheless, IEP Teams should provide students with this information in some form because they encompass part of the transition to adulthood. Because IDEA’s intent is to ensure students with disabilities successfully transition to appropriate adult “outcomes,” then informing students of the universally applicable rights that attach at age eighteen seems like a “no-brainer” as part of a good transition plan.

At age eighteen, students have the following rights:

(This list not intended to be all-inclusive):

- ◆ To vote;
- ◆ To make a will;
- ◆ To make a power of attorney;
- ◆ To make end-of-life decisions;
- ◆ To be an organ donor;
- ◆ To sign an enforceable contract (e.g., rent an apartment, purchase a house, take out a loan, purchase a car);
- ◆ To obtain medical treatment without parental consent;
- ◆ To enlist in the armed forces without parental consent;
- ◆ To apply for credit in their own name;
- ◆ To be completely independent of parental control; and
- ◆ To get married without parental permission.



And the following responsibilities

- ◆ Your parents are no longer required to support you;
- ◆ You may be sued for breaching contracts you signed;
- ◆ You are responsible for having auto insurance;
- ◆ You are responsible for your own car accidents;
- ◆ You are eligible for jury duty;
- ◆ You will be tried as an adult for committing a crime; and
- ◆ If you are male, you must register for the selective service.

Is Guardianship Appropriate?

Parents who believe, due to their child's disability, that their child will not be able to make some or all types of decisions on his or her own behalf may want to consider guardianship. Parents who believe a guardianship is needed should take steps to ensure a guardianship is in place when the student turns age eighteen. Otherwise, regardless of the student's actual capabilities, the student will become his or her own guardian and all rights will transfer at age eighteen (until such time a court determines a guardianship is needed and such guardianship is in place). Becoming a guardian/conservator is not something to take lightly, as there are several statutory responsibilities.

Because guardianship is not addressed in federal law, each state must create its own requirements and procedures. Guardianship requires a legal proceeding, with several procedural requirements that must be followed under South Dakota law before a court will grant a guardianship. Parents seeking to have a guardianship in place when their child turns age eighteen should obtain legal advice/representation at least six months prior to their child reaching age eighteen.

South Dakota's statutes allow for a number of different options. A full guardianship allows the guardian to make decisions for the protected person in many areas, such as making medical and educational decisions, determining where the protected person lives, etc. A conservator, on the other hand, is appointed by the court to be responsible for managing the estate and financial affairs of a minor or protected person. Oftentimes, the same person fills both roles. South Dakota laws also provide for the court appointing a limited guardian, which means the responsibilities for the personal affairs of a minor or protected person are more narrow as specified in the order of appointment. For example, a court may limit the guardian's authority to making only educational decisions if the protected person is found capable of making decisions in all other areas. A court can similarly specify in the court order a limited conservator, where responsibilities for managing the estate and financial affairs of a minor or protected person are specifically set-out.

South Dakota law also provides for the appointment of a temporary guardian/conservator, which is limited to six months for a minor, and 90 days with one extension for adults. A temporary guardianship/conservatorship may be used in situations where there is not an anticipated need for an ongoing guardianship, such as where the protected person was in an accident or has a medical condition where improvement is possible in the short-term. A temporary guardianship is easier to put in place, so it works well in emergency situations (where a guardianship is needed, but there is not time to go through the required procedures for a regular guardianship to be put in place).

The statutes also provide the flexibility for courts to appoint joint guardians/conservators. For example, a brother and sister may be appointed joint guardians over their brother, or both parents over their son.

The laws also allow for the appointment of successor guardians/conservators, meaning persons or entities that will assume the guardian role if something should happen to the current guardian.

While typically one immediately thinks of parents becoming guardian, others may petition for guardianship or conservatorship if they are capable of providing an active and suitable program and are



Important Age 18 Information

Regardless of Disability, Young Men Are Required to Register with Selective Service. Men ages 18-25 living in the US must register with Selective Service within 30 days of their 18th birthday. You may be denied benefits or a job if you have not registered. Registration may be done at any US Post Office or online at www.sss.gov/. Call the Selective Service at 888-655-1825 or 847-688-2567 (TTY).

Establishment Program

This program in the SD Department of Human Services assists families or friends of adults with developmental disabilities who reside in South Dakota with legal costs up to \$500 associated with establishing a guardianship or conservatorship. Visit <http://dhs.sd.gov/gdn> or call 800-265-9684 for more information.

For information about transitioning to adulthood visit www.sdparent.org (**Our Resources, Virtual Library, Transition to Adulthood**).

not providing substantial direct care services or financial assistance to the minor or protected person other than the services of the guardian/conservator.

Appointment of a guardian is a significant deprivation of rights and courts will not grant a petition for guardianship if lesser-restrictive options are available or if there is not sufficient proof a guardianship is needed. In most instances, for a guardianship to be ordered, there must be a current evaluation report accompanying the petition. The purposes of the evaluation are to have sufficient information before the court to determine whether the person needs a guardianship or conservatorship, and if so, whether full or limited, provide the court information on whether the provision of additional services would avoid the necessity of an appointment, assist the guardian or conservator in planning for the needs of the person by reviewing aspects of the person's life, including medications, and help the court determine whether the person alleged to need protection will be able to attend the hearing. The person alleged to need protection has the right to disagree with (contest) the procedure and who will be the guardian/conservator.

Significant in South Dakota law is that appointment of a guardian/conservator does not constitute a general finding of incompetence unless the court orders. The protected person retains all rights that have not been granted to the guardian/conservator. Without prior court authorization, the guardian cannot change the residence of a minor or protected person to another state, terminate or consent to termination of a minor's or protected person's parental rights, initiate a change in the minor's or protected person's marital status, or revoke or amend a durable power of attorney of which the protected person is the principal.

As guardianship/conservatorship is a legal proceeding, parents (or others) seeking to become guardian/conservator will need an attorney to assist them in this process. There are costs involved and they should expect to spend \$600.00 or more.

Conclusion

The transfer of rights at age of majority is a life-altering event and one that requires significant planning. If parents and students are not receiving the information discussed above from their IEP Team, they should ask for that information. If parents or youth have questions about the transfer of rights at age of majority please contact South Dakota Advocacy Services at 1-800-658-4782.

Parent Tip:

I.C.E. (in case of emergency) on a mobile phone enables first responders, such as paramedics, firefighters, and police officers, as well as hospital personnel, to contact the next of kin to obtain important medical or support information. The mobile phone entry (or entries) should supplement or complement written (such as wallet, bracelet, or necklace) information or indicators. Information young adults should keep under ICE on their phone should list the names and of all approved emergency contacts, health insurance information, any allergies, other pertinent health information that would assist first responders in case of any emergency.

EMERGENCY



INFORMATION

Other Considerations at Age 18

Health Care

Health care providers must protect every patient's right to privacy and consent. In the absence of legally arranged guidance, this may prevent parents from getting medical information, speaking with the doctor, or making medical decisions for their child aged 18 or above. For young people who may be unable to make medical decisions independently, or for those with medical conditions that may be intermittently incapacitating, health care durable powers of attorney, conservatorships or waivers of confidentiality for individual health care issues are options that can 1) support a young person's decision making while, 2) providing parents the legal right to obtain information and make decisions for their child should an emergency arise.



Supplemental Security Income (SSI) and Medicaid

Social Security provides SSI disability benefits to qualifying individuals with little or no income and limited resources. In South Dakota, individuals who qualify for SSI benefits of at least \$1 will also receive Medicaid insurance.

Social Security determines disability for adults (18+) by different standards than those used for children. Adult eligibility is determined by the ability to be substantially and gainfully employed while child disability is determined by a child's functional ability. For children receiving Social Security benefits, families should anticipate a re-determination process at the time of turning 18 years of age, using the adult criteria.

Families of children with disabilities are often ineligible for SSI due to required reporting of all household income. When the child becomes an adult at age 18, only the income and resources of the applicant (child) are considered, regardless of where they live or with whom. An adult application for Social Security benefits can be initiated at any time following the 18th birthday or not more than three months before the age of 18. Visit www.sdparent.org, (**OurResources, Virtual Library**) for more information on SSI and applying for Social Security benefits.

Medicaid/CHIP

At age 19, low income youth in South Dakota who have received Medicaid/CHIP insurance will become ineligible. Alternate insurance/financing should be identified. Options families can explore include private insurance, SSI (Medicaid for adults with disabilities), Health KiCC (see below), and low cost community health/mental health/dental health clinics. Please explore the **Family Resource Guide, Paying for Needed Services** at www.sdparent.org for additional resources or contact SD Parent Connection.

Affordable Health Care Act

Under the Affordable Health Care Act, young adults up to age 26 may be covered under their parent's plan. The Healthcare Marketplace also offers affordable health options for young adults. The Marketplace has a number of health insurance providers and four different levels of health insurance plans. The least expensive (bronze) plans have fewer benefits and higher deductibles and co-pays. Those that are the most expensive (platinum) have more benefits and lower deductibles and co-pays. Learn more about health plans for young adults at www.healthcare.gov.

Health KiCC

This program provides financial assistance for medical appointments, procedures, treatments, medications and travel reimbursement for South Dakota youth through age 20 with a wide range of

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chronic medical conditions who meet financial guidelines. Call 800-305-3064 or visit <http://doh.sd.gov/family/childhood/health-kicc.aspx>.

Family Educational Rights and Privacy Act (FERPA)

Parents have the right to inspect and seek to amend their children's educational records, and control (with some exceptions) how those records are released to other individuals. Examples are grade reports, transcripts, and most disciplinary files. Those rights transfer to students when the student turns eighteen, or is attending any post-secondary educational institution. When the rights under FERPA transfer, the student must provide written permission before parents can be given access to their student's records. However, there are exceptions. If a student is enrolled in both a high school and a postsecondary institution, the two schools may exchange information on that student. If the student is under 18, the parents retain FERPA rights at the high school and may inspect and review any records sent to the high school by the postsecondary institution. Also, although the rights under FERPA have now transferred to the student, a school may disclose information from an "eligible student's" education records to either of the parents of the student, without the student's consent, if the student is claimed as a dependent by either parent for tax purposes. Neither the age of the student nor the parent's status as a custodial parent is relevant. If a student is claimed as a dependent by either parent for tax purposes, then either parent may have access under this provision. Another exception allows disclosure to parents of a student's violation of the use or possession of alcohol or a controlled substance if the student is under age 21, or is claimed as a dependent regardless of age. (34 CFR § 99.31(a)(8).) <http://www2.ed.gov/policy/gen/reg/ferpa/index.html>. See FERPA FAQs at www.sdparent.org, (**Our Resources, Virtual Library, Transition – Post Secondary**).

Independent Living Centers

Independent living centers offer a number of programs to help support young people. In eastern South Dakota, **Independent Living Choices (ILC)** offers an adaptive devices program, advocacy, assisted living services, home modification, independent living skills, information and referral services, peer support program, summer transition program, telecommunication adaptive devices and other programs. Visit www.ilchoices.org for a list of Independent Living Choices or call 1-800-947-3770.

Western Resources for dis-ABLED Independence (WRDI) serves Butte, Custer, Fall River, Haakon, Harding, Hughes, Jackson, Jones, Lawrence, Lyman, Mellette, Pennington, Perkins, Stanley, Sully and Tripp counties. Among the services it provides are an individual and systems advocacy program, information and referrals, independent living skills, peer support, supplementation for school services, home modification, housing assistance, mobility training, employment services, recreational services, technology adaptive services, transportation services, youth transition services (ages 12-24). Visit www.wrди.org/ or call 1-888-434-4943 for more information.

The **Native American Advocacy Program** was established to advocate for tribal members with significant disabilities on the nine reservations in South Dakota. Four core services of the independent living program are information and referral, independent living skills training, advocacy and peer support. Visit www.nativeamericanadvocacy.org/ or call 605-842-3977.

Community Support Providers

Nineteen community support providers across South Dakota provide services which may include community living training and support for those who are living on their own or are working toward that goal; service coordination; nursing care; residential living options, such as group homes and supervised apartments; and vocational opportunities such as working in an agency workshop, job coaching and pre-vocational training for participants looking for community jobs, and support for those working in the community. For a list of community support providers visit <http://dhs.sd.gov/dd/atclist.aspx>.

College, Training and Employment Resources

Think College offers Post-secondary Education Resources for Youth With Intellectual Disabilities

Do you have questions about post-secondary education opportunities for your youth with an intellectual disability? Think College, a technical assistance center that works to improve access to post-secondary education for students with intellectual disabilities, offers resources for families. It has developed a series of web-based, self-paced learning modules that share information by using multimedia tools such as videos, publications, interactive learning activities, and podcasts. www.thinkcollege.net/index.php.

Going to College — This website provides a range of information for high school students with a disability who are, or will be attending college. The site contains video clips, activities, and resources that can help students explore more about themselves, learn what to expect from college, and examine important considerations and tasks to complete when planning for college. www.going-to-college.org/index.html.



National Center for Secondary Education and Transition — Provides information related to secondary education and transition for youth with disabilities in order to create opportunities for youth to achieve successful futures. www.ncset.org/.

A Guide to College Life for Those with Autism — The guide offers tips on everything from classroom accommodations to dealing with roommates, and is written by adults with the developmental disorder. It is geared toward individuals with autism rather than parents or professionals. www.navigatingcollege.org.

National Collaborative on Workforce and Disability — This website looks specifically at what youth with disabilities need to know to prepare themselves for careers or meaningful jobs, and what parents need to know to ensure that their children are getting all of the things they need to succeed. You will find a wealth of resources. www.ncwd-youth.info.

Vocational Rehabilitation Services — A program that provides individualized vocational rehabilitation and supportive services to assist eligible individuals with disabilities to get and keep jobs compatible with their skills and abilities. <http://dhs.sd.gov/drs/vocrehab/vr.aspx>.

Workplace Flexibility Toolkit — Provides employees, job seekers, employers, policymakers and researchers with information, resources and a unique approach to workplace flexibility. Searchable by type of resource, target audience, types of workplace flexibility (place, time, task). www.dol.gov/odep/workplaceflexibility.

Department of Labor and Regulation Services — Staff in the South Dakota Department of Labor are available to help young adults with disabilities (ages 18-24) find employment. For more information contact your local SD Department of Labor and Regulation office. For a list of SD Labor and Regulation offices visit <http://dlr.sd.gov/localoffices/default.aspx>.



SOUTH DAKOTA Parent Connection

Resources for families of children with disabilities.

Contact us 24/7 at www.sdparent.org
or <http://m.sdparent.org>

Call Monday-Friday
8:30 a.m. - 5:00 p.m. (central time)
1-800-640-4553

Sioux Falls Office
3701 W. 49th Street
605-361-3171

Rapid City Office
7110 Jordan Drive
605-348-0305



South Dakota Parent Connection Provides Resources for Families

South Dakota Parent Connection (SDPC) is a private, nonprofit organization formed by parents of children and youth with disabilities and allied professionals. The mission of SDPC is to connect families caring for children and youth (ages birth to 26) with a full range of disabilities or special health care needs to information, training and resources in an environment of support, hope and respect.

With offices in Sioux Falls and Rapid City, a 24/7 website and a toll free number, SDPC supports and assists families across the state. Assistance may be provided to a family of a child with asthma or autism, diabetes or Down syndrome, epilepsy or ADHD and many more diseases and disorders. SDPC provides families and the professionals supporting them with information and training, resources and referrals, and individualized assistance to connect families with programs at the local, state and national level to meet the health, education and financial needs of their family. SDPC staff are uniquely qualified to help families because many are parents of children/youth with special needs and, as parents, have traveled through the maze of services and programs designed to help.

SDPC provides a variety of resources, such as the Folder of Information of Life Experiences (FILE) record keeping system for parents; MyFILE record keeping system for youth as they transition to adulthood; Family Resource Guide with over 200 links to programs and services; and publications, such as *What Parents Should Know...About Special Education in South Dakota*, and *Dare to Dialogue...Reach Yes!*, all provided at no cost to families.



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