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Determining Adult Student Capacity for Educational Decision-Making Sample Form

Student: _____ Date: _____
Student D.O.B.: _____ Parent(s) Name(s): _____
District: _____ School: _____

DISCLAIMER: This document is intended solely for informational purposes. It's use is not mandatory, and school districts are encouraged to seek legal counsel to ensure compliance with state and federal law.

IMPORTANT: All adult students are presumed capable of making educational decisions. This form should only be used when there are significant concerns about capacity, and only after providing robust supports. The determination of incapacity requires clear evidence that the adult student cannot provide informed consent even with maximum supports.

BACKGROUND INFORMATION

Primary Disability Category: _____
Secondary Disability (if applicable): _____
Date Rights Transferred to Student: _____
Student's Preferred Communication Method: _____
Student's Primary Language: _____

PROCEDURAL SAFEGUARDS

- ☐ Student received notice of the meeting in which this will be completed in accessible format
- ☐ Student was informed of their right to disagree with determination
- ☐ Student was informed of appeal/complaint procedures
- ☐ Copy of Procedural Safeguards provided and explained
- ☐ Student's preferred supporters were invited to participate

SUPPLEMENTARY AIDS AND SERVICES

Check all that have been tried and document effectiveness:

Communication Supports:	Decision-Making Supports:	Environmental Supports:
<input type="checkbox"/> Visual aids/pictures <input type="checkbox"/> Simplified language <input type="checkbox"/> Extra processing time <input type="checkbox"/> AAC device <input type="checkbox"/> Interpreter <input type="checkbox"/> Written summaries <input type="checkbox"/> Social stories <input type="checkbox"/> Video explanations	<input type="checkbox"/> Role-playing scenarios <input type="checkbox"/> Breaking down complex information <input type="checkbox"/> Repeated explanations <input type="checkbox"/> Peer/family support present <input type="checkbox"/> Practice opportunities <input type="checkbox"/> Visual decision-making tools <input type="checkbox"/> Pros/cons lists <input type="checkbox"/> Decision-making frameworks	<input type="checkbox"/> Quiet setting <input type="checkbox"/> Familiar location <input type="checkbox"/> Preferred time of day <input type="checkbox"/> Breaks as needed <input type="checkbox"/> Reduced distractions <input type="checkbox"/> Comfort items allowed

Effectiveness

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Other Supports Provided:

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Support	Date(s) Implemented	Effectiveness	Notes

SUPPORTED DECISION-MAKING EFFORTS

Before determining incapacity, document all attempts at supported decision-making:

How does the student prefer to receive information? (Check all that apply)

- | | |
|---|---|
| <input type="checkbox"/> Verbal explanation | <input type="checkbox"/> Demonstration |
| <input type="checkbox"/> Written materials | <input type="checkbox"/> Discussion with trusted person |
| <input type="checkbox"/> Visual/graphic | <input type="checkbox"/> Other: _____ |

Who has the student identified as trusted supporters?

What decision-making strategies work best for this student?

What environmental factors support their decision-making?

Describe specific supported decision-making strategies attempted:

STUDENT PARTICIPATION AND PERSPECTIVE

How was the student involved in this determination process?

What are the student's identified educational goals?

Who does the student want to help with decisions?

What concerns does the student have about this process?

Student's own view of their decision-making abilities:

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DETERMINING CAPACITY**Rating Scale:**

- 4: Full Capacity** - Student consistently demonstrates ability (with or without supports)
3: Emerging Capacity - Student demonstrates ability inconsistently but shows progress with supports
2: Significant Support Needed - Student requires extensive support but can participate in some aspects of the area being considered
1: Unable to Demonstrate - Student cannot demonstrate this skill even with maximum supports

Understanding Educational Information

Area	Rating	Evidence/Examples	Supports That Helped
Understands the purpose of an IEP: Can the student explain why they have an IEP?			
Recognizes their own educational strengths and needs: Can they identify what they're good at and what's hard?			
Comprehends educational options available: Do they understand different class/service options?			
Understands implications of educational decisions: Can they explain how choices affect their future?			
Retains information long enough to make decisions: Can they remember options discussed earlier?			

Communication of Educational Preferences and Decisions

Area	Rating	Evidence/Examples	Supports That Helped
Expresses preferences regarding educational program: Can they say what they want/don't want?			
Communicates choices consistently: Do they share choices they've made over time?			
Can explain reasoning behind choices: Can they tell you why they want something?			
Communicates agreement or disagreement: Can they communicate yes or no to proposals?			

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Area	Rating	Evidence/Examples	Supports That Helped
Asks questions or requests clarification: Do they seek help understanding things?			

Evaluation of Options

Area	Rating	Evidence/Examples	Supports That Helped
Considers advantages and disadvantages of options: Can they identify good and bad parts of choices?			
Relates decisions to personal goals: Do choices connect to what they want in life?			
Identifies potential consequences: Can they predict what might happen?			
Considers input while maintaining autonomy: Can they listen to advice but make own choice?			
Adjusts decisions with new information: Can they change their mind when it makes sense?			

Real-World Application

Area	Rating	Evidence/Examples	Supports That Helped
Makes consistent decisions in daily life: Do they make choices in other areas of life?			
Applies past experiences to decisions: Do they learn from what happened before?			
Identifies when help is needed: Do they know when to ask for support?			
Advocates for personal needs: Can they speak up for what they need?			
Shows awareness of safety: Do their choices consider safety?			

Relevant Formal Educational Assessment Results:

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Relevant Medical Information:

Observations of Real-World Functioning:

Input from Family/Caregivers:

IEP TEAM DETERMINATION

If the IEP team finds either of the following to be true, a surrogate may be needed:

- ☐ The student has a condition or circumstance that significantly interferes with understanding and meaningful participation in the IEP process, even with supplementary aids and services.
- ☐ The student experiences significant limitations in communicating educational concerns or expressing preferences/needs that interfere with meaningful participation, even with supplementary aids and services.

If either or both boxes are checked, provide detailed justification:

IEP Team Determination

Based on the information above, the IEP team has determined that:

- ☐ The student **HAS** capacity to provide informed consent regarding their educational program (may benefit from continued supports as described).
- ☐ The student **DOES NOT** have capacity to provide informed consent regarding their educational program, even with provision of supplementary aids and services.

SURROGATE DETERMINATION (Complete only if student determined to need surrogate)

Student's expressed preference regarding potential surrogate:

Parent input regarding potential surrogate (if parent not selected):

CONSIDERATION OF FACTORS PER OAR 581-015-2325(2)(C):

- ☐ Student's preference considered
- ☐ Parent input considered (if applicable)

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- ☐ Pre-existing positive relationship exists
- ☐ Proposed surrogate understands responsibilities
- ☐ Proposed surrogate understands supported decision-making
- ☐ No disqualifying factors present

Name of surrogate to be appointed: _____

Contact information: _____

Relationship to student: _____

Note: Once a person is named here, districts must follow their policies and procedures for appointment of that individual as a surrogate.

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District: _____

Date: _____

Parent(s) Name(s): _____

School: _____

REVIEW AND PROGRESS MONITORING

This determination will be reviewed no later than: _____ (date within 365 days)
The determination may be reviewed earlier upon request of the student or surrogate parent.

How will the IEP team work to increase student’s decision-making capacity?

SIGNATURES

Role	Name (Print)	Signature	Date
Student			
Parent/Guardian			
Special Education Teacher			
General Education Teacher			
District Representative			
School Psychologist/Evaluator			
Related Service Provider			
Other: _____			

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STUDENT-FRIENDLY SUMMARY PAGE

(To be completed and provided to student in accessible format)

What happened today:

We met to talk about how you make decisions about your education.

What we decided:

- ☐ You can make your own educational decisions. We will help you when you need it.
☐ You need someone to help you make educational decisions. The person who will help is: _____

Your rights:

- You can disagree with this decision
- You can ask for another meeting
- You can file a complaint
- You will get a copy of your rights

Next steps:

Questions? Contact: _____ Phone: _____

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Directions to Education Agency – Determining Adult Student Capacity for Educational Decision-Making Authority

This form is intended to support education agencies in complying with the requirements of the Individuals with Disabilities Education Act (IDEA) 2004 regulations related to transfer of rights at age of majority per 34 CFR § 300.520, as well as OAR 581-015-2320 (Surrogate Parents) and OAR 581-015-2325 (Transfer of Procedural Rights at Age of Majority). Its use is not required. Education agencies can choose to develop their own forms and procedures that comply with the requirements of federal and state authorities. Education agencies should consult with legal counsel regarding the applicable requirements of federal and state regulations. Remember that the goal is always to maximize student autonomy and self-determination while ensuring access to appropriate educational services.

Purpose

Use this form to document the IEP team’s determination of whether an adult student has the capacity to provide informed consent regarding their educational program. This process must be conducted with respect to the principles of self-determination, presuming competence, and the dignity of risk.

Key Principles

Presuming Competence

- All adult students are presumed capable of making educational decisions
- The burden is on the IEP team to demonstrate clear evidence of incapacity
- Incapacity is not determined by disability category or label
- Communication differences do not equal incapacity

Self-Determination

- Students have the right to make their own choices, even if others disagree
- The goal is to maximize student autonomy and decision-making while ensuring that informed consent is provided for their educational program
- Supported decision-making must be explored before determining incapacity

Dignity of Risk

- Students have the right to make decisions that others might view as risky or unwise
- Poor decisions or disagreement with recommendations does not indicate incapacity
- Learning from mistakes is part of self-determination
- Safety concerns alone do not justify removing decision-making rights

When Is This Form Used?

Use this form **ONLY** when:

1. A student has reached age of majority (18) or been emancipated
2. There are significant, documented concerns about the student’s capacity to provide informed consent
3. The IEP team has already attempted multiple supports and accommodations
4. The team is considering whether a surrogate parent is necessary

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Do NOT use this form:

- Simply because an IEP team member requests it without evidence of incapacity
- Because the student is non-compliant or makes choices the team disagrees with
- As a routine practice for students eligible under certain disability categories or in specific programs
- Before attempting robust supported decision-making strategies

Completing the Form

Before the Meeting:

1. Ensure the student has been notified in an accessible format
2. Invite the student's chosen supporters to participate
3. Gather relevant assessment data and observations
4. Plan for necessary accommodations and supports during the meeting

During the Determination Process:

1. **Background Information:** Complete all fields. Ensure communication methods reflect the student's preferences.
2. **Procedural Safeguards:** Check each box as completed.
3. **Supplementary Aids and Services:**
 - Document ALL supports attempted, not just those currently in use
 - When an attempted aid or service does not provide all support a student needs, it is still important to note partial success
4. **Supported Decision-Making Efforts:**
 - This section is critical – supported decision-making is to be used instead of a surrogate where it enables the student to provide informed consent
 - Include specific examples of strategies attempted
 - Document the student's own preferences for support
5. **Student Participation and Perspective:**
 - The student **MUST** be present unless there are extraordinary circumstances
 - Use the student's actual words when possible
 - If using alternative forms of communication or input, document how the student's participation and perspective were collected
6. **Determining Capacity:**
 - Use evidence-based examples, not general impressions
 - "Unable to Demonstrate" should be used rarely and only with extensive documentation
7. **IEP Team Determination:**
 - Criteria established by OAR must be met to determine incapacity
 - The justification must be specific and detailed
 - Avoid vague language like "cognitive limitations" without specific examples
8. **Surrogate Determination** (if applicable):
 - Student preference is paramount

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- Document all considerations per OAR requirements
- Ensure proposed surrogate understands and will use supported decision-making

After the Meeting:

1. Provide the student with the student-friendly summary immediately
2. Ensure all team members sign
3. Schedule the review date (must be within 365 days)
4. File according to district special education records requirements

Important Considerations

Communication Access

- Use the student's preferred communication method throughout
- Allow extra time for processing and response
- Confirm the adult student's understanding
- Document all communication supports provided

Avoiding Common Errors

- Do not conflate communication differences with lack of capacity
- Do not assume incapacity based on IQ scores or adaptive behavior scores alone
- Do not determine incapacity because the student's choices seem unwise
- Do not rush the determination - multiple sessions may be needed

Reminders

- The IEP team's determination that an adult student cannot provide informed consent for their educational program does NOT necessarily affect the student's capacity in other areas (e.g., voting, medical decisions, contracts) and the IEP team is encouraged to make its decision based solely on educational factors
- This determination is intended **ONLY** for special education decision-making
- The determination must be reviewed at least annually
- Students can request review at any time