



**RESOURCE INFORMATION
ON THE
TRANSFER OF RIGHTS
AT THE
AGE OF MAJORITY**

**MARYLAND STATE DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION/EARLY INTERVENTION SERVICES**

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MARYLAND STATE DEPARTMENT OF EDUCATION

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Resource Information on the Transfer of Rights at the Age of Majority

INTRODUCTION

In 1997, when Congress reauthorized the Individuals with Disabilities Education Act (IDEA), states were allowed to transfer educational decision making to a student when the student reached the age of majority as long as the student had not been judged to be incompetent under state law. In reviewing Maryland law and in consultation with the Office of the Attorney General, it was determined that Maryland did not provide for the transfer of educational decision making to a student with a disability at the age of majority. Senate Bill (SB) 83, titled "The Transfer of Rights at the Age of Majority" was presented to the Maryland General Assembly during the 2002 legislative session. The purpose of the bill was to address **very specific and limited circumstances** when the rights currently afforded parents of students with disabilities under the IDEA may transfer to a student with a disability at the age of majority. This bill was passed by the General Assembly, signed into law by the Governor, and goes into effect on July 1, 2002. It will be enacted as Transfer of Rights at Age of Majority, in Education Article §8-412.1, Annotated Code of Maryland.

This statute applies **only** to a limited number of students who have a disability under the IDEA. These students with disabilities are those that are:

- Eighteen years of age, or older, that have not been ruled incompetent under State law; and
- Qualify for consideration in accordance within one of the limited circumstances described in the legislation.

Most parents of students with a disability will continue to exercise their rights to educational decision making and informed consent throughout the educational career of their children until these young adults graduate from high school or through the end of the school year in which the student turns 21 years old. This legislation does not change local public agency policies, procedures, or practices currently in use with respect to the majority of students with disabilities in Maryland. The Maryland State Department of Education (MSDE) solicited input and questions from public agencies regarding implementation of the legislation. The purpose of this resource document is to provide public agencies, parents, and advocates guidance and applicable implementation strategies on the new State statute in response to their questions.

STATUTE

In order to assist individuals in having access to primary information sources relevant to Transfer of Rights at the Age of Majority, below is the text of Education Article §8-412.1, Annotated Code of Maryland for your convenience. The statute is divided into three subsections.

Six of the limited circumstances when education rights under the IDEA may transfer from the parent to the student are enumerated in §8-412.1(a). The situation under which a student may request due process concerning the transfer of parental rights under IDEA when the student's parents do not consent to the transfer of rights is described in §8-412.1(b). The seventh limited circumstance is described in §8-412.1(c). This circumstance involves a student with a disability currently represented by a parent surrogate.

EDUCATION ARTICLE §8-412.1, ANNOTATED CODE OF MARYLAND

"(a) When a child with a disability reaches the age of 18 years, all rights accorded to parents under the federal Individuals with Disabilities Education Act, 20 U. S. C. 1400 et seq. 1997, shall transfer to the child if the child has not been adjudged incompetent under state law and if there is documentation that:

(1) The parents are unavailable or unknown as defined in §8-412 of this subtitle, the child would be eligible for a parent surrogate, and the child requests that the parental rights be transferred to the child;

(2) The parents have not participated in the special education decision making process for the child after repeated attempts by the local school system to involve the parents over the previous year as described in COMAR 13A.05.01.07C(7);

(3) The parents have affirmatively rejected participation in the special education decision making process;

(4) The parents cannot participate in the special education decision making process due to prolonged hospitalization, institutionalization, or serious illness or infirmity of one or both of the parents and the parents have consented to the transfer of rights to the child;

(5) The parents cannot participate in the special education decision making process due to extraordinary circumstances beyond the control of the parents and the parents have consented to the transfer of rights to the child; or

(6) The child is living outside of the parents' home and is not in the care or custody of another public agency as defined in § 8-412 of this subtitle."

"(b) A child with disabilities who reaches the age of 18 years and is living at home with the child's parents and whose parents do not consent to the transfer of rights to the child may file for

due process in accordance with § 8-413 of this subtitle to determine whether the rights should be transferred to the child."

"(c) If a child with disabilities who has reached the age of 18 years has been represented by a parent surrogate as defined in § 8-412 of this subtitle, any notice required by the Individuals with Disabilities Education act, 20 U. S. C. 1400 et seq. 1997, shall be provided to both the child and to the parent surrogate and all other rights accorded to the parent surrogate under that act shall transfer to the child if the child has not been adjudged incompetent under state law and the child requests that the rights transfer to the child."

TERMINOLOGY RELATED TO TRANSFER OF RIGHTS AT AGE OF MAJORITY

Child

"Child" means an individual under the age of 22 who has been determined through appropriate procedures to be disabled and in need of special education; or is believed to be disabled and in need of special education.

Educational Decision Making Process

"Educational decision making process" means all procedures relating to the identification, evaluation, or educational placement of a child and the provision of a free appropriate public education (FAPE), including the appeal procedures provided for by Education Article § 8-413, Annotated Code of Maryland.

Individualized Education Program (IEP) Team

"IEP team" means a group of individuals responsible for:

- Identifying and evaluating students with disabilities in accordance with 34 CFR §§300.532–536 and COMAR 13A.05.01.04 –.06;
- Developing, reviewing, or revising an IEP for a student with a disability in accordance with 34 CFR §§300.340–349 and COMAR 13A.05.01.07 – .09; and
- Determining the placement of a student with a disability in the least restrictive environment (LRE) in accordance with 34 CFR §§300.550–300.553 and COMAR 13A.05.01.10.

Informed Consent

"Informed Consent" means a parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication. The parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom. The parent also understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

Parent

"Parent" means a parent, a guardian, a person acting as a parent of a student, or a surrogate parent who has been appointed in accordance with 34 CFR §300.515, Education Article, §8-412, Annotated Code of Maryland, and COMAR 13A.05.01.03B(45). "Parent" does not include the State if the student is a ward of the State.

Parent Surrogate

"Parent surrogate" means a person who is appointed by the local school superintendent to act in place of a parent of a child in the educational decision making process.

Public Agency

"Public agency" means a State or local governmental or quasi-governmental entity responsible for the provision of a free appropriate public education to students with disabilities. Public agency includes local school systems, the State Department of Education, and other agencies responsible for providing education to a student with a disability, including the Department of Health and Mental Hygiene, Mental Hygiene Administration, the Department of Juvenile Justice, the Maryland School for the Blind, the Maryland School for the Deaf, and adult correctional facilities.

Unavailable

"Unavailable" means that a public agency, after reasonable efforts, cannot discover the physical whereabouts of a student's parent.

Unknown

"Unknown" means that a public agency, after reasonable efforts, cannot identify the student's parent.

Ward of the State

"Ward of the State" means a student for whom a State or county agency or official has been appointed legal guardian, or who has been committed by a court of competent jurisdiction to the legal custody of a State or county agency or official with the express authorization that the State or county agency or official make educational decisions for the child.

PURPOSE AND INTENT

The purpose of this statute is to address those very **limited circumstances** when a student with a disability, who is over the age of eighteen, is unable to access the full range of special education programs and services because parental consent is required, but the parents are not involved or

available. The statute applies to very few students. The students with disabilities for whom this statute applies **must**:

- Be over the age of eighteen;
- Have not been adjudged incompetent under state law, and
- Fall within one of the limited circumstances described in §8-412.1(a) and (c).

The **only** rights that are transferred are the rights described in IDEA for parents. The new statute does not provide for and does not have any impact on any other parental rights including any educational rights not related to IDEA. A public agency's consideration as to whether the parental rights under IDEA would transfer to a student with a disability **must** be made on an individual basis. When making a determination as to whether the statute is applicable to a student with a disability, **one of the limited circumstances must exist**. The "or" at the end of §8-412.1(a)(5) indicates that this is list of options and only one circumstance must be met in order for the parental rights under IDEA to transfer to the student.

LIMITED CIRCUMSTANCES

If none of the circumstances listed below apply to a student with a disability, the parental rights under IDEA **remain with the parents and do not transfer** to the student. In Maryland, parental rights under the IDEA may only be transferred to a student with a disability for one of seven limited circumstances enumerated in Education Article §8-412.1. Again, for the majority of students with disabilities over the age of 18 within public agencies in Maryland, the transfer of parental rights under IDEA at the age of majority **will not** apply. Below is an explanation of **each** of the limited circumstances under which parental rights for decision making and informed consent may transfer to a student with a disability.

Circumstance One — §8-412.1(a)(1)

Parents are Unavailable or Unknown and the Student Requests the Transfer of Parental Rights, rather than the Appointment of a Parent Surrogate

Each of the following elements **must be present before** a transfer of rights may be considered. There must be documented evidence that:

- The student is over the age of eighteen;
- The student has not been adjudged incompetent under state law;
- The student's parents are unavailable or unknown; and
- The student has requested that the parental rights under IDEA be transferred rather than have a parent surrogate appointed.

Under these conditions there are two significant scenarios when this circumstance could apply. First, a student may not yet have been determined to be a student with a disability under the IDEA. Therefore, the student is personally requesting to represent himself/herself. In this situation, the student **must** initiate the request that the parental rights under IDEA be transferred,

rather than have the public agency appoint an individual to serve as a parent surrogate. A second scenario may involve a student, previously identified as a student with a disability, who exited the public agency by dropping out of school, transferring to another school system or private school, or whose whereabouts were unknown, has returned to the jurisdiction of the public agency and wishes to complete his/her education. The return of the student to the public agency would require an IEP team meet to review existing data and obtain informed consent in order to access the student's educational records from another school system or private school. The IEP team may also decide that additional data is needed before the IEP team is able to determine whether the student continues to need the provision of special education and related services as a student with a disability. Prior to initiating assessments, as determined appropriate, the IEP team must obtain informed consent.

When a student does request that the parental rights be transferred, the student should make this request in writing, or orally, if the student does not know how to write or has a disability that prevents a written statement to public agency personnel. Public agency personnel, family members, friends, or advocates may assist the student to compose a written request for the transfer of parental rights. If the request is made orally, public agency personnel should document the date, time, and circumstances under which the request was made to assist in determining if any of the limited circumstances apply to the student. This circumstance does not apply to students currently represented by a parent surrogate. *Please refer to Circumstance Seven — §8-412.1(c) for guidance.*

Circumstance Two — §8-412.1(a)(2)

Parents have not Participated in the Special Education Decision Making Process after Repeated Attempts by the Public Agency to Involve the Parents over the Previous Year

Each of the following elements **must be present before** a transfer of rights may be considered. There must be documented evidence that:

- The student is over the age of eighteen;
- The student has not been adjudged incompetent under state law;
- The public agency has documented evidence of diligent efforts to obtain parental participation in accordance with 13A.05.01.07C(7); and
- Results of the diligent efforts are documented and the parents have not responded to the repeated requests for participation.

The statute specifies that the public agency shall follow the requirements of COMAR 13A.05.01.07C(7) which explains when an IEP team meeting may be held without a parent and what documentation must be maintained. Procedures used by the public agency to fulfill the requirements of 13A.05.01.07C(7) can be used as guidance in documenting conditions applicable to §8-412.1(a)(2), including the requirement of repeated attempts to involve the parent over the previous year. There is an expectation that all requirements described in COMAR 13A.05.01.07C for ensuring parent participation in the special education decision making process be fulfilled prior to the use of §8-412.1(a)(2) to transfer parental rights to the student.

Circumstance Three — §8-412.1(a)(3)

Parents Affirmatively Reject Participation in the Special Education Decision Making Process

Each of the following elements **must be present before** a transfer of rights may be considered. There must be documented evidence that:

- The student is over the age of eighteen;
- The student has not been adjudged incompetent under state law;
- The public agency has documented evidence of diligent efforts to obtain parental participation in accordance with 13A.05.01.07C(7);
- Results of the diligent efforts are documented and the parents have not responded to the repeated requests for participation; and
- The public agency has documented evidence that demonstrates that the parents have explicitly communicated with public agency personnel that they do not want to participate or be involved in the special education decision making process.

A public agency may transfer the parental rights when the parents have affirmatively rejected participating in the special education decision making process. The parent and the student with a disability must be provided written notice in accordance with 34 CFR §300.503 informing the parent and the student that the public agency proposes to transfer the parental rights under IDEA to the student. Written documentation must be maintained which provides evidence of the parent's "affirmative rejection" of participation in the decision making process. Individual circumstances and public agency policy will play an important role in determining the details of the type of documentation.

Circumstance Four — §8-412.1(a)(4)

Parents cannot Participate Due to Prolonged Hospitalization, Institutionalization, Serious Illness or Infirmary of one or both of the Parents and Parents Consent to the Transfer of Rights to the Child

Each of the following elements **must be present before** a transfer of rights may be considered. There must be documented evidence that:

- The student is over the age of eighteen;
- The student has not been adjudged incompetent under state law;
- The parents have informed the public agency of a prolonged hospitalization, institutionalization, or serious illness or infirmity of one or both of the parents; and
- The parents have provided the public agency with informed written consent to transfer the parental rights to their child.

The essential documentary evidence requires that the parents inform the public agency of a situation as described in §8-412.1(a)(4) and provide the public agency informed parental consent for the transfer of rights to their child, in writing in accordance with 34 CFR 300.505 and COMAR 13A.05.01.03B(10). Parents should inform the public agency in writing, or orally, if

the parents are illiterate and do not know how to write or have a disability that prevents a written statement to public agency personnel.

Written documentation needs to be maintained which provides evidence of any of the situations described in §8-412.1(a)(4). Individual situations and public agency policy will play an important role in determining the details of the type of documentation. A parent's hospitalization, illness, institutionalization serious illness or infirmity of one or both of the student's parents is personal and public agency personnel should respect the privacy of the parents and not ask for any further explanation.

Circumstance Five — §8-412.1(a)(5)

Parents cannot Participate Due to Extraordinary Circumstances Beyond their Control, and Parents Consent to the Transfer of Rights

Each of the following elements **must be present before** a transfer of rights may be considered. There must be documented evidence that:

- The student is over the age of eighteen;
- The student has not been adjudged incompetent under state law;
- The parents have informed the public agency of an extraordinary circumstances beyond their control; and
- The parents have provided the public agency with informed written consent to transfer the parental rights to their child.

The essential documentary evidence requires that the parents inform the public agency of a situation as described in §8-412.1(a)(5) and provide the public agency informed parental consent for the transfer of rights to their child, in accordance with 34 CFR 300.505 and COMAR 13A.05.01.03B(10). Parents should inform the public agency in writing, or orally, if the parents are illiterate and do not know how to write or have a disability that prevents a written statement to public agency personnel.

Written documentation needs to be maintained which provides evidence of any of the situations described in §8-412.1(a)(5). Individual situations and public agency policy will play an important role in determining the details of the type of documentation.

The determination of what is considered an extraordinary circumstance beyond the control of the parents is a personal decision by the parents and public agency personnel should respect the privacy of the parents and not ask for any further explanation.

Circumstance Six — §8-412.1(a)(6)

The Student Lives Outside of the Parents' Home and Not in the Care or Custody of Another Public Agency.

Each of the following conditions **must be present before** a transfer of rights may be considered. There must be documented evidence that:

- The student is over the age of eighteen;
- The student has not been adjudged incompetent under state law;
- The student is living outside the parents home; and
- The student is not in the care or custody of another public agency.

When a student is living outside of the parent's home, a public agency may transfer the parental rights to the student. In this instance, if the student is living with an adult relative, that adult relative is considered the parent as defined by 34 CFR §300.20, Education Article §8-412, Annotated Code of Maryland, and COMAR 13A.05.01.03B(45). Accordingly, the rights of the student **would not** transfer. The student must be able to document that he or she is living independently from his or her family before the public agency would consider the transfer of parental rights to the student. If the child is living outside the parent's home and is in the care and custody of the Department of Social Services the student is in the custody or care of another public agency and considered a ward of the State.

Circumstance Seven — 8-412.1(c)

Student with a Disability Represented by a Parent Surrogate

Each of the following elements **must be present before** a transfer of rights may be considered. There must be documented evidence that:

- The student is over the age of eighteen;
- The student is represented by a parent surrogate;
- The student has not been adjudged incompetent under state law;
- The student requests that the parental rights be transferred; and
- The student and the parent surrogate received notice.

When a student with a disability, who is represented by a parent surrogate, in accordance with 34 CFR §300.515 and Education Article §8-412, Annotated Code of Maryland, requests that the parental rights under IDEA be transferred, both the student and the parent surrogate shall each receive all notices and all other rights shall transfer to the student if the student has not been adjudged incompetent under State law. The student must affirmatively request the transfer of rights under IDEA. A public agency shall provide both the student and the parent surrogate with written notice, in accordance with 34 CFR §300.503 and COMAR 13A.05.01.12 that the parental rights under IDEA entrusted to the parent surrogate will transfer to the student.

DISPUTE RESOLUTION

Subsection §8-412.1(b) is applicable when a student's parents do **not** consent to the transfer of parental rights. If a student with a disability believes the parental rights under IDEA should be transferred and the parents disagree, the student may request mediation or a due process hearing with the Office of Administrative Hearing to resolve the disagreement, in accordance with Education Article §8-413, Annotated Code of Maryland and COMAR 13A.05.01.15B and C. If the parents do not consent to the transfer of rights and the student does not file a request for mediation or a due process hearing, the parental rights under IDEA would not transfer, unless the student can demonstrate that a circumstance under §8-412.1(a)(1) or §8-412.1(c) is applicable.

If a student believes one of the circumstances under §8-412.1 is applicable, and the student is living in the parent's home, whose parents do not consent to the transfer of rights, §8-412.1(b) provides the student the means for advocating for him or herself. Any action related to a request for due process must be aligned with the State procedures for mediation or a due process hearing, including expedited due process, if applicable. When a student with a disability files for mediation or a due process hearing under §8-412.1(b), the student and the student's parents are the parties to a mediation or due process hearing. Public agency personnel may be called as a witness for either party.

NOTIFICATION OF TRANSFER OF RIGHTS AT AGE OF MAJORITY

To provide sufficient notice, a public agency is to provide both students and parents with information concerning the circumstances within §8-412.1, on the Transfer of Rights at the Age of Majority, that enable parental rights under the IDEA to transfer to the student at least one year prior to a disabled student's eighteenth birthday. If any one of the seven circumstances exist for a student with a disability, the public agency shall provide the student and the student's parents or parent surrogate with a copy of the procedural safeguards and written notice of the public agency's proposal to transfer the parental rights under the IDEA to the student. If the rights afforded parents under the IDEA are transferred to a student, the rights regarding educational records must also be transferred to the student. However, a public agency must provide any notice required under the IDEA to both the student and the parents. The notice must include all of the required elements in accordance with 34 CFR §300.503 and COMAR 13A.05.01.12. The requirement of the notice content may be provided separately or within the documentation of discussions and proposals of the IEP team at an IEP team meeting, including written documentation of the notice content within the student's IEP.

REPORTING

If a public agency transfers parental rights under the IDEA to a students with a disability, in accordance with §8-412.1, the local public agency shall notify, in writing, to the Assistant State Superintendent, Division of Special Education/Early Intervention Services, Maryland State Department of Education of the transfer of parental rights. The notice shall occur within 30 days after the transfer of parental rights under IDEA is made. The notification shall include:

- The student's name;
- The student's local school system identification number;
- School of attendance;
- Grade;
- Date of transfer of rights;
- The name of the parent surrogate, if applicable;
- The circumstance under which the parental rights were transferred; and
- Any other information deemed applicable.

If a public agency finds that a student is not eligible for the transfer of rights, the public agency shall provide the student and the student's parents or parent surrogate with written notice, specifying the reasons for not transferring the parental rights to the student, in accordance with 34 CFR §300.503 and COMAR 13A.05.01.12.