



NEBRASKA

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TO: Nebraska Special Education Directors
FROM: Amy Rhone
DATE: September 8, 2022
RE: Transfer of Parental Rights at Age of Majority

Questions regarding the transfer of parental rights to students with a disability who have reached the age of majority are raised periodically. The Nebraska Office of Special Education has revisited this issue on a number of occasions and has consistently come to the same conclusion.

34 CFR 300.520(a) provides:

- (a) General. A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)
 - (1)(i) The public agency must provide notice required by this part to both the child and the parents; and
 - (ii) All rights accorded to parents under Part B of the Act transfers to the child;
- (2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and
- (3) Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the child and the parent of the transfer of rights.

In Nebraska, the age of majority is nineteen years of age (See Neb. Rev. Stat. 43-2101). Therefore, Nebraska has the option of transferring the parental rights contained in the IDEA to students with a disability who have reached 19 years of age. The decision of whether or not to transfer the parental rights rests solely with the State and school districts do not have the authority to transfer these rights if the State does not make such a provision.

In years past, in determining whether the State would provide for the transfer of parental rights to students with a disability upon reaching the age of majority, the

State consulted with stakeholders and the Special Education Advisory Committee. Those discussions lead to the decision not to transfer parental rights for several reasons, including:

- 1) The IDEA provides a number of significant parental rights which are intended to enable the child to receive a free appropriate public education. Those rights provide the parent with information and the opportunity to fully participate in the student's education planning process. Additionally, those rights provide the parent with a number of procedural safeguards (i.e. due process, the complaint process, mediation etc.) which enables the parent to advocate for the student. The stakeholders and SEAC were concerned that transferring these rights to students who may not be fully prepared to advocate for themselves without parental support would not be in the best interests of Nebraska's youth.
- 2) The IDEA requires school districts to provide transition services to all students with disabilities who have reached 14 years of age. (See 92 NAC 51-007.07A9.) The transitions services provided to the student should include self-advocacy training if appropriate. The regulations also provide for the participation of the student whenever the IEP meeting includes the consideration of post-secondary goals or the transition services necessary to meet these goals. (See 92 NAC 51-007.03A10.) These requirements allow the student to be involved in and develop self-advocacy skills while the safety net of parental involvement remains in place.
- 3) The definition of "Parent" contained in 92 NAC 51-003.44 is sufficient to allow every student with a disability, including students who have reached the age of majority, to have someone meeting the definition of parent participate in the IDEA process. In addition to the student's biological or adoptive parent, the definition of parent includes a guardian, an individual acting in the place of the parent with whom the student lives, or an individual who has legal responsibility for the student's welfare and a surrogate parent appointed by the school district.

Based on the State's decision not to transfer parental rights to the student with a disability who has reached the age of majority, 92 NAC 51 (Rule 51) does not include any language regarding the transfer of rights. Rather, the regulations include those parental rights which the district must provide to an individual meeting the definition of parent contained in 92 NAC 51-003.44.

The Nebraska Office of Special Education's Special Education Advisory Council took a position of support in the decision not to transfer parental rights to the student with a disability who has reached the age of majority in November of 2016 as it has in previous years when this issue has been brought before the council.