

Educational Representation for Adult Students

Transfer of Rights at the Age of Majority

In the Commonwealth of Virginia, a student reaches the age of majority on his or her eighteenth (18th) birthday and is:

- considered to be an adult in the eyes of the law
- legally able to vote
- able to enter into binding contracts

Under most circumstances, when a person reaches the age of majority, the rights related to special education provided by the school system automatically transfer to the student. The parents or guardians retain the right to be invited to meetings and may be invited to participate in meetings by either the school or the student as an “other person with special expertise” member of the individualized education program (IEP) team.

At least one year prior to the student’s eighteenth birthday Fairfax County Public Schools is required by law to notify a student and his or her parents or guardians that this transfer of rights will take place. The responsibility of Fairfax County Public Schools is limited to informing students and parents or guardians of the transfer of rights.

Continuation of Decision-making for Educational Matters for the Adult Student

Under some circumstances the parents or guardian may need to continue to make educational decisions for their student. This pamphlet is designed to provide information for the parents or guardian who, due to the nature or severity of their student’s disability, desire to continue to serve as their students’ educational representative.

The parents or guardians may pursue one of three vehicles made available to them by the Commonwealth of Virginia to continue to make educational decisions for their student. Court-appointed guardianship, power of attorney for educational matters, and certification are options currently available through state law.

COURT-APPOINTED GUARDIANSHIP

- The parent may request to be the court-appointed guardian with the authority to made educational decision.
- In the Commonwealth of Virginia, an individual who, because of mental or physical illness or condition, is not capable of taking care of himself or herself or his or her affairs may be determined an incapacitated person by the court.
- Appointment of guardianship indicates that the adult student has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction.

POWER OF ATTORNEY FOR EDUCATIONAL MATTERS

- The adult student may be assisted by the parents or guardians to appoint or designate in writing another competent adult of his/her choice who will have power of attorney concerning educational decisions.
- This information must be executed and signed by the adult student and a notary public.
- This person will be the student’s agent and will receive notices and participate in meetings and all other procedures related to the student’s educational program.
- The adult student can revoke power of attorney for educational matters at any time if he/she has not been determined to be incompetent or an incapacitated person.

CERTIFICATION

- Parents or other competent adult may pursue certification if the student is deemed to be incapable of providing informed consent for educational matters.
- Certification must be sought from two of the following professionals entitled to make a determination of competency; medical doctor, licensed clinical psychologist, guardian ad litem, certified nurse practitioner, physician’s assistant (when countersigned by a supervising physician), licensed clinical social worker, or court-appointed special advocate.
- Once certification has been obtained, the parent or other competent adult is then recognized as the student’s “educational representative.”
- The individuals who provide the certification for the adult student may not be employees of Fairfax County Public Schools or be related by blood or marriage to the adult student.

Additional Information for Parents and Guardians

Specific Power of Attorney for Educational Decisions Made Under the Individuals with Disabilities Education Act (SS/SE-340)

and

Certification of the Inability of a Student to Provide Informed Consent for Education Decisions Made Under the Individuals with Disabilities Education Act (SS/SE-338)

can be found at: www.fcps.edu/academics/special-education/forms.

Reference Document:

Transfer of Rights for Students with Disabilities Upon Reaching the Age of Majority in Virginia (November 2015): <https://www.doe.virginia.gov/home/showpublisheddocument/32733/638047251355110723>.

For questions or additional resources, contact:

Your school's Employment & Transition Representative (ETR)

Your school's special education department chair

Career and Transition Services

571-423-4150

Due Process and Eligibility

571-423-4470

Correspondence may be addressed to the above offices at:

8270 Willow Oaks Corporate Drive
Fairfax, Virginia 22031

Fairfax County Public Schools

Dr. Michelle Reid, Superintendent

8115 Gatehouse Road

Falls Church, Virginia 22042

571-423-1200

