



Section 9: Transfer of parental rights

Section overview

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The IDEA provides for the transfer of parental educational rights when students with disabilities on IEPs reach the age of majority, or the age at which you legally become an adult. In Oregon, this happens when you turn 18, get married or are legally emancipated. You have several informal and formal (requiring legal representation) options to consider as you and your family prepare for this milestone. In this section, we provide general information regarding your options with links to other resources.

The transfer of parental rights

The transfer of parental rights is required in the IDEA. Your school district must provide notice of this transfer a year before your 18th birthday. Beginning at least one year before you turn 18, the school district must:

- Provide you with a copy of the ODE Notice of Procedural Safeguards at the IEP meeting closest to your 17th birthday;
- Inform you that special education rights will transfer from your parents to you when you turn age 18;
- Write a statement in your IEP that you and your family have been informed of the transfer of parental rights.

At age 18, you are no longer under the legal guardianship of your parent or other adult unless a court has established adult guardianship. When you turn 18, you will receive written notice that your rights have transferred. At that time, you will:

- Become responsible for making decisions about your own education including eligibility, IEP and placement meetings;
- Consent or refuse consent for evaluation or reevaluation, and exercise other special education rights.

Once these rights transfer, parents (except for parents of incarcerated students) must continue to receive notices of meetings and prior written notices of district actions. Parents still have the right to review your school records and file a complaint on your behalf as a concerned citizen. However, your parents may not attend IEP meetings unless you or the school district specifically invites them.

If you and your family are concerned about your ability to make decisions, you have several informal and formal options to consider.

Informal options to the transfer of rights

Most people do not make important decisions without talking with their parents, friends and others that know them well. You and your family can still work together as critical IEP team members after parental rights transfer to you, the student. The difference will be that you will have final decision-making authority. Below are a couple strategies to consider.

- **Actively participate in your IEP meetings.** Consider participating in or leading your IEP meetings. This will help you develop critical self-determination skills. You can use these skills throughout adulthood. Section 2 includes information and resources about self-determination skills and student-led IEPs.
- **Make a written request to keep your parents involved.** Write a letter to your school district administrator saying you want your parents to keep participating in all IEP meetings and discussions about your school and work goals. Ask the school district to insert the letter in your permanent file. Parents are usually involved in their children's lives well beyond high school; they can continue to advocate for and support you in your goals during IEP meetings and in other parts of your life.



Formal options to the transfer of rights

Several legal options exist for you and your parents if you think you will need more support. We have included several options below with links to more resources. It is important to talk with an attorney experienced in guardianship and alternatives when considering these options.

Surrogate parent

Students who are wards of the state or whose biological parents are not available can request a surrogate parent from the school district. This person will represent the student in all special education matters and make educational decisions as part of the student's IEP team. This person must be willing to accept the responsibility of being a surrogate parent. He or she must have the necessary knowledge and skills to protect the student's rights. The surrogate cannot be an employee of the school district, Oregon Department of Education or a state agency involved in the student's education or care. A surrogate must also not have a conflict of interest that would interfere with representing the student's best interests.

Guardianship

Guardianship is the formal process where a judge appoints another person, called a guardian, to act on behalf of an "incapacitated" person. Oregon law requires that guardians encourage maximum independence for the person. Always consult an attorney if you have questions about guardianship.

A judge orders a guardian for a protected person if evidence shows three things:

- The person is incapacitated, which means he or she cannot make decisions well enough to get health care, food or shelter, or to avoid serious injury.
- A guardian is necessary to oversee the care and supervision of the person.
- The guardian is qualified, suitable and willing to serve.

Conservatorship

Conservatorship is similar to guardianship in Oregon, except that a conservator only makes decisions about the person's money or property. A judge orders a conservator if evidence shows that a person cannot manage his or her money or has money or property that requires management or protection.

Power of attorney

A power of attorney is a legal document that allows a person to give another person (called an "agent") the right to act on the person's behalf about financial decisions only. The power of attorney can give the agent limited authority, like over a bank account; or broad authority, like over a person's entire collection of assets (including bank accounts, property or estate).

Powers of attorney can be written to go into effect right away, even when the person giving the authority to the agent still has full capacity. They can also be written to take effect only when the person becomes incapacitated. A power of attorney can be revoked in writing if the person still has capacity.

Representative payee

A representative payee is a person who can only manage the person's government benefits like SSI or SSDI payments (Section 8). People that need help managing other parts of their lives may establish another decision-making authority like a power of attorney.

Several other types of legal decision-making relationships can protect a person's well-being. The booklet "Options in Oregon to Help another Person Make Decisions" has more helpful information.



Resources

ODE K-12 procedural safeguards

www.ode.state.or.us/wma/pubs/proceduralsafeguards/k21/englishk21.pdf

Oregon State Bar (for help to find an attorney)

www.osbar.org/

Guardianship Handbook: Protective Proceedings for Adults

<http://droregon.org/wp-content/uploads/Guardianship-Handbook-Third-Edition.pdf>

Managing Someone Else's Money: Help for court-appointed guardians of property and conservators

http://files.consumerfinance.gov/f/201310_cfpb_lay_fiduciary_guides_guardians.pdf

Managing Someone Else's Money: Help for agents under a power of attorney

http://files.consumerfinance.gov/f/201310_cfpb_lay_fiduciary_guides_agents.pdf

Managing Someone Else's Money: Help for representative payees and VA fiduciaries

http://files.consumerfinance.gov/f/201310_cfpb_lay_fiduciary_guides_representative.pdf

Options in Oregon to Help Another Person Make Decisions

http://ocdd.org/doc_downloads/Guardianship_and_other_options_booklet.pdf