



DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS

Office of Special Education

August 2013

# Transfer of Rights Guidelines

Approved by the Chancellor, Kaya Henderson: WR for K. Hend Date: 8/15/13

## Transfer of Rights Guidelines

---

### Purpose

- The purpose of these guidelines is to outline the procedures to be used when parental rights under Part B of the Individuals with Disabilities Act (IDEA) transfer to adult students, and to make recommendations regarding the support of adult students during this process, including ways in which parents and families can stay involved in the decision-making process. With the publication of these Guidelines, DCPS hereby revokes all prior guidance on the Transfer of Rights.

### Guidelines

In accordance with the Individuals with Disabilities Education Improvement Act (IDEA) (20 USC § 1415(m)) and the District of Columbia Municipal Regulations (DCMR) (Title 5 § 3023.1), rights given to parents under Part B of IDEA automatically transfer to a child with a disability when that child reaches the age of eighteen. This also applies to youth who are incarcerated. To comply with IDEA and the DCMR, LEA Representatives, special education teachers, case managers, and IEP team members shall adhere to the following guidelines when parental rights transfer to an adult student.

In the District of Columbia, a student shall be presumed competent to assume rights upon reaching age 18, including the rights to make all educational decisions and sign legal documents. In some instances a court may find the adult student incompetent and create a legal guardianship in which a parent or other adult is granted the power to make all decisions for the adult student. However, there are alternatives to guardianship in which family members or former guardians can make educational decisions for or support adult students in the decision-making process, even when they are competent and capable of making decisions on their own.

Beginning when the student is in 9<sup>th</sup> grade, but in no cases later than the year the student will turn 16, and in all subsequent IEP meetings before the student's 18<sup>th</sup> birthday, the LEA Representative shall:

- Inform parents and students that parental rights under IDEA Part B will transfer to the student when the student reaches age 18, unless the student has been determined, by court order, to be incompetent.
- Offer parents information on the various ways in which they continue to offer support to their adult student, including supported decision-making.
- If parents express concern regarding the ability of their student to assume rights, LEA Representatives shall refer parents to the following organizations for more information:
  - ARC of DC, 415 Michigan Ave., NE, Suite 400, Washington, DC 20017. [arcadc@arcdc.net](mailto:arcadc@arcdc.net). 202-636-2950.

- Quality Trust for Individuals with Disabilities, 5335 Wisconsin Avenue NW, Suite 825, Washington, DC 20015. (202) 448-1450.
- Department on Disability Services (DDS), 1125 15th Street, NW, Washington, DC 20005. [dds@dc.gov](mailto:dds@dc.gov). (202) 730-1700.
- The Department of Human Services (DHS), 64 New York Avenue, NE, 6<sup>th</sup> Floor, Washington, DC 20002. [dhs@dc.gov](mailto:dhs@dc.gov). 202-671-4200
- DC Superior Court, Probate Division, 500 Indiana Ave, 5<sup>th</sup> Floor, Washington, DC 20001. 202-879-9640.
- Review the procedural safeguards document (*Caring for Our Students with Disabilities: A Procedural Manual for Parents*) with parents and students.
- Verify in SEDS and document in the IEP meeting notes that the transfer of rights was discussed, confirming that both the student and the parent were informed that parental rights under IDEA will transfer to the student upon reaching the age of majority.

The LEA Representative shall convene an IEP team meeting as soon as possible after the student's 18<sup>th</sup> birthday to confirm the transfer of educational rights to the student, and to discuss methods of supporting the adult student. This meeting may be combined with the student's annual IEP review meeting if appropriate.

At the meeting following the student's 18<sup>th</sup> birthday, the LEA Representative shall:

- Generate a pre-transfer of rights document in SEDS under the Student/Parent Information section. For more information, see the SEDS Resource Site at <https://sites.google.com/a/dc.gov/seds-help-resources/feedback/video/seds-basic-user-training-course/module-3-student-parent-information>
- Inform parents and students that parental rights under IDEA Part B transferred to the student on the student's 18<sup>th</sup> birthday, unless the student has been determined incompetent and a guardian has been appointed, The LEA Representative should also inform parents about how they can assist their adult student through supported decision-making and other methods of assistance.
- Discuss the rights that accrue to the student on the student's 18<sup>th</sup> birthday, as outlined in IDEA Part B and the procedural safeguards manual (*Caring for Our Students with Disabilities: A Procedural Manual for Parents*).
- Review the "Notice of Transfer of Parental Rights" form and procedural safeguards manual (*Caring for Our Students with Disabilities: A Procedural Manual for Parents*) with parents and students.
- Obtain signatures from the parent and student on the "Notice of Transfer of Parental Rights" form.
- At this meeting, the LEA representative should reiterate that the adult student has the option of ensuring that their parents remain informed and active in the special education process through supported decision-making. The LEA Representative should provide a copy of the consent to the student and explain that they may provide consent for their parent to remain involved through the supported decision making process. See page 5 for more information.
- Fax the completed "Notice of Transfer of Parental Rights" form into SEDS, verifying that both the student and parent have been informed that parental rights under IDEA transferred to the student on the student's 18<sup>th</sup> birthday.

- Additionally, if the adult student and their parent wish to create a supported decision-making model either at the meeting or following the meeting, both the student letter and the “Supported Decision-Making Request Form” release should be uploaded into SEDS with a miscellaneous fax sheet titled, “Supported Decision-Making Model”.

When a student turns 18, parents and other IEP team members should keep in mind that the ability to make sound, reasoned decisions is a skill acquired over time, and that students with disabilities would benefit from the opportunity to practice making decisions in a supported environment. Even though educational rights are essentially automatically transferred to a special education student at age 18, there are still ways to grant parents some ability to assist and be considered in the educational decision-making process, without completely taking away an individual's rights through a guardianship hearing. Supported decision-making is a method by which both parents and students can remain involved in the educational decision-making process:

- **Supported decision-making:** Supported decision-making is when a student over the age of 18 years retains their rights as the ultimate decision-maker but consents to let parents continue to be involved. It is essentially an option in which families remain engaged while children keep formal rights.
  - **Steps to creating a supported decision-making environment:**
    - Parents should have the student sign the "Supported Decision-Making Request Form" release (or a similar form), allowing the parent or former guardian to have access to educational records and information, including all educational notices sent to the student.
    - Parents should assist the student in writing a letter to the school explaining that they want their parents/ former guardians invited to all meetings.
      - Note: Although educational rights under IDEA Part B transfer to the student, parents continue to be allowed access to their child's education records under the Family Educational Rights and Privacy Act (FERPA) (20 USC §1232 g) if the student is the parent's dependent, as defined in Section 152 of the Internal Revenue Code. When the student is a dependent of the parents, the parents will also continue to receive meeting notices, but may only participate in these meetings if allowed by the student.
    - Both the student letter and the "Supported Decision-Making Request Form" release should be uploaded to SEDS into a "Supported Decision-Making Model" folder.
  - **Suggestions for supported decision-making:**
    - Parents should help the student prepare for school meetings by:
      - Discuss the last IEP and any new evaluations or results
      - Discuss what they do or do not like about school
      - Help the student prepare questions to ask at the meeting
    - Parents should attend the school meetings, but let the student speak, only offering reminders and sharing opinions and ideas when asked for assistance.
    - Parents should remember that they can step out of the meeting to share concerns or discuss an issue with the student one-on-one .
    - Parents should remind the student that they can bring home any papers that need to be signed and think through things before making a decision.

Even if a formal supported decision-making environment is not created, IEP team members should encourage families to support all adult students in their decision-making process, not just those whom have attempted to formally include their parents in these processes. Additionally, school representatives should encourage families to pursue less restrictive options such as the models discussed above before attempting to establish legal guardianship, which deprives adults of their decision-making capacity in all areas well beyond their involvement in school.

**If a parent does not attend the IEP meeting where transfer of rights is discussed:**

If the IEP meeting has been confirmed but the parent does not attend, the LEA Representative shall:

- Send the “Notice of Transfer of Parental Rights” form to the parent(s) both by certified mail with a return receipt and by first class mail.
- Document in the SEDS Communication Log at least three diligent efforts (phone calls, home visits, etc.) to obtain a parental signature on the “Notice of Transfer of Parental Rights” form.

If a parental signature cannot be obtained after making the notice efforts outlined above, rights will still transfer to the adult student in accordance with the IDEA and DCMR.

**If school or district personnel suspect the student is incompetent but a guardian has not been appointed:**

When the student reaches age 18, the student is presumed to be competent and parental rights will transfer to the student unless a court order is presented that declares the student incompetent.

While a school or staff member may have doubts regarding a student’s competence, this cannot in any way impede the transfer of rights to the student. School and district personnel shall not use the transfer of parental rights to an adult student as an opportunity to encourage the student to exit himself/herself from special education services. In cases where the school has concerns about the competence of the student, they should refer the parent to the ARC of Washington DC, [arcdc@arcdc.net](mailto:arcdc@arcdc.net), or 202-636-2950 for support and guidance.

*This guidance is current as of August 2013. DCPS has the discretion to revise, amend or revoke this guidance at any time.*