

## What Parents Should Know...

### About Reaching Age 18

“Promise me you’ll always remember: You’re braver than you believe, stronger than you seem and smarter than you think.”

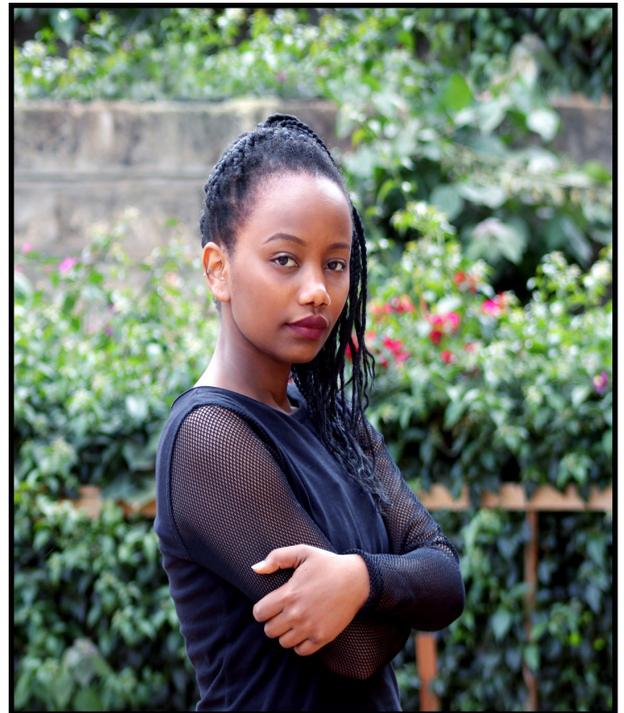
A.A. Milne, Author

Winnie the Pooh Books

### Age 18 Brings Changes

by John A. Hamilton, South Dakota Advocacy Services

Nationwide, most youth look forward to the day they become “legal” adults, meaning reaching the “age of majority.” The age of majority is determined on a state-by-state basis and South Dakota has set it at eighteen. When youth reach the age of majority, their legal relationship with their parents and society changes dramatically, probably in several ways in which youth (and parents) are unaware.



Additional changes, which are described in the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), take place for students with disabilities. The IDEA sets out how a number of “parental rights” will transfer to the student upon reaching the age of majority, including students who are incarcerated in an adult or juvenile correctional institution.

**No later than a student’s seventeenth birthday in South Dakota, the IEP must document that the student has been informed of the rights (under IDEA) that will transfer to the student at age eighteen. In addition, both students and parents must be given notice when the transfer of rights occurs.**

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# Turning Age 18 and the IEP

Parents and students should understand that the following parental rights will transfer at age eighteen: (Except for a child with a disability whose rights have been terminated or assigned to another party.)

- ◇ The student becomes solely responsible for his or her educational program, not the parents or guardian. Guardianship of a minor would end when the student turns age eighteen unless the guardianship order states otherwise.
- ◇ The student is responsible for reviewing and/or seeking copies of school records. Students must understand they have a right to review all educational records, request a copy, and be informed whether there are reasonable copying charges.
- ◇ The student, not the parents or guardian, will receive notices of IEP Team meetings and must contact the school if the day and time do not work and the meeting needs to be rescheduled.
- ◇ The student, not the parents or guardian, is responsible for attending and participating in IEP Team meetings.
- ◇ The student may, but is not required to, invite his or her parents to IEP Team meetings, as parents no longer are mandatory IEP Team members when the student turns age eighteen.
- ◇ The student is responsible for inviting other people to IEP Team meetings, such as an advocate, Navigator, or other desired professionals.
- ◇ The student is responsible for requesting evaluations, if needed, and signing consent for all evaluations sought by the district or requested by the student.
- ◇ The student is responsible for determining whether he or she disagrees with any evaluations completed by the district and whether to engage his or her right to independent educational evaluations.
- ◇ The student is responsible for consenting to persons from participating agencies participating at IEP Team meetings and for consenting to any release of information.
- ◇ The student is responsible for determining whether he or she agrees with the IEP the IEP Team develops.
- ◇ The student decides whether to request mediation or contest IEP provisions through filing a Due Process Complaint.
- ◇ The student is responsible for locating and hiring legal representation if desired.
- ◇ The student is responsible for addressing discipline issues relating to his or her own behaviors.

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# Beyond the IEP

While significant rights transfer to students with disabilities under IDEA at age eighteen, there are rights that transfer or otherwise attach at age eighteen for all youth.

**Students have the following rights: these include but are not limited to:**

- ☞ To vote.
- ☞ To make a will.
- ☞ To make a power of attorney.
- ☞ To make end-of-life decisions.
- ☞ To be an organ donor.
- ☞ To sign an enforceable contract (e.g., rent an apartment, purchase a house, take out a loan, purchase a car).
- ☞ To obtain medical treatment without parental consent.
- ☞ To enlist in the armed forces without parental consent.
- ☞ To apply for credit in their own name.
- ☞ To be completely independent of parental control.
- ☞ To get married without parental permission.

**Being 18 also comes with responsibilities:**

- ☞ Your parents are no longer required to support you.
- ☞ You may be sued for breaching contracts you signed.
- ☞ You are responsible for having auto insurance.
- ☞ You are responsible for your own car accidents.
- ☞ You are eligible for jury duty.
- ☞ You will be tried as an adult for committing a crime.

## Important Age 18 Information

Regardless of Disability, young men are required to register with Selective Service. Men ages 18-25 living in the US must register with Selective Service within 30 days of their 18th birthday. You may be denied benefits or a job if you have not registered.

**Registration may be done:**

- Online or print out a form at: <https://www.usa.gov/selective-service>.
- Get a registration form at the post office, fill it out and mail it in.
- If you received a reminder mail back card in the mail when you turned 18, you can complete that and mail it back in.
- To contact the Selective Service System, call 1-847-688-6888 or toll-free 1-888-655-1825 Monday to Friday, 9:00 AM to 5:00 PM ET

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## Establishment Program

This program in the SD Department of Human Services assists families or friends of adults with developmental disabilities who reside in South Dakota with legal costs up to \$500 associated with establishing a guardianship or conservatorship.

Visit <https://dhs.sd.gov/guardianship/establishmentprogram.aspx>

For information about transitioning to adulthood visit [www.sdparent.org](http://www.sdparent.org)



## Is Guardianship Appropriate?

Before your child turns 18, there are discussions that need to take place on what his/her life and decision making will look like once they turn 18. It is best that your child keeps as many rights as possible. The transfer of rights at age of majority is a life-altering event and one that requires significant planning. If parents and students are not receiving the information from their IEP Team, they should ask for that information. South Dakota's statutes allow for a number of different options.

### Power of Attorney:

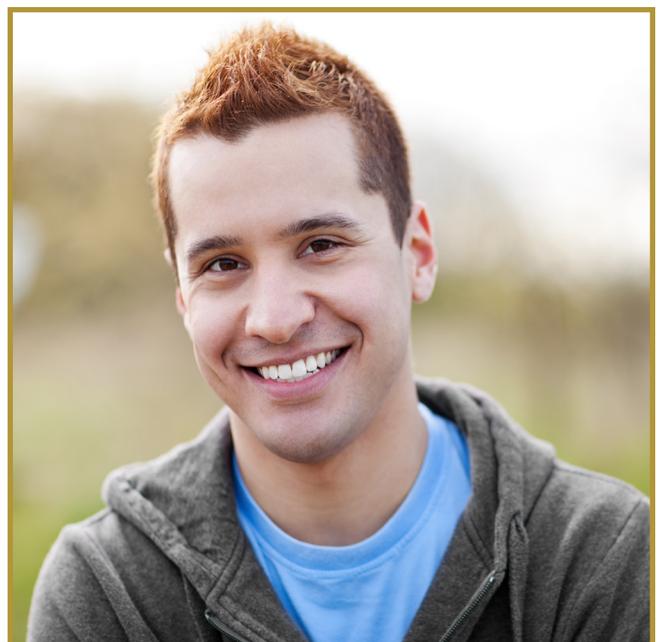
- Your son or daughter (principal) gives someone else (the agent) the right to act on their behalf in certain situations regarding healthcare or finances.
- This terminates if your son/daughter revokes it, dies, or becomes incapacitated.

### Durable Power of Attorney:

- This continues if the principal becomes incapacitated,
- Terminates when principal revokes or dies.

### Supported Decision Making:

- This can be combined with Power of Attorney or Guardianship
- This is a team, that your son/daughter chooses, to help give support when needed in making decisions.



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## Guardianship/Conservatorship (finances)

- Three different types of guardianship: Full, Limited, or Temporary
- Should be in place when your child reaches 18
- Includes an attorney, fees, and a judge
- Parents should seek legal representation at least 6 months before your child turns 18
- May be someone other than the parents
- Appointment of a guardian is a significant deprivation of rights and courts will not grant a petition for guardianship if lesser-restrictive options are available or if there is not sufficient proof a guardianship is needed.
- In most instances, for a guardianship to be ordered, there must be a current evaluation report accompanying the petition. The purposes of the evaluation are to have sufficient information before the court to determine whether the person needs a guardianship or conservatorship.
- The person alleged to need protection has the right to disagree with (contest) the procedure and who will be the guardian/conservator.
- The protected person retains all rights that have not been granted to the guardian/conservator.

## Responsibilities of a guardian or conservator include:

- Considers the desires of the participant (your son/daughter)
- Is knowledgeable about the person
- Makes decisions to keep the person safe and healthy
- Acts in the person's best interests
- Encourages the person to be an active participant in decision-making process and act on their own behalf

## For more information:

<https://tslp.org/wp-content/uploads/2019/07/Alternatives-to-Guardianship-JWG-Edits-20190612.pdf>

<https://doe.sd.gov/sped/documents/TA-Guide.doc>

Disability Rights South Dakota <https://drsdlaw.org/>

Information can be found in South Dakota Codified Law (SDCL) 29A-5-101 through 29A-5-510

**Parent Tip:** I.C.E. (in case of emergency) on a mobile phone enables first responders, such as paramedics, firefighters, and police officers, as well as hospital personnel, to contact the next of kin to obtain important medical or support information.

The mobile phone entry (or entries) should supplement or complement written (such as wallet, bracelet, or necklace) information or indicators. Information young adults should keep under ICE on their phone should list the names of all approved emergency contacts, health insurance information, any allergies, other pertinent health information that would assist first responders in case of any emergency.



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# Other Considerations at Age 18

## Health Care

Health care providers must protect every patient's right to privacy and consent. In the absence of legally arranged guidance, this may prevent parents from getting medical information, speaking with the doctor, or making medical decisions for their child aged 18 or above.

For young people who may be unable to make medical decisions independently, or for those with medical conditions that may be intermittently incapacitating, there are options that can support a young person's decision making while providing parents the legal right to obtain information and make decisions for their child should an emergency arise.

### Some of these options are:

- A medical or health care power of attorney
- Conservatorship
- Waivers of confidentiality for individual health care issues

## Supplemental Security Income (SSI) and Medicaid

Social Security is a Federal program that provides assistance to people with disabilities who have little or no income and meet medical criteria.

A child may qualify for SSI, but when they turn 18, they will re-evaluate based on the definition of disability for adults. Adult eligibility is determined by the ability to be substantially and gainfully employed while child disability is determined by a child's functional ability. Families of children with disabilities are often ineligible for SSI due to required reporting of all household income.

When the child becomes an adult at age 18, only the income and resources of the applicant (child) are considered, regardless of where they live or with whom. An adult application for Social Security benefits can be initiated at any time following the 18th birthday or not more than three months before the age of 18.

In South Dakota individuals who receive a Supplemental Security Income (SSI) payment are automatically eligible for Medicaid.

### For more information go to:

<https://www.ssa.gov/disability/>

<https://www.ssa.gov/ssi/text-understanding-ssi.htm>

Understanding SSI Homepage 2020

## Medicaid/CHIP

At age 19, low income youth in South Dakota who have received Medicaid/CHIP insurance will become ineligible. Alternate insurance/financing should be identified. Options families can explore:

- Private insurance
- SSI (Medicaid for adults with disabilities)
- Low-cost community health/mental health/dental health clinics.
- Please explore the Family Resource Guide, Paying for Needed Services at [www.sdparent.org](http://www.sdparent.org) for additional resources or contact SD Parent Connection.



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### **Affordable Health Care Act**

Under the Affordable Health Care Act, young adults up to age 26 may be covered under their parent's plan. The Healthcare Marketplace also offers affordable health options for young adults. Learn more about health plans for young adults at [www.healthcare.gov](http://www.healthcare.gov).

### **Family Educational Rights and Privacy Act (FERPA)**

Parents have the right to inspect and seek to amend their children's educational records, and control (with some exceptions) how those records are released to other individuals. Those rights transfer to students when the student turns eighteen or is attending any post-secondary educational institution. When the rights under FERPA transfer, the student must provide written permission before parents can be given access to their student's records. There are however some exceptions.

For more information go to: <https://www2.ed.gov/policy/gen/guid/fpco/pdf/ferpafaq.pdf>



## **Independent Living Centers**

Independent living services offer several programs to help support young people. Services are provided to eligible youth to improve the ability of individuals to function independently in their home and community. **Individuals should apply for services at the provider which serves the county in which they live.**

### **Independent Living Choices serves eastern South Dakota and South Dakota Tribal Nations.**

<http://www.ilchoices.org/> (605) 362-3550

Independent Living Choices Serves all Tribal Nations of South Dakota.

### **Western Resources for Independent Living serves western South Dakota.**

<http://www.wrill.org/> (605) 718-1930

Both Independent Living Choices and Western Resources for Independent Living provide a wide array of services including an advocacy program, resources and information, peer support, independent living skills, transitions, home modification, housing, recreation, transportation, and employment.

### **Community Support Providers**

Community Support Providers, or CSP's, provide services in a variety of settings. Services may include community living training and support for those who are living on their own or are working toward that goal, including Shared Living supports, or residential living options. They also provide employment services, vocational training, and nursing care. CSP's do not provide Case Management.

<https://dhs.sd.gov/developmentaldisabilities/csp.aspx>

<https://www.cspofsd.com/>

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# College, Training and Employment Resources

## Think College

Think College is a national organization dedicated to developing, expanding, and improving college options for people with intellectual disability. Think college supports families and students by giving information on college options, preparing for college, paying for college and family focused resources.

<https://thinkcollege.net/>

## National Center on Secondary Education and Transition

Provides information and resources related to secondary education and transition for youth with disabilities to create opportunities for youth to achieve successful futures. <http://www.ncset.org/>

## Vocational Rehabilitation Services

A program that provides individualized vocational rehabilitation and supportive services to assist eligible individuals with disabilities to get and keep jobs compatible with their skills and abilities.

<https://dhs.sd.gov/rehabservices/vr.aspx>

## Office of Disability Employment

Works to increase employment success for people with disabilities.

<https://www.dol.gov/odep/>

## Department of Labor and Regulation Services

Staff in the South Dakota Department of Labor are available to help young adults with disabilities (ages 18-24) find employment. For more information contact your local SD Department of Labor and Regulation office.

<https://dlr.sd.gov/>

## Transition Services Liaison Project

TSLP enables students with disabilities to reach their maximum potential in their transition from high school to the adult world.

<https://tslp.org/post-secondary-education/#1543960998925-f93e23fe-c11e>

## National Center on Workforce and Disability

NCWD/Youth aims to promote awareness of what all youth ages 12 to 25, including youth with disabilities, need to successfully transition to employment.

<http://www.ncwd-youth.info/issues/transition/>



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1-800-640-4553



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