

TRANSITION PROCESS FOR STUDENTS WITH DISABILITIES REGARDING RECORDS AND SERVICES AT THE AGE OF MAJORITY

STUDY PLAN

Study Mandate

- During the Commission on Youth’s 2021 Crossover Youth study, the study work group discussed the importance of maintaining and transferring records and services that young people receive in the school setting as they reach adulthood.
- Young adults with emotional or intellectual disabilities often lose access to services when they leave high school and reach 18, the age of majority. It is difficult for parents to navigate services and resources without supports.
- The Virginia Commission on Youth approved a recommendation at its October 19, 2021 meeting articulating that the appropriate transfer or handoff of student records and the effective provision of services needs to be explored further.
 - The Virginia Commission on Youth shall convene an advisory group to review how youth with disabilities are being provided services in the schools, including mental health services, and how they can be better supported as they transition to adulthood. The 2022 study should look at ways that the Community Services Boards can work with the transitioning student and family and the local education agency.

Background

- Special education in the public schools may be provided through the age of 21 as needed, depending on the level of the physical, intellectual or emotional disability and the available services that will meet the student’s needs.
- All students, including students in special education programs, are considered self-sufficient adults at the age of majority (18 years old) by law in Virginia and, as such, are no longer required to have parental consent for educational decisions.
- Educators are required by federal and state regulations to inform parents of their student’s rights at least one year prior to the student’s eighteenth birthday, giving parents time to either petition the court for guardianship, or complete the paperwork to become the “educational representative” for their adult student. This is for students with an IEP.
- When their child with disability turns 18, parents will no longer have access to educational records of their student, including the Individualized Education Plan (IEP), goals, academic or other achievements, and history of services.
- While the above described regulations are in place, parents of children with disabilities are often overwhelmed and do not have the approvals in place to access their 18-year-old child’s education records. Additionally, the knowledge and use of available resources is often not made available to this parent population making it a confusing time for these parents to navigate. This causes needed services to stop, creating a “cliff effect” for the families.
- House Bill 2380 (Bell, Rob B.) was introduced during the 2015 Virginia General Assembly Session to require school divisions to designate staff to receive training about community

services that are available to students with intellectual disability or emotional disturbance upon graduating from, aging out of, or leaving public education, and to provide this information to students and their parents or guardians. Additionally, the bill required the community services boards and behavioral health authorities to provide information about available services and ensure that at least one employee or representative of these organizations participate in the meeting (a warm handoff) between the students and/or parents to discuss the services that are available to the students when they graduate from, age out of, or leave public education. The bill was not passed and left in House Appropriations.

- Senate Bill 585 (Dunnivant) was introduced during the 2020 Virginia General Assembly Session to require the Department of Education to prepare and update transitional materials that include information about powers of attorney and guardianship to be provided to students and parents during the student’s annual IEP meeting for students with an IEP between the ages of 17.5 and 21 years of age. When a petition for guardianship or conservatorship is presented, a guardian ad litem is appointed and must review the IEP and include the results in the court report. The guardian ad litem is required to consider whether a less restrictive option is available for the student, including an advance directive or durable power of attorney. The bill also encourages the student to fully participate in all decisions as able. This bill was approved by the House and Senate and signed by the Governor.

Study Activities

- Review and analyze laws, policies, and procedures related to the following:
 - Federal secondary school transition requirements
 - Virginia Department of Education secondary school transition process
 - Other states secondary school transition process
 - “Warm handoff” approach from local school divisions to community services boards and behavioral health authorities
 - Recordkeeping by local school divisions and potential use by community services boards
 - Rights of Students when they reach the age of majority
 - Family Educational Rights and Privacy Act (FERPA)
 - Health Insurance Portability and Accountability Act (HIPAA)
 - Individuals with Disabilities Education Act (IDEA)
 - Olmstead Act and the Americans with Disabilities Act
 - Individualized Education Plans (IEP) and 504 Plans
- Conduct background and literature reviews:
 - Parent ombudsman for special education program in Virginia
 - Virginia Department of Education programs to assist students with transitioning to adulthood, and adult services, if relevant (i.e., “I’m Determined” Program)
 - Programs and services at the Virginia Department of Behavioral Health and Developmental Services, including any progress on the supported decision-making agreements
 - Programs and services at the Virginia Department for Aging and Rehabilitative Services, and Blind and Vision Impaired (Pre-Employment Transition Services, or Pre-ETS)
 - Services provided by the Community Services Boards
 - National Center on Secondary Education and Transition (NCSET) resources
 - Guardianship, conservatorship, power of attorney, educational representative requirements

- Best practices for secondary school transition prior to the age of majority
- Convene an Advisory Group of impacted stakeholders:
 - Community Services Boards
 - The Office of Children’s Services
 - The Office of the Secretary of Education
 - Special Education/Exceptional Education Professionals
 - Virginia Association of Independent Specialized Education Facilities
 - Virginia Council of Administrators of Special Education
 - Virginia Department for Aging and Rehabilitative Services
 - Virginia Department of Behavioral Health and Developmental Services
 - Virginia Department for the Blind and Vision Impaired
 - Virginia Department of Education
 - Youth and families with transition experience
 - Other relevant professionals
- Present findings and recommendations to the Commission on Youth.
- Receive public comment.
- Prepare final report.