



Powers of Attorney and Conservatorships for the Individualized Education Account Program

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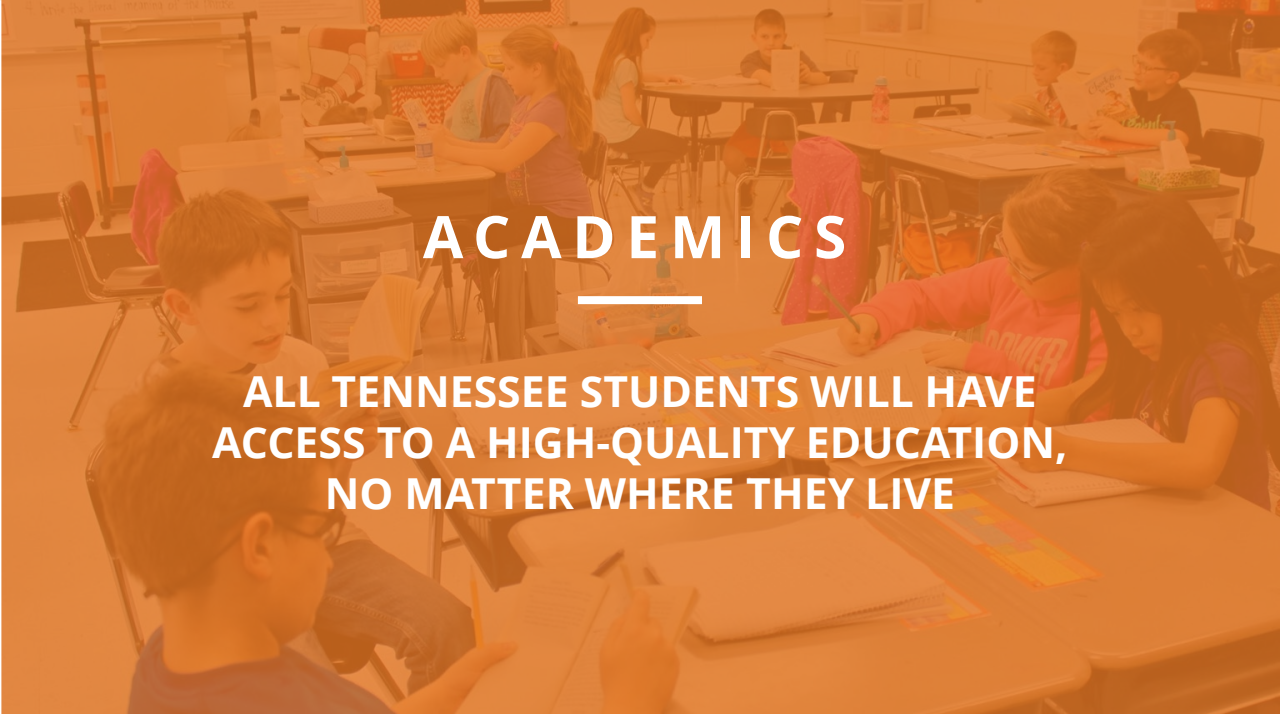
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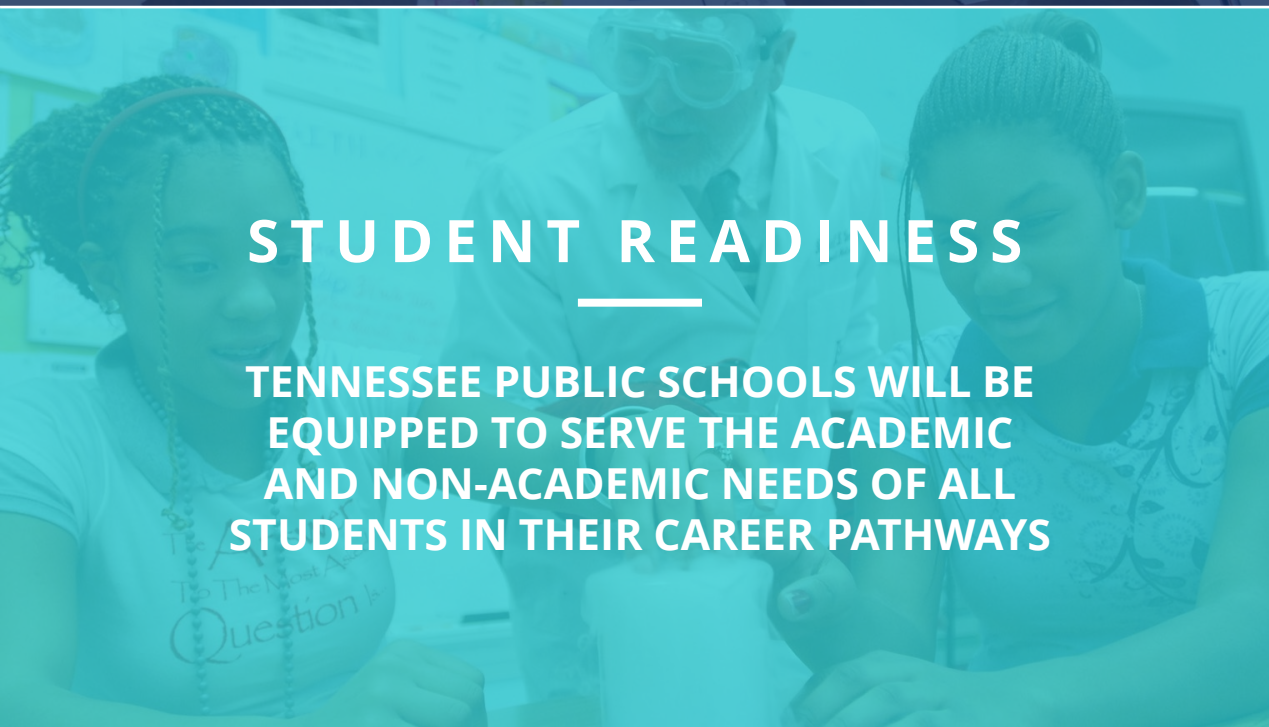
BEST FOR ALL

We will set all students on a path to success.



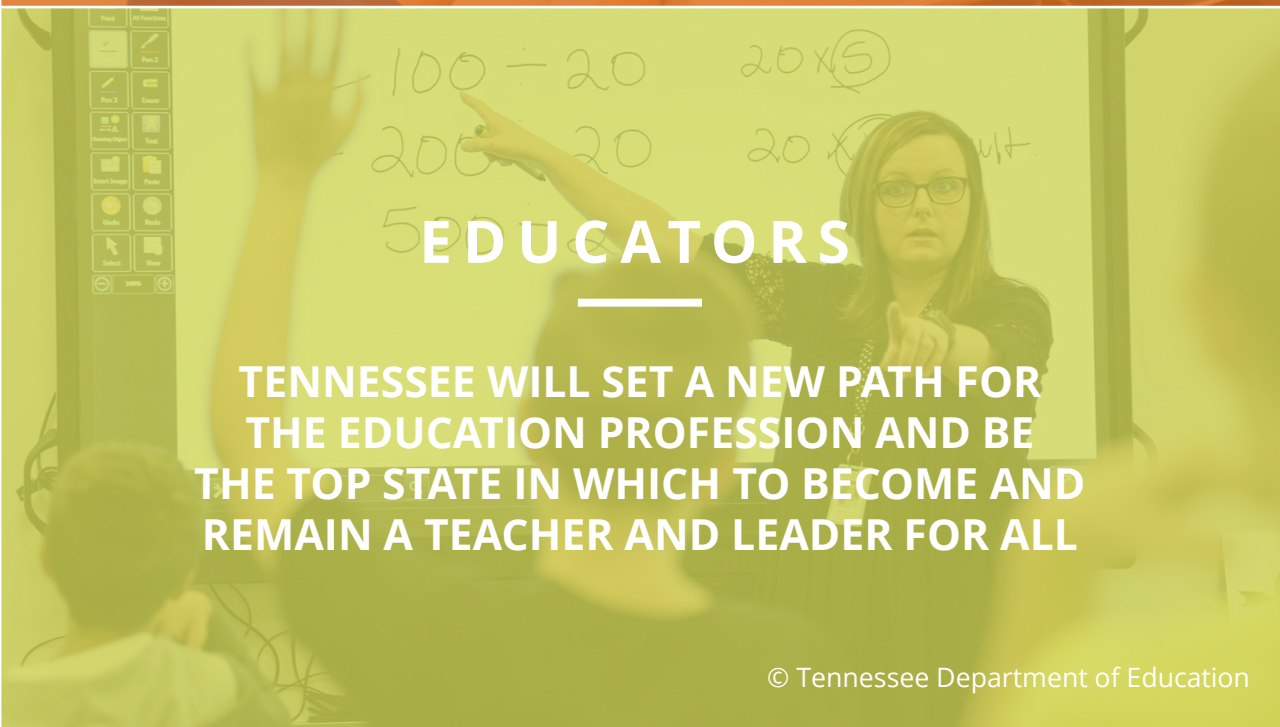
ACADEMICS

ALL TENNESSEE STUDENTS WILL HAVE ACCESS TO A HIGH-QUALITY EDUCATION, NO MATTER WHERE THEY LIVE



STUDENT READINESS

TENNESSEE PUBLIC SCHOOLS WILL BE EQUIPPED TO SERVE THE ACADEMIC AND NON-ACADEMIC NEEDS OF ALL STUDENTS IN THEIR CAREER PATHWAYS



EDUCATORS

TENNESSEE WILL SET A NEW PATH FOR THE EDUCATION PROFESSION AND BE THE TOP STATE IN WHICH TO BECOME AND REMAIN A TEACHER AND LEADER FOR ALL



Agenda

- Transfer of Educational Rights
- Creating and Terminating Powers of Attorney (POAs)
- Creating and Terminating Conservatorships
- Tips for the Individualized Education Program (IEA) Program
- Questions



Transfer of Educational Rights

Educational Rights

- When a student is under 18-years-old, all rights automatically vest in the student's parents, including:
 - The right to participate in the IEA Program; and
 - The right to choose which school to enroll in.
- When a student turns 18-years-old, all rights automatically transfer from the student's parents to the student **unless a valid POA or conservatorship is in effect.**

See [Tenn. Code Ann. § 1-3-105\(a\)\(1\)](#) (defining "age of majority" as 18-years-old)



Role of the Account Holder

- The IEA Program requires each student to have a designated **IEA account holder**. The account holder is responsible for complying with all IEA rules and requirements, including:
 - Signing the IEA contract;
 - Expending IEA funds; and
 - Submitting expense reports and receipts for all expenditures.

See [Tenn. Code Ann. § 49-10-1403](#); [State Board of Education Rule 0520-01-11-.02\(1\)](#)



Importance of POAs and Conservatorships for the IEA Program

- Once a student participating in the IEA Program turns 18-years-old, the student is authorized to select his or her own IEA account holder.
- If no valid POA or conservatorship is in effect, the department must act as if the student is the IEA account holder.
- If a valid POA or conservatorship is in effect, you can continue acting as the IEA account holder even after the student has turned 18-years-old.

Powers of Attorney (POAs)

What is a POA?

- A legal agreement between two individuals in which the principal (e.g., the student) agrees to allow the agent (e.g., the student's parents) to make decisions or exercise rights and responsibilities on the principal's behalf.
- POAs can be...
 - General: Intended to cover all decisions, rights, and responsibilities. Note that [Tenn. Code Ann. § 34-6-109](#) has a common list of powers that can be incorporated by reference.
 - Limited: Intended to cover only some rights and responsibilities (e.g., financial or healthcare).
 - Durable: Takes effect immediately and remains in effect until termination.
 - Temporary: Takes effect immediately, but only remains in effect until some future event occurs.
 - Springing: Takes effect when some future event occurs but remains in effect until termination.
- The POAs we see are usually durable general POAs.

Examples of POAs

A participating student wants her parents to serve as her IEA account holder. She wants to ensure that her parents have all rights that they need to act as her account holder.

A **general POA** would allow the student to transfer all rights to her parents, including those rights related to the IEA Program.

A participating student wants his parents to serve as his IEA account holder, but he does not want his parents to have access to his bank account where he deposits his checks from his after-school job.

A **limited POA** would allow the student to transfer only limited rights to his parents, such as those rights related to the IEA Program.

A participating student wants her parents to serve as her IEA account holder while she is in high school, but she wants to serve as her own IEA account holder when she is in college.

A **temporary POA** could allow the student to transfer rights related to the IEA Program to her parents.

A participating student has a deteriorating cognitive disability. He can serve as his own IEA account holder now, but he is concerned that he may not be able to do so in the future.

A **springing POA** could allow the student to transfer rights related to the IEA Program to his parents when a certain event occurs (e.g., a medical diagnosis or exam).

How are POAs formed?

- The principal signs the legal instrument in the presence of a notary or two disinterested witnesses.
- The principal must have the mental capacity to enter into the POA.
- The POA does not have to be drafted by an attorney and does not have to be approved or entered by a judge.

How are POAs terminated?

1. The principal revokes the POA.
 - There is no singular way to revoke a POA. For example, revocation can be signified by (1) issuing a written statement to the agent, (2) entering a new POA that overrides the old POA, (3) emphatically tearing up the POA in the presence of the agent.
 2. The principal or the agent die.
- * POAs remain in effect even if the principal later becomes mentally incapacitated. See [Tenn. Code Ann. § 34-6-103](#).



Department Review of POAs

- The department reviews POAs to ensure that they are valid procedurally and substantively.
- Procedurally:
 - Ensure that the principal had the mental capacity to enter into the POA.
 - Ensure that the POA is signed by the principal.
 - Ensure that the POA is notarized *or* signed by two disinterested witnesses.
- Substantively:
 - Ensure that the terms of the POA have taken effect.
 - Ensure that the terms of the POA actually say what the agent claims they say.

Pros and Cons of POAs

Pros

- Flexible
- Easy to establish
- Easy to amend

Cons

- Easy for principal to terminate
- Requires the principal to have mental capacity to enter into



Conservatorships



What is a conservatorship?

- A legal arrangement established by a court order in which the court removes rights and decision-making powers from an individual who lacks capacity to make decisions for themselves and grants them to a fiduciary (“the conservator”).
- The individual may lack the capacity to make decisions due to a physical or mental disability or an injury.
- Conservatorships allow the conservator to exercise complete *or* partial control over the disabled individual’s decisions.
- In the education setting, a conservatorship will usually exist with a student over the age of 18 that lacks the mental capacity to form a power of attorney.

How are conservatorships formed?

- An individual files a petition to appoint a conservator in a court with proper jurisdiction.
- The petition must include:
 - Sworn medical examination
 - Report describing the individuals' disability and inability to independently make decisions
- The allegedly disabled individual may oppose the petition.
- To have the conservatorship granted, the petitioner must establish the need for one by clear and convincing evidence.



Conservatorship Documentation

- Once a conservatorship is granted, you should possess three documents:
 1. The Petition to Appoint a Conservator;
 2. The letters of conservatorship; and
 3. The Order Granting Conservatorship.
- The department only needs to review the **Order Granting Conservatorship**.

How are conservatorships terminated?

- They can only be terminated by a court order if the court determines that the disabled individual has the capacity to make decisions.





Department Review of Conservatorships

- The department reviews conservatorships to ensure that they are valid procedurally and substantively.
- Procedurally
 - Ensure the Order has been signed by a judge.
 - Ensure the Order is not a temporary order.
- Substantively
 - Ensure that the terms of the conservatorship actually say what the agent claims they say.

Pros and Cons of Conservatorships

Pros

- Difficult for the principal to terminate
- Does not require the principal to have the mental capacity to enter into

Cons

- Difficult to establish
- Difficult to amend



Considerations and Tips



Tip #1: Start the process early!

- POAs and especially conservatorships can take weeks or even months to obtain. The IEA Program team will send you a reminder of the need to obtain a POA or conservatorship before your student turns 18-years-old if you intend to remain as the Account Holder.
- If you intend to obtain a POA, you can **have the POA prepared before the student's 18th birthday**, so that the student can sign the POA on his or her birthday and it can take effect immediately.
- If you intend to obtain a conservatorship, you can **have the petition to appoint a conservator ready to be filed with the court on the student's 18th birthday**.



Tip #2: Ensure all necessary rights transfer.

- IEA account holders must ensure that the POA or Order Granting Conservatorship transfer the following rights, at a minimum:
 - The right to make **educational decisions** on behalf of the student
 - The right to make **financial decisions** on behalf of the student
- Many courts and attorneys have a standard POA or Order Granting Conservatorship that do not include these rights, so you may need to **specifically request that these rights be included in the document.**



Tip #3: Submit the correct documents.

- IEA account holders must ensure that the department has the appropriate documentation for review:
 - For a POA, the department must have a complete copy of the POA signed by the principal (e.g., the student) and notarized or signed by two disinterested witnesses.
 - For a conservatorship, the department must have a complete copy of the Order Granting Conservatorship signed by the judge.



Tip #4: Consider other reasons that you may need a POA or conservatorship for your student.

- POAs and conservatorships can be amended, but it can be time-consuming and expensive to do so. When you are developing a POA or conservatorship, consider all other circumstances that you may need to support your student.
 - Will your student need assistance with healthcare matters?
 - Will your student need assistance with financial matters?
 - Will your student need assistance obtaining housing or lodging?
 - Will your student need assistance with applying for other government benefits or programs?

Questions?



Thank You!

IEA Program Team

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