

DOCUMENT RESUME

ED 453 613

EC 308 421

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TITLE Transfer of Rights: A Special Education Technical Assistance Document.
INSTITUTION Oregon State Dept. of Education, Salem. Special Education Section.
PUB DATE 2000-03-00
NOTE 22p.; Developed in collaboration with Meg Nightingale and Beverly Sali.
AVAILABLE FROM Oregon State Dept. of Education, Office of Special Education, 255 Capitol St. NE, Salem, OR 97310-0203; Tel: 503-378-3569; Fax: 503-373-7968.
PUB TYPE Guides - Non-Classroom (055)
EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Disabilities; Legal Responsibility; *Personal Autonomy; Secondary Education; *Self Advocacy; *Self Determination; *State Regulation; *Student Rights
IDENTIFIERS *Oregon

ABSTRACT

This report explains the transfer of legal rights to students with disabilities at age 18 in Oregon. Sections of the report address: (1) the rights that transfer to the student; (2) the rights that parents keep; (3) school district notice requirements; (4) alternatives to the transfer of rights, including the appointment of a surrogate parent by the school district at the student's request or through a court appointed guardianship; (4) the role of the surrogate parent and the guardian; (5) preparing for the transfer of rights; (6) self-advocacy; and (7) ensuring students develop the skills necessary to be able to make choices and decisions about the future. Answers to frequently asked questions concerning the transfer of rights at the age of majority are provided, along with information about the rights of incarcerated youth. A form for the notice of transfer of special education rights is included, as well as a list of organizational resources in Oregon. The report closes with the statutory language from Oregon's reviewed statute concerning the age of majority, surrogate parents, transfer of procedural rights, and notice of transfer of rights. (Contains 30 references.) (CR)

Transfer of Rights.

A Special Education Technical Assistance Document

Oregon Department of Education
Office of Special Education

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March 2000

TRANSFER OF RIGHTS AT AGE OF MAJORITY

For school districts and families

In Oregon, at age 18, a person reaches the "age of majority." Oregon law assumes that at age 18, individuals are capable of decision-making in all areas of life, including education.

Under federal and state laws, procedural rights transfer from the parent to the student when the student reaches the age of majority. This is called "transfer of rights." Districts must notify parents and students that the rights will transfer at least one year before the student's 18th birthday.

Section I: Transfer of Rights Requirements

What Rights Transfer to the Student?

After rights transfer:

- 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 rights transfer to the student:

- Parents have a right to receive notice of educational meetings (such as IEP meetings). This notice is not an invitation to these meetings. 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 participants.
- Parents will still 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 may file a letter of complaint as a concerned citizen.

School District Notice Requirements

School districts must give notice two different times when rights transfer from parents to students:

- The school district must give notice at least one year before the student turns 18. The student's IEP must include a statement that the student has been informed of the special education rights that will transfer to the student at age 18.
- School districts must also notify the student and the parents at the time of the transfer of rights.

Alternative to the Transfer of Rights

The Oregon law provides two alternatives to the transfer of rights, the appointment of a surrogate parent by the school district at the student's request or through a court appointed guardianship.

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 team. 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.

The surrogate parent must be willing to accept the responsibility, 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, later on, the student wants to exercise his/her educational rights, the student may make a written request to the school district to revoke the surrogate's appointment.

What is Guardianship?

If parents do think 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)

Guardianship may be tailored to the individual situation. Guardianship can be limited to a single area such as educational or medical decision-making, or it can be full guardianship, including the authority to make decisions about all areas of life.

Any adult who is qualified and suitable and is willing to serve 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. The guardian will participate in decision making as part of the IEP team.

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

Section II: 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 priorities, needs, and options.
- Reading and discussing together the “Notice of Procedural Safeguards” booklet.
- Addressing preparation for transfer of rights as part of the IEP transition services (such as self-determination, self-advocacy, and decision-making).
- Requesting information about student self-advocacy training/courses and enroll, if appropriate.
- Contacting legal counsel or community organizations to explore guardianship options.

Self-Determination

Self-determination is the capacity to make choices about life and have those choices determine 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. 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. To aid in self-determination, parents and teachers may want to begin to address at an early age, skill development in self-advocacy and in making choices at an early age.

Self-Advocacy

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 in everyday life. 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.

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.

Students need to understand and be able to exercise their rights and responsibilities related to IEPs 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 successes 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.
- 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.

Making Choices

Students need to develop the skills necessary to be able to make choices and decisions about their future. They must determine priorities and develop their visions. To make informed choices, students need information about different options. 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 strategies or accommodation that work 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 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.

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

The district cannot discontinue special education merely at the request of the student. 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. 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 school district cannot compel the student to attend school if the student does not want to continue.

6) 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 the school district. The parent does not have standing to request a due process hearing but may file a complaint with the Oregon Department of Education.

7) 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. The district can have an IEP meeting without the student if the district:

- Made sufficient attempts to arrange a mutually agreeable time and place for the meeting, and
- Documented such attempts in the student's record.

Sufficient attempts means:

- communicating directly with the student to arrange a mutually agreeable time and place;
- sending written notice to confirm the arrangement or proposing a time and place and stating in the notice that the student may request a different time and place; and
- confirming that the student received the notice.

8) 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. The nature of the participation changes. The student is now the person acting in his/her behalf.

9) 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 a hearing officer, using the same procedures as for overriding refusal to consent.
- e. In some counties, the GAPS Program (Guardianship, Advocacy & Planning Services) or the Office of Public Guardianship may be available to seek appointment as guardian.
- f. The school district may directly petition the Probate Court for appointment of a guardian. Before taking this step, the staff should consult with an attorney representing the district. If the district initiates a guardianship process, it may be responsible for the costs.

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 in an Oregon Youth Authority?

Yes. Rights transfer as for other youth at the time they turn 18 even if the educational agency appointed the surrogate. 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 notice to 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 parental rights, and to the student.

For More Information

Oregon State Bar

Oregon Lawyer Referral Service
(503) 684-3763 or 1-800-452-7636

Tel-Law

(503) 620-3000 or 1-800-452-4776

Oregon Advocacy Center

620 S.W Fifth Ave., 5th floor,
Portland, OR 97204-1428
(503) 243-2081 or 1-800-452-1694
Fax: (503) 243-1738
www.oradvocacy.org

Coalition in Oregon for Parent Education (COPE)

(503) 581-8156 or 1-888-505-2673
www.open.org/orcope

Guardianship, Advocacy, & Planning Services (GAPS)

The ARC of Oregon

1745 State Street
Salem, Oregon 97301
(503) 581-2726
Fax: (503) 363-7168
www.open.org/arcoforg/

Oregon Department of Education

Office of Special Education

255 Capitol St NE
Salem OR 97310
(503) 378-3598 ext. 637
www.ode.state.or.us/sped/index.htm

NOTICE OF TRANSFER OF SPECIAL EDUCATION RIGHTS

Date _____

Dear _____ and _____ :
Parent(s) Student

When _____ turns 18 on _____ all special
Student

education rights given to the parent(s) will transfer to the student, unless a court has appointed a legal guardian. Parent(s) will continue to receive any future notice required by state and federal laws regarding the educational program for the student. If you have questions, you may contact the person listed below.

NAME	POSITION	TELEPHONE

ADDRESS		

A copy of procedural safeguards is enclosed.

Oregon Laws and Rules

Oregon Revised Statute

109.510 Age of majority. Except as provided in ORS 109.520, in this state any person shall be deemed to have arrived at majority at the age of 18 years, and thereafter shall have control of the own actions and business of the person, have all the rights and be subject to all the liabilities of a citizen of full age. [Amended by 1973 c.827 s.14]

109.520 Majority of married persons. ...all persons shall be deemed to have arrived at the age of majority upon their being married according to law. [Amended by 1953 c.343 s.2; 1957 c.710 s.12; 1973 c.827 s.15]

125.005 Definitions. As used in this chapter:

..."Financially incapable" means a condition in which a person is unable to manage financial resources of the person effectively for reasons including, but not limited to, mental illness, mental deficiency, physical illness or disability, chronic use of drugs or controlled substances, chronic intoxication, confinement, detention by a foreign power or disappearance. "Manage financial resources" means those actions necessary to obtain, administer and dispose of real and personal property, intangible property, business property, benefits and income.

"Guardian" means a person appointed as a guardian under the provisions of this chapter.

"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 or 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...

Oregon Administrative Rule

(OAR) 581-015-0099 Surrogate Parents

(1) School districts shall ensure that the rights of a child are protected by appointing a surrogate parent when:

- (a) The parent, cannot be identified or located after reasonable efforts; or
- (b) The child is a ward of the state and there is reasonable cause to believe that the child has a disability.

(2) In determining the need for a surrogate, the school district shall consider whether it is likely to take any action regarding the child which would require notice under OAR 581-015-0075 to the parents, substitute care provider, or state agency which has legal guardianship of the child.

(3) Each school district shall secure nominations of persons to serve as surrogates. The school district shall ensure that each person approved to serve as a surrogate:

(a) Is not an employee of the school district or the;

(b) Is not 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-education care for the child;

(c) Is free of any conflict of interest that would interfere with representing the child's special education interests; and

(d) Has or can acquire the necessary knowledge and skills protect the special education rights of the child.

(4) An appointed surrogate parent shall have all of the special education rights and procedural safeguards available to the parent.

(5) A surrogate shall not be considered an employee of a school district solely on the basis that the surrogate is compensated from public funds.

(6) The duties of the surrogate parent are to:

(a) Protect the special education rights of the child;

(b) Be acquainted with the child's disability and the child's special education needs;

(c) Represent the child in all matters relating to the identification, preplacement, or annual evaluation, IEP and educational placement of the child; and

(d) Represent the child in all matters relating to the provision of a free appropriate public education to the child.

(7) A surrogate shall have the same rights granted to a parent in a hearing under OAR 581-015-0080, and the procedures regarding hearings set forth in OAR 581-015-0081 through 581-015-0091 shall apply.

(8) A parent may give written consent for a surrogate to be appointed. When a parent requests that a surrogate be appointed, the parent shall retain all parental rights to receive notice under OAR 581-015-0063, 581-015-0067, 581-015-0075, and 581-015-0079 and all of the information provided to the surrogate. The surrogate, alone, shall be responsible for all matters relating to the special education of the child unless the parent revokes consent for the surrogate's

appointment. If a parent gives written consent for a surrogate to be appointed, the parent may revoke consent at any time by providing a written request to revoke the surrogate's appointment.

(9) A child to whom rights have transferred at age of majority may give written consent for a surrogate to be appointed. When a child requests that a surrogate be appointed, the child shall retain all rights to receive notice under OAR 581-015-0063, 581-015-0067, 581-015-0075 and 581-015-0079, and all of the information provided to the surrogate. The surrogate, alone, shall be responsible for all matters relating to the special education of the child unless the child revokes consent for the surrogate's appointment. If a child gives written consent for a surrogate to be appointed, the child may revoke consent at any time by providing a written request to revoke the surrogate's appointment.

(10) The school district may change or terminate the appointment of a surrogate when:

(a) The person appointed as surrogate is no longer willing to serve;

(b) The child reaches 21 years of age or the child's elementary/secondary schooling is terminated;

(c) The child is no longer eligible for special education services;

(d) The legal guardianship of the child is transferred to a person who is able to carry out the role of the parent;

(e) A foster parent is identified who can carry out the role of parent under OAR 581-015-0005;

(f) The parent, who previously could not be identified or located, is now identified or located;

(g) The appointed surrogate is no longer eligible; or

(h) The child moves to another school district.

(11) A person appointed as surrogate shall not be held liable for actions taken in good faith on behalf of the parent in protecting the special education rights of the child.

(12) The school district shall not appoint a surrogate solely because the parent or child to whom rights have transferred is uncooperative or unresponsive to the special education needs of the child.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055

Stats. Implemented: ORS 343.155 & ORS 343.045

Hist.: 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 9-1992, f. & cert. ef. 4-7-92; EB 11-1995, f. & cert. ef. 5-25-95; ODE 23-1999, f. & cert. ef. 9-24-99

(OAR) 581-015-0101 Transfer of Procedural Rights at Age of Majority

- (1) When a child with a disability reaches the age of majority under ORS 109.510 or 109.520, or is emancipated pursuant to ORS 419B.550 to 419B.558, the rights accorded to the child's parents under the special education laws transfer to the child.
- (2) Notwithstanding section (1) of this rule:
 - (a) Pursuant to a protective proceeding under ORS Chapter 125, the Probate Court may find the child to be incapacitated to make educational decisions and may appoint a guardian to exercise these rights.
 - (b) Under ORS 419B.223, the Juvenile Court may appoint a surrogate parent to exercise these rights if the child is under wardship.
- (3) School districts are not responsible for the costs of a protective proceeding unless the school district is the Petitioner.
- (4) Even after transfer of rights to the child, the school district shall provide any written prior notices and written notices of meetings required by the special education laws to the child and to the parent if the parent can be reasonably located.
- (5) After transfer of rights to the child, receipt of notice of an IEP meeting does not entitle the parent to attend the meeting unless invited by the child or the school district.
- (6) Pursuant to OAR 581-015-0099(9), a child to whom rights transfer may request that a surrogate be appointed to exercise the child's special education rights.

Stat. Auth.: ORS 343.055

Stats. Implemented: ORS 343.155

Hist.: ODE 24-1999, f. & cert. ef. 9-24-99

(OAR) 581-015-0102 Notice of Transfer of Rights at Majority

(1) The school district shall provide notice to the child and the parent that rights will transfer at the age of majority: This notice shall be provided at the IEP meeting and documented on the IEP:

(a) At least one year before the child's 18th birthday; or

(b) More than one year before the child's 18th birthday, if the child's IEP Team determines that earlier notice will aid transition;

(c) Upon actual knowledge that within a year the child will likely marry or become emancipated prior to age 18.

(2) The school district shall provide written notice to the child and to the parent at the time of the transfer.

(3) The Department shall include information about transfer of rights in the Notice of Procedural Safeguards required by OAR 581-015-0079.

Stat. Auth.: ORS 343.055

Stats. Implemented: ORS 343.155

Hist.: ODE 25-1999, f. & cert. ef. 9-24-99

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Development credits:

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EFF-089 (3/2000)