

# **Transfer of Rights**

## **AT AGE OF MAJORITY**

**A Special Education Technical Assistance Document**  
*For school districts and families*

**Oregon Department of Education**  
**Office of Student Learning & Partnerships**

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Procedural safeguard rights associated with IDEA transfer to the student at the age of majority. In Oregon, the age of majority is 18, or when the student gets married or becomes emancipated. The IEP Team must plan ahead, and assist the student and the parent in understanding and preparing for the transfer of rights that will occur.

## **Section I: Transfer of Rights Requirements**

### **What Rights Transfer to the Student?**

Beginning not later than 1 year before the student's 18th birthday, the school district must provide a notice to the student and the parent that educational rights will transfer at the age of majority. This notice must be provided at the IEP meeting and documented on the IEP. The IEP team must also document on the IEP, the date that this information was provided to the student.

The district also must provide written notice of the transfer to the student and the parent at the time of transfer. This written notice must be provided at the time the student reaches the age of majority.

- The student will receive the written notice for all meetings and will be invited to attend all meetings. The student may invite his/her parent(s) or other individual(s) to attend meetings.
- The student has the right to participate in all meetings where decisions are made about the student's eligibility, special education services, and placement. The student will participate with the team in making educational decisions.
- The student will receive prior written notice of important decisions or changes related to his/her eligibility, evaluation, individualized education program (IEP), or placement before those decisions are put into place.
- The student also has the right to prior written notice if the district refuses the student's request to take these actions.
- The student has the right to review his/her educational records.
- The student has the right to request changes to or meetings to review: his/her identification, evaluation, individualized education program (IEP), or placement.
- When consent is required; the school district must ask the student for consent rather than the parent.
- The student has the right to ask questions and to ask for help in solving problems. The student also has the right to file a complaint, request a due process hearing, and to participate in voluntary mediation regarding special education services he/she receives.

### **What Rights Do Parents Keep?**

After the rights transfer to the student:

- Parents have a right to receive notice of educational meetings (such as IEP meetings). However, the IEP meeting notice is not an invitation to attend the

meeting. The student or the district may invite the parent to participate on the IEP team as someone "with special knowledge" about the student. If the parent is invited by the school district to participate in the meeting, the parent's name will be listed on the meeting notice as one of the invited participants.

- Parents will receive copies of all Notices of Special Education Action, such as notice of change in placement, or notice that services will be terminated.
- Parents may have the right to review their child's school records, if the student qualifies as a tax dependent and is claimed by the parents.
- Parents who disagree with IEP team decisions may file a letter of complaint as a concerned citizen.

## **Section II: Alternatives to the Transfer of Rights**

Oregon law provides three alternatives to the transfer of rights--the appointment of a surrogate parent by the school district at the student's request; a court appointed guardianship; or, for students who are over 18 but still a ward of the court, appointment of a surrogate parent by the juvenile court.

### **What is a Surrogate Parent?**

A surrogate parent is a person who is assigned to represent the student in all matters relating to special education and to make educational decisions as part of the student's IEP team.

A surrogate parent must be willing to accept the responsibility of being a surrogate parent, and must have the necessary knowledge and skills to protect the special educational rights of the student. The person appointed as a surrogate:

- must not be an employee of the school district or the Oregon Department of Education;
- must not be an employee of any other agency involved in the education or care of the child (except for an employee of a non-public agency that only provides non-educational care for the child); and
- must be free of conflict of interest that would interfere with representing the child's special education interests.

If a student who turns 18 prefers not to exercise his/her educational rights, the student may make a written request to the school district that the school district appoint his/her parent or another adult to act as a surrogate parent on his/her behalf. If, later on, the student wants to exercise his/her educational rights, the student would make a written request to the school district to revoke the surrogate's appointment.

### **What is Guardianship?**

If parents believe that their child will not be able to make decisions regarding various aspects of his/her life (e.g., education, money management, health care, etc.), the

parents may pursue legal guardianship. If legal guardianship is obtained, the rights will not transfer to the student, but will be exercised by the guardian.

Only a court can appoint a guardian. Guardianship may be determined to be necessary if a person over 18 is “incapacitated.” Under Oregon law, “incapacitated” means a condition in which a person’s ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the person’s physical health and safety.

“Meeting the essential requirements for physical health and safety” means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene, and other care without which serious physical injury or illness is likely to occur. ORS 125.005(5). Oregon law permits guardianship to be tailored to the individual situation. Guardianship can be limited to (tailored to) a single area such as educational or medical decision-making, or it can be a full guardianship, which gives the guardian full authority to make decisions about all areas of a person’s life.

Any adult who is qualified and suitable and is willing to serve in this capacity may seek appointment as guardian.

When a guardian is appointed, the student will continue to be involved in school meetings in the same way that a transition age student under age 18 would be involved. The guardian will participate in decision making as part of the IEP team in the same way a parent would for a student under age 18.

Information about guardianship is available from probate attorneys or advocacy organizations.

### **Section III: Preparing for Transfer of Rights**

Students and parents need time to discuss options, plan, and make decisions that best meet the individual needs of the student. As part of this preparation, students, staff, and parents may want to consider:

- Discussing student strengths, priorities, needs, options and interests.
- Reading and discussing together the “Notice of Procedural Safeguards for Students Age 18 - 21” booklet.
- Addressing preparation for transfer of rights as part of the IEP transition process and services (such as self-determination, self-advocacy, and decision-making).
- Reviewing the postsecondary goals developed as part of the IEP process and the transition services, including courses of study, needed to assist the student in reaching those goals.
- Requesting information about student self-advocacy training/courses and enroll, if appropriate.

- Contacting legal counsel or community organizations to explore guardianship options.

## **What is Self-Determination?**

Self-determination is the capacity to make choices about life and have those choices determine the course of your life. A sense of self-determination is necessary for the development of individual identity and is a crucial catalyst for developing autonomy. In order to be able to self-determine direction in life, the skills for making informed choices and self-advocacy for oneself are essential.

Parents and teachers may want to begin to address at an early age, skill development in self-advocacy and in making choices. Self-determination plays an increasing role in the life of the individual with disabilities as that person matures into adulthood. When the transfer of educational rights happens at age 18, the student must have the skills and knowledge to actively participate in making decisions that will determine his/her future.

## **Why is Self-Advocacy Important for Transition-age Students?**

Teaching students about self-advocacy is necessary for successful student involvement and, ultimately, for successful transition to the adult world. Self-advocacy is based on the belief that everyone has a right to speak up and make decisions about his or her own future. It is a life skill that adults use everyday.

Transition planning is a way to assist students with disabilities to develop skills for making decisions about their future. This process is not done for the student, but with the student. Students attend all meetings relating to transition and their IEPs, and they also work with the other members of their IEP teams on an ongoing basis as part of their school programs to develop necessary self-advocacy skills. A student must be able to advocate for his or her vision of the future. It is essential for full participation in the transition planning process.

Students need to understand and be able to exercise their rights and responsibilities related to IEP development and the transition planning process. They need to have knowledge of laws such as:

- The Individuals with Disabilities Education Act (IDEA).
- Section 504 of the Rehabilitation Act (504).
- The Americans with Disabilities Act (ADA).

It is essential that students assume as much responsibility in transition planning as possible. They need to develop the skills to:

- Assess themselves, including their skills, abilities, disabilities, and reasonable accommodations that may make success more likely;
- Know their strengths and weaknesses;
- Be able to set goals, know how to plan activities to reach goals, and know how to get help when necessary;

- Understand the available support services of an agency, work environment, or school, and identify what supports will make a difference in their success; and,
- Know how and when to step back and decide if they are making progress;

The student's active involvement in the IEP process from the earliest stage possible will increase the likelihood that many of these self-advocacy skills will be learned and practiced. This early involvement will also give the IEP team knowledge about what kinds of instruction and practice are still needed.

The ability to advocate for oneself takes time to develop, and is dependent on one's self-esteem, maturity, and confidence along with practice and experience. Providing adequate time and instruction to develop these skills may enable the student to become a more successful self-advocate.

If a student needs assistance in communicating and self-advocacy, the team must still develop a way to enable the student to communicate his or her preferences. A communication device, a special advocate, or a communication expert are possible means to assist a student to express his or her opinions.

Students must be encouraged to participate to the fullest extent possible. Finally, students need to know that self-advocacy goes beyond a meeting; they may need to talk with individual team members on an informal or ongoing basis. The team should encourage this informal networking and acknowledge that the student is a self-advocate even if the student only partially participates.

### **How Do Students Learn How to Make Appropriate Choices?**

Students need to develop the skills necessary to be able to make choices about their future. They must be able to determine priorities and develop their visions. To make informed choices, students need information about different choices. For example, a student may want to try several different jobs before deciding about a career, or a student may want to experience different types of living situations (dorm, apartment, group home, etc.) before deciding where to live.

Students also need to be informed of services and accommodations available to help them be successful. They must learn to explain and use the strategy or accommodation that works for them. Students may need to meet and talk with people who provide supports to people with disabilities to find out what is available. Teachers, parents, and others involved in transition planning with the student need to help him/her to build skills to secure information and not just provide the information. Skills that a student may need include: research skills, including Internet access, how to ask questions to gain information, and how to network from one resource to another. Students should be given many opportunities for real world experiences so they develop the skills needed for life outside of home and school. They need real life practice, role-playing, and coaching.

## **Frequently Asked Questions and Answers**

### **1) Do rights ever transfer before age 18?**

Yes, if the child is legally emancipated or marries, rights will transfer at the time of the event.

### **2) Do rights transfer if a student has a surrogate appointed by the school district already at the time of the transfer?**

Yes. In order for the rights **not** to transfer, the student would have to indicate they want another adult (surrogate parent) to make decisions on his/her behalf.

### **3) Can a parent of the student be appointed as a surrogate?**

Yes, if the student requests it. However, it is the district's responsibility to appoint surrogate parents. It is very likely they would honor the student's request to have their own parent appointed as surrogate.

### **4) What if a student over 18 (after rights transfer) wants to stop special education services?**

The district cannot discontinue special education services at the request of the student. The team should consider why the student wants to cease services and examine what services the student is getting to make sure that the educational program fits the student's needs. The IEP team must meet to consider whether the student continues to need special education. If the IEP team concludes that the student no longer needs special education services through the eligibility determination process, services may be terminated. If the student is over 18, the school district cannot compel the student to attend school if the student does not want to continue.

### **5) What if, after rights transfer, the parent disagrees with decisions about the student's IEP?**

The parent may share concerns at the IEP meeting if invited by the student or district to be in attendance at the IEP meeting. If a parent files for a due process hearing, the administrative law judge would likely dismiss the request for a due process hearing for lack of standing. A parent may file a complaint, as a concerned citizen, with the Oregon Department of Education.

### **6) What if a student over 18 refuses to participate in the IEP meeting?**

The school district needs to follow the same procedures as for parent participation. If the student cannot attend, the district must use other methods to ensure student participation, including individual or conference telephone calls, or video conferences. The district can have an IEP meeting without the student if the district is unable to convince the student that he/she should attend. The district must keep a record of its attempt to arrange a mutually agreed on time and place.

### **7) Could a surrogate parent appointed before the age of 18 continue to participate in IEP meetings after the student turns 18?**

Yes, if the student requests the surrogate to participate or the school district invites the surrogate parent as a person with special knowledge of the student. It is the nature of the participation that changes. The student is now the person acting in his/her behalf.

**8) What can the team do if a student turns 18 and has no legal guardian, does not have the ability to request a surrogate, and the IEP team believes that the student does not have the ability to understand or participate in the IEP process?**

- a. The IEP team needs to include the student to the extent that the student can participate.
- b. The IEP team can invite individuals who are knowledgeable about the student to participate in the IEP process but may not appoint a surrogate parent unless the student requests one.
- c. If consent is needed, the team may seek consent from an administrative law judge, using the same procedures as for overriding refusal to consent.
- d. In some counties, the GAPS Program (Guardianship, Advocacy & Planning Services) or the Office of Public Guardianship may be available to seek appointment as guardian.
- e. The school district may directly petition the Probate Court for appointment of a guardian. Before taking this step, staff should consult with the district's attorney. If the district chooses to initiate the guardianship process, it may be responsible for the costs incurred.

**9) For youth who are over 18 but still a ward of the court, may the juvenile court appoint a surrogate parent for the student?**

Yes. If the juvenile court appoints a surrogate for the student, the district must defer to the court's determination. In this situation, the court's appointment of a surrogate would override any transfer of rights until the juvenile court terminated the surrogate's appointment or terminated the student's wardship, whichever occurred first.

## **Incarcerated Youth**

### **1) What is the role of the superintendent of the facility when a student is in the care of the Oregon Youth Authority?**

When a juvenile is committed to the care of the Oregon Youth Authority, the superintendent of the facility becomes the student's guardian.

### **2) Does the superintendent act as the “parent” in the special education process?**

No, the educational program must appoint a surrogate if one has not already been appointed by the juvenile court.

### **3) Do the rights transfer to a student who is in an Oregon Youth Authority facility or placement?**

Yes. Rights transfer as for other youth at the time they turn 18. Even though the student is under the legal guardianship of the institution, this is not the type of guardianship that would prevent transfer of special education rights.

### **4) What requirements are there for sending notice about transfer of rights for incarcerated youth?**

- a. The school program must send the transfer of rights notice to both the surrogate parent and the student. The school program may also send notice to the natural parent if their location is known and there is no court order prohibiting contact or terminating parental rights.
- b. After rights transfer, special education notices would go to the natural parents if their location is known and there is no court order prohibiting contact or terminating their parental rights, and to the student.

## **For More Information**

### **Oregon State Bar**

Oregon Lawyer Referral Service

Phone: 503.684.3763 or 1.800.452.7636

<http://www.osbar.org/public/ris/ris.html#referral>

Tel-Law

Phone: 503.620.3000 or 1.800.452.4776

### **Oregon Advocacy Center**

620 SW Fifth Avenue, 5th floor

Portland, OR 97204-1428

Phone: 503.243.2081 or 1.800.452.1694

TTY 1.800.566.5351

FAX: 503.243.1738

<http://www.oradvocacy.org>

**The Oregon Parent Training and Information Center (OrPTI)**

2295 Liberty Street NE

Salem, OR 97303

Phone: 503.581.8156 or 1.888.505.2673

FAX: 503.391.0429

Special Education Help Line 1.888.891.6784

<http://www.orpti.org>

**Guardianship, Advocacy, & Planning Services (GAPS)**

**The ARC of Oregon**

1745 State Street

Salem, Oregon 97301

Phone: 503.581.2726 or 1.877.581.2726

FAX: 503.363.7168

<http://www.arcoregon.org/gapsbooklet2.htm>

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<http://www.ode.state.or.us/>



## Resources

### Student Involvement in Transition Planning

#### References available only in print

- Battle, D. A., Dicken-Wright, L. L., & Murphy, S. C. (1998). How to empower adolescents: Guidelines for effective self-advocacy. *Teaching Exceptional Children*, 30 (3), 28-33.
- Clark, G. M., & Patton, J. R. (1997). *Transition planning inventory: Administration and resource guide*. Austin, TX: Pro-ed.
- Curtis, E., & Dezelsky, M. (1994). *It's my life: Preference-based planning for self-directed goal meetings*. Castle Valley, UT: New Hats, Inc.
- Gillespie, E. B., & Turnbull, A. P. (1983). Involving students in the planning process. *Teaching Exceptional Children*, 16 (1), 27-29.
- Halpern, A. S., Herr, C. M., Wolf, N. K., Doren, B., Johnson, M. D., & Lawson, J.D. *NEXT S.T.E.P.: Student transition and educational planning*. Austin, TX: Pro-ed.
- Lane, G. (1995). *Empowerment in transition planning: Guidelines for special educators*. LD Forum, 21(1), 34-38.
- Miner, C. A., & Bates, P. E. (1997). Person-centered transition planning. *Teaching Exceptional Children*, 30 (1), 66-69.
- Oregon Department of Education (2005). *It's Your Life: Transition Planning from High School to Adult Life--A Student handbook*.
- Oregon Department of Education (2005). *Transition from High School to Adult Life: What is the Family Role?*
- Thomas, C. A. (1999). Supporting student voices in transition planning. *Teaching Exceptional Children*, 31 (5), 4-9.
- Transition trek: A game for planning life after high school for youth with disabilities*. (1996). Minneapolis, MN: PACER Center, Inc.
- Vandercook, T., York, J., & Forest, M. (1989). The McGill Action Planning System (MAPS): A strategy for building the vision. *Journal of the Association for Persons with Severe Handicaps*, 14 (3), 205-215.

### Self-Determination: Assessment and Strategies

#### References available only in print

- Curtis, E. (1996). *Self-determination profile: An assessment package*. Salt Lake City, UT: New Hats, Inc.
- Field, S., & Hoffman, A. (1996). *Steps to self-determination: A curriculum to help adolescents learn to achieve their goals*. Austin, TX: Pro-ed.
- Field, S., Hoffman, A., & Spezia, S. (1998). *Self-determination strategies for adolescents in transition*. Austin, TX: Pro-ed.
- Field, S., Martin, J. E., Miller, R., Ward, M., & Wehmeyer, M. (1997). *A practical guide for teaching self-determination in the schools*. Reston, VA: The Council for Exceptional Children.
- Martin, J. E., & Huber Marshall, L. (1996). *ChoiceMaker: Infusing self-determination instruction into the IEP and transition process*. In D. J. Sands & M. L. Wehmeyer (Eds.).

- Powers, L. E., Singer, G. H. S., & Sowers, J. A. (Eds.). (1998). *On the road to autonomy: Promoting self-competence in children and youth with disabilities*. Baltimore, MD: Paul H. Brookes Publishing Company.
- Powers, L.E. *Take charge for the future*. Oregon Health Sciences University, P.O. Box 574, Portland, Oregon.
- Sands, D. J., & Wehmeyer, M. (Eds.). (1998). *Self-determination across the life span: Independence and choice for people with disabilities*. Baltimore, MD: Paul H. Brookes Publishing Company.
- Self-determination across the life span: Independence and choice for people with disabilities (pp. 215-236). Baltimore, MD: Paul H. Brookes Publishing Company.
- Student rights: What you need to know. (1998, Winter). *What's Working in Transition: Transition News, Information, and Resources from Minnesota*. Minneapolis, MN: University of Minnesota.
- Van Reusen, A. K., Bos, C. S., Schumaker, J. B., Deschler, D. D. (1994). *The self advocacy strategy for education and transition planning*. Lawrence, KS: Edge Enterprises, Inc.
- Wehmeyer, M. L. (1995). *The ARC's self-determination scale: Procedural guidelines*. Arlington, TX: The ARC.
- Wehmeyer, M. L., Agran, M., & Hughes, C. (1998). *Teaching self-determination to students with disabilities: Basic skills for successful transition*. Baltimore, MD: Paul H. Brookes Publishing Company.

## **Legal References**

Individuals with Disabilities Education Act, Public Law 108-446 (December 3, 2004).  
Oregon Administrative Rules  
Oregon Revised Statutes

On-Line References: <http://www.ode.state.or.us/search/results/?id=266>