



## ***TRANSFER OF RIGHTS FACT SHEET***

**What does the law say about the transfer of parental rights to their child at age 18?** According to 6.31.2.13(K) of the New Mexico Administrative Code (NMAC):

A person's age of majority begins on the first instant of his or her 18<sup>th</sup> birthday and a person who has reached the age of majority is an adult for all purposes not otherwise limited by state law. A guardianship proceeding under the probate code is the only way an adult in New Mexico can legally be determined to be incompetent and have the right to make his or her own decisions taken away. Public agencies and their Individualized Education Program (IEP) teams are not empowered to make such determinations under New Mexico law.

A child, 14 or older, and his or her parents must be notified of the rights that will transfer to the child at age 18, and this must be documented in the child's (IEP) annually until the child reaches the age of majority (age 18). Any discussion for obtaining guardianship must also be documented in the child's IEP.

### **Questions and Answers Regarding the Transfer of Rights**

**Who needs to know about the Transfer of Parental Rights?** - Prior to age 18 years of age, both the parents and the child must be notified of the transfer of rights. In New Mexico, the child and the parents need to be notified when the child turns 14 years of age.

**What does this mean?** - This means that unless the child is incapable of making his or her own educational decisions as determined by a court of law, all rights given to parents under the Federal law known as the Individuals with Disabilities Education Act (IDEA) **will** transfer to the child, including a child who is in a correctional institution. This means that the parents are no longer in charge for their child's education, including participating in the development of their child's IEP. Parents may still be invited to their child's IEP as long as their child makes the decision to have his/her parents involved.

**When does the school have to notify parents?** – Each IEP review for a child who is 14 or older must include a discussion of the rights that will transfer when the child turns 18, and as appropriate, a discussion of the parent's plan for obtaining a guardian before that time.

**Who are the children who may require a Guardian?** – Children who may be severely compromised and or "incapacitated" and are unable to make decisions regarding their

education, health and medical options, financial planning, where they will live, etc., may need to have an appointed guardian.

***What does the Guardianship mean?*** - A guardian is usually a family member or someone that is appointed by the court. There are different types of guardianships which are determined based on the person's ability to manage his or her own needs. Usually, the courts will want to assign the least restrictive type of guardianship. Be aware that ***parents do not automatically become their adult child's guardian and IEP Teams cannot make determinations regarding guardianship.***

Depending on the individual's needs, the guardian may assume responsibility for:

- attending IEPs;
- making daily living decisions for the individual;
- making decisions regarding education, employment, etc.
- coordinating and monitoring professional and other services needed; and
- making financial, legal, and medical decisions.

***Where can I get more information on Guardianship?*** - Parents may contact the following agencies to obtain more information on guardianship:

New Mexico Developmental Disabilities  
Planning Council – Office of Guardianship  
810 W. San Mateo Street, Suite C  
Santa Fe, NM 87505-4144  
Phone 1-888-779-6183 or (505) 476-7332  
Website: [www.nmddpc.com](http://www.nmddpc.com)

New Mexico Division of Vocational Rehabilitation  
435 St. Michael's Drive Building D  
Santa Fe, NM 87505  
1-800-224-7005 (Toll free) (505) 954-8500  
(505) 954-8562 (fax)

The ARC of New Mexico  
3655 Carlisle NE  
Albuquerque, New Mexico 87110  
Phone: 505-883-4630 or 1-800-358-6493

Guardianship HELP Line-Law Access  
Phone: 1-800-340-9771 (help line)

NM Public Education Department  
Special Education Bureau  
120 S. Federal Place, Rm. 205  
Santa Fe, NM 87501  
(505) 827-1457 or (505) 954-0001 (fax)  
Website: [www.ped.state.nm.us](http://www.ped.state.nm.us)

Parents Reaching Out  
1920 B Columbia Dr. SE.  
Albuquerque, NM 87106  
1-800 524-5176 or (505) 247-0192  
(505) 247-1345 (fax)  
[www.parentsreachingout.org](http://www.parentsreachingout.org)

Education of Parents of Indian Children  
with Special Needs  
P.O. Box 1043  
Bernalillo, NM 87004  
(505) 404-2070 or 404-2083 (fax)  
[jeanettet@epicsproject.org](mailto:jeanettet@epicsproject.org)