



The Protection and Advocacy System for South Carolina

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P&A FACT SHEET

WHEN A CHILD GROWS UP

THE LEGAL EFFECTS OF BECOMING AN ADULT

When a child turns 18, he or she becomes entitled to the legal rights and duties of an adult. Generally, it does not matter whether the person has a disability. At age 18, a person is considered to be capable of making his or her own decisions unless a court has decided that the person is incapacitated. This information sheet describes some of the legal effects of becoming 18, as well as some adult rights that apply even before age 18.

1. AGE OF MAJORITY IS 18:

The South Carolina Constitution, Article XVII Sec. 14, states that individuals become legal persons at 18. Generally, adult citizens have the right to: vote, serve on juries, enter into contracts, decide where to live, make health care decisions and make a will. (This does not include the right to purchase alcoholic beverages until age 21.)

2. SPECIAL EDUCATION:

a. Maximum age 21: The right to be a public school student continues until age 21. As long as the 21st birthday occurs after school starts, a student can enroll and finish that school year. If the 21st birthday occurs before the start of the new school year, the student is not eligible to enroll that year. SC law states that when a student is in the graduating class and becomes 21 before graduation, the student is allowed to stay in school and graduate.¹ Based on this law, students with disabilities who are under 21 when school starts and have not graduated may continue to receive special education until the end of the school year.²

¹ SC Code Ann 59-63-20 (2)

² SC Code Ann 59-33-10 states that education for children with disabilities will be provided in public schools between the ages designated in §59-63-20.

b. IDEA rights transfer to student at 18: At age 18, the right to make decisions about special education transfers to the student from the parents.³ For example, when a student turns 18 he or she starts signing the Individualized Education Program (“IEP”) plan. Parents still keep their right to receive notices from the school and to have access to the student’s school records.⁴

A student who is 18 or over may sign a power of attorney giving parents or another adult the authority to exercise the student's education rights. The SC Adult Students with Disabilities Educational Rights Consent Act⁵ allows a health care provider to determine that a student is not able to express education choices; if so, a parent or other family member is designated to continue to make education choices. This is an easy alternative to getting court-ordered guardianship for education purposes. See P&A Fact sheet SC Adult Students with Disabilities Educational Rights Consent Act on the resource section of the P&A website www.panda.sc.org If a student has a court-appointed guardian, the guardianship order may include authority to make educational decisions for the student.

At least one year before a student turns eighteen, schools must notify the student and parents about the upcoming transfer of rights to the student. The transfer of rights is further described in the Special Education Process Guide for South Carolina. The Guide is available at the “Parent Resource” section of the website of the SC Department of Education: <http://ed.sc.gov/scdoe/assets/file/programs-services/173/documents/SEPG-03202013.pdf>

c. Transition services prior to age 18: Usually between ages 18 and 21 students leave high school to go to work or college. So, beginning at age 13 in South Carolina, special education IEPs must include goals and services needed to transition the student from school to later life.⁶ Transition planning can begin earlier than age 13 if the IEP team determines it is appropriate. (This is younger than federal law which sets age 16). Activities after high school may include post-secondary education (college), vocational training, employment, and independent living.⁷ For example, the IEP team may do transition planning to decide if the student will take classes leading to a regular high school diploma or an alternative diploma (e.g. employment diploma). The school must invite the student to attend IEP meetings where transition services are discussed and identify any other agency being invited to attend the IEP meeting (such as the Department of Vocational Rehabilitation). See P&A Fact Sheet “School Transition Services” for more information.

³ Individuals with Disabilities Education Act (IDEA), 20 U.S. Code 1415 (m); 34 Code of Federal Regulations Section 300.520; and SC Code Ann. Regulation 43.243 V 21

⁴ The Family Educational Rights and Privacy Act (FERPA) 20 U.S. Code 1232g and following, also provides parents with access to student records if the student continues to be a dependent of the parent for tax purposes.

⁵ S.C. Code §§ 59-33-310 to 59-33-370

⁶ SC Code Ann. Regulation 42.243 IV D 3 (b)(2)

⁷ IDEA: 20 US Code § 1414 d(1)(A)(i)(VIII), and SC Code Ann. Regulation 42.243 IV D 3 (b)(2)

d. Rights to school records: The Family Educational Records and Privacy Act of 1974 (usually called "FERPA") and its regulations give parents the right to access school records, the right to confidential treatment of records, and the right to seek correction of records. These rights pass to the student at age 18. Parents continue to have access to records of a student who is still their income tax dependent.⁸

3. **HEALTH CARE DECISIONS:**

a. Age 16: In South Carolina, a child who is 16 is able to consent to all his/her own health care decisions except operations.⁹ If a child has consented to treatment, the child is the only one who can consent to release of medical records about that treatment. Once a child has reached 16, some providers will no longer accept a parent's request for records of any prior medical care. The child can sign a release authorizing the parent access to records.

b. Age 18: As an adult, a person makes all his/her own health care decisions, unless (1) a court has declared the person incapacitated and appointed a guardian, OR (2) two physicians (in emergency circumstances just one) have determined the person is unable to consent.¹⁰ Then under the South Carolina Adult Health Care Consent Act,¹¹ health care decisions for the person are made by (1) any court-appointed guardian; or (2) someone who has a medical power of attorney from the person, or (3) family members, in the order they are named in the law. For a single person, parents continue to be primary decision makers under the Adult Health Care Consent Act unless the person has adult children.

4. **GUARDIANSHIP/CONSERVATORSHIP:**

If any adult is unable to make decisions about personal affairs OR about property, a court can declare the individual an "incapacitated person" (sometimes this is called being incompetent but that term is not used in the SC guardianship law).

a. Guardianship relates to personal affairs, such as health care decisions or where to live. It can also include the right to make educational decisions. If guardianship is ordered, the person is called a "ward" and the person exercising authority over the ward is called the "guardian." South Carolina law says the court should not give more authority to the guardian than is actually necessary.¹²

b. Conservatorship: If a person is unable to take care of business/financial affairs, a court may appoint a "conservator." A person who has a conservator is called a "protected person."

c. Procedure: Both guardianship and conservatorship are handled in SC probate courts. Both involve the individual being seen by two examiners including at least one physician. The examiners then testify whether they believe the person is or is not incapacitated.

⁸ 34 Code of Federal Regulations Part 99.1 and following

⁹ SC Code Ann. 63-5-340

¹⁰ SC Code Ann. 44-66-20 and following

¹¹ SC Code Ann. 44-66-30

¹² SC Code Ann. 62-5-101; 62-5-304; and 62-5-503 and following

The individual has the right to an attorney. The court can order either guardianship or conservatorship or both, depending on what is needed. If a person has a guardian, without a conservator, the guardian has basic authority to handle the person's financial matters.

d. Legal settlements over \$25,000 for incapacitated person: Must be approved by circuit court to make sure they are in the best interest of any incapacitated person. Example: motor vehicle accident settlement with insurance company, even if the case is otherwise being settled "out of court."¹³ Similar procedures apply if a settlement is over \$2500 but less than \$25,000. Then a conservator may simply accept the settlement; if the person does not have a conservator, the person's guardian must get approval from circuit or probate court. If settlement is \$2500 or less, court approval is not required. If there is any significant question about whether the person is now "incapacitated," an insurance company may require these procedures to be followed.

5. SOCIAL SECURITY:

a. After age 18, only a person's own income/resources affect eligibility: Many children with disabilities are not eligible to get Supplemental Security Income (SSI), because eligibility depends on (1) having a disability and (2) having only limited income and property. Until age 18, a part of the parents' income/property is counted as belonging to their child. Unless the parents have very low income/property, a child may be disqualified. An 18 year old should apply for SSI as an adult. In 2016, the SSI benefit was \$733 per month for a single person. In South Carolina SSI automatically qualifies a person for Medicaid health coverage.

Note: An adult can work and earn some income without losing SSI. Complex formulas exist that exclude some earnings and even allow some income to be "saved" for education or transportation expenses. Individuals should get advice about how working could affect the amount of SSI they get. The Social Security Administration has free counselors known as Community Work Incentive Coordinators (CWICs). The program is known as Work Incentives and Planning Assistance (WIPA). In South Carolina, the Walton Options organization provides this service; in some counties, they work through ABLE the independent living center located in Columbia and Greenville; you may contact these resources directly.¹⁴

b. Reduction of SSI for adults living rent free: If a person on SSI is living in someone else's home without paying rent, Social Security may reduce the SSI payment up to 1/3.¹⁵ This

¹³ SC Code Ann. 62-5-433 and Revised Minor Settlement Procedure S.C. Sup.Ct. Order 2011-07-26-01 Note: The statutes do not specify a procedure for settlements that are exactly \$25,000. Parties may decide to follow procedures for settlements over \$25,000.

¹⁴ Walton Options: <http://waltonoptions.wix.com/wipawaltonoptions> and ABLE: <http://www.able-sc.org/programs/> – ABLE handles the following counties: Abbeville, Anderson, Calhoun, Cherokee, Chester, Chesterfield, Clarendon, Darlington, Dillon, Fairfield, Greenville, Greenwood, Kershaw, Lancaster, Laurens, Lee, Marlboro, Newberry, Oconee, Pickens, Richland, Saluda, Spartanburg, Sumter, Union, and York.

¹⁵ See Social Security Administration's Program Operations Manual System (POMS) <https://secure.ssa.gov/poms.nsf/lnx/0500835200>

includes an adult child who continues to live with his/her parents. However, if the person can pay his or her share of household expenses from SSI, OR pays reasonable rent to parents, there will be NO reduction in SSI. When child becomes 18 and gets SSI, check with Social Security about how to receive full SSI payments. Money paid as rent can be used to benefit the SSI recipient for anything other than food, clothing or shelter. It can be used for medical expenses, travel etc. without causing problems. Small household or personal items can also be given without affecting SSI. Caution: rent paid to parents may count as income on their tax return.

C. Representative Payee: If a child under 18 receives SSI, it is payable to the child's parent or guardian. Once a person is 18, it is payable directly to him/her. If a physician determines that the person is not capable of handling SSI, Social Security allows a representative payee to be appointed. A court order is not necessary. A parent/family member is the most common person designated as a representative payee. A private organization can also be a representative payee and in some counties the SC Department of Social Services can serve as a representative payee. The "Rep payee" receives the individual's SSI check and controls how it is spent. If a physician later determines the person is capable of handling his/her own SSI check, Social Security can be notified and the check can start going directly to the individual with the disability. For information, call Social Security at (800) 772-1213 (voice) or 1-800-325-0778 (TTY) or go to their website at: <http://www.ssa.gov/>

6. VOTING:

At age 18, a person is presumed eligible to vote. The SC Constitution, Article II, Section 4 states: "Every citizen of the United States and of this State of the age of eighteen and upwards who is properly registered is entitled to vote as provided by law" (emphasis added). Having a disability does not disqualify a person from voting (unless that person has been declared incompetent by a court). He/she can register at the local voter registration board or at most public agencies (Department of Social Services, Department of Motor Vehicles etc.). P&A clients can also register to vote at P&A offices. When it comes time to vote, a person with a disability may vote at regular polling places. The voter may have an assistant help in the voting booth. A person may also vote in advance by requesting and sending back an absentee ballot if the person has a disability or meets other requirements for using an absentee ballot. There is also "curbside" voting from a vehicle. Information on the website of the Supreme Court of South Carolina states that a person under a guardianship can still vote unless the guardianship paper says the person is not eligible to vote.¹⁶ See the Voters with Disabilities section of the website of the SC State Election Commission: http://www.scvotes.org/voters_with_disabilities

7. SELECTIVE SERVICE (THE "DRAFT"):

Federal law requires ALL men between 18 and 26 to register for the draft. There is no exemption for physical or mental or cognitive conditions. However, if a man is hospitalized, institutionalized, homebound, or would not comprehend the nature of registration, evidence

¹⁶ <http://www.judicial.state.sc.us/selfHelp/FAQsFromAWard.pdf>

can be sent to Selective Service. The case will be reviewed to see if registration will be required.

Register by:

- (a) Returning a Selective Service card if it is received in the mail;
- (b) Getting a Selective Service card at a post office and mailing it;
- (c) Signing up at high school;
- (d) Registering "on line."

Failure to register is a crime that could be prosecuted AND will result in being permanently barred from student financial assistance ("student loans"), federal job training programs, and most federal employment. Individuals may be excused from these penalties if they are later able to convince the Selective Service program that their failure to register was not "knowing and willful." See information available at <http://www.sss.gov> or write to the Selective Service System at P.O. Box 94638, Palatine IL 60094-4638. Telephone: 888 655 1825 toll free--847 688-6888 (voice); or 847 688-2567 (TTY).

8. MAKING A WILL:

Generally, anyone can make a will once he/she turns 18, even if the person has a disability. SC law states any person "who is of sound mind and who is not a minor....may make a will."¹⁷ Knowing if someone is "of sound mind" can be a difficult. Witnesses who sign their names to a will must be able to say they believe the person was "of sound mind." Whether a person was "of sound mind" is ultimately decided by the probate court. If the court decides the person was not "of sound mind" when the will was signed, the will is not valid. The deceased person's property would be disposed of according to state law covering people who die without a will.¹⁸

A disability that keeps a person from personally signing a will is not a problem. SC law allows a person to direct someone else to sign the person's name for him/her.¹⁹ Because making a will correctly is so important, individuals with disabilities should always consult with an attorney when making a will.

This publication provides legal information, but is not intended to be legal advice. The information was based on the law at the time it was written. As the law may change, please contact P&A for updates.

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¹⁷ SC Code Ann. 62-2-501. A "minor" is defined in SC Code Ann 62-1-201(24) as a person under age 18, except individuals under 18 are NOT minors if they are married or have been declared "emancipated" by a court order.

¹⁸ SC Code Ann. 62-2-101 and following

¹⁹ SC Code Ann. 62-2-502