

Below, you will find the final proposed language for the Oregon Department of Education's rule(s) relating to Transfer of Procedural Rights at Age of Majority.

Rule Number: 581-015-2325

Rule Title: 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 419B.550 to 419B.558, the rights accorded to the child's parents under the special education laws transfer to the child. A student for whom rights have transferred is considered an "adult student" under OAR 581-015-2000.

(2) Beginning no later than the first IEP at or after age 14, or earlier when the IEP team determines it is appropriate, the IEP team must annually consider and, where appropriate, include age-appropriate, documented activities and goals designed to build the student's capacity to understand and exercise procedural rights and self-determination.

(3) Notwithstanding section (1) of this rule:

(a) After considering the adult student's preferences, interests, needs, and strengths based on age appropriate transition assessment, when the IEP team determines it is necessary, a school district shall appoint the parent of an adult student or, if the parent is not available, not willing, or not able, another appropriate individual to serve as a surrogate parent under OAR 581-015-2320 for any adult student who:

(i) has a disability;

(ii) is not able to provide informed consent with respect to their educational program as a result of their disability; and

(iii) is not already subject to a court order depriving them of decision-making authority or otherwise designating another person to make educational decision, as described below.

(b) In considering whether an adult student has the capacity to provide informed consent with respect to their educational program, the school district shall, at minimum, consider whether the adult student:

(i) Has any condition or circumstance that significantly interferes with their understanding of, and ability to participate meaningfully in, the IEP process, even with the use of supplementary aids and services; or

(ii) Experiences any significant limitations in communicating their educational concerns, or expressing their preferences, interests, needs, or strengths regarding their IEP in a way that interferes with their ability to participate meaningfully in the IEP process, even with the use of supplementary aids and services.

(c) In considering whether an adult is suitable to serve as surrogate parent for an adult student, the school district shall consider all of the following:

(i) Any indication of the adult student's preferences about who might serve as a surrogate parent;

(ii) If the parent is not appointed as the surrogate, any input from the parent about who might serve as a surrogate parent;

(iii) Whether the adult student has:

(I) a pre-existing relationship with the proposed surrogate;

(II) a history of positive interactions with the proposed surrogate; and

(III) a demonstrated comfort in the presence of the proposed surrogate;

(iv) Whether the other adult has:

(I) demonstrated an understanding of the responsibilities of a surrogate parent;

(II) demonstrated an understanding of and the willingness to apply the principles of supported decision-making for the benefit of the adult student; and

(III) demonstrated the capacity to reliably act to the benefit of the adult student.

(v) Any disqualifying factors listed in ORS 343.156.

(d) The determination that a surrogate parent or conditional surrogate parent is necessary can be made in any IEP meeting for the adult student. For conditional surrogate appointments, the determination must include, but is not limited to:

(i) Documentation of the adult student's informed consent to the conditional arrangement;

(ii) Clear specification of activation criteria and deactivation procedures;

(iii) A plan for regular review of the need for conditional surrogate status; and

(iv) Procedures for the adult student to revoke the conditional surrogate appointment at any time when they have capacity to do so.

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(e) 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.

(f) Under ORS 419B.220 or 419C.220, the Juvenile Court may appoint a surrogate parent to exercise these rights for a ward of the state. The district must follow requirements from OAR 581-015-2320 to document and recognize the appointment.

(g) For students aged 18-21 incarcerated in state or local correctional facilities, the district or service provider must:

(i) Deliver all required notices using the correctional facility's delivery system;

(ii) Ensure the student can confidentially participate in IEP/surrogate discussions; and

(iii) Coordinate with facility staff to enable participation by the student's chosen representative (including by phone or video).

(h) Conditional Surrogate Appointment

(i) For the purposes of this rule, a conditional surrogate means a surrogate parent who exercises all rights and authority of a surrogate only during those periods of time when the IEP team has determined it necessary.

(ii) When the IEP team determines that an adult student requires the aid of a conditional surrogate parent to provide informed consent regarding their educational program, and after considering the principles of supported decision-making under subsection (2)(h) of this rule, the school district may appoint a conditional surrogate parent who shall exercise decision-making authority only during specific periods when the adult student's capacity makes them unable to provide informed consent for their educational program.

(iii) A conditional surrogate appointment shall be made only when:

(A) The adult student has provided informed consent during a period when able to do so for the conditional appointment;

(B) The IEP team has documented specific patterns or circumstances that predictably affect the adult student's decision-making capacity; and

(C) Clear activation criteria have been established and agreed upon by the adult student, IEP team, and proposed conditional surrogate.

(iii) The criteria to establish conditional surrogate authority includes but is not limited to:

(A) Documented medical or psychological episodes that temporarily impair decision-making capacity;

(B) Specific environmental stressors or circumstances that have been shown to impact the adult student's ability to participate meaningfully in educational decisions;

(C) Emergency situations requiring immediate educational decisions when the adult student's capacity is compromised and delay would result in harm to the adult student or others; or

(D) Other circumstances specifically documented in the adult student's IEP that create predictable periods of impaired capacity.

(iv) During periods when the conditional surrogate is not activated, the adult student retains all decision-making authority and rights under this rule.

(i) Supported Decision-Making Considerations: Before determining that a surrogate parent is necessary under subsection (2)(a) or a conditional surrogate is appropriate under subsection (2)(g), the IEP team shall consider and document whether supported decision-making could enable the adult student to participate meaningfully in educational decisions. Supported decision-making support may include but is not limited to:

(i) Providing additional time for the adult student to process information and make decisions;

(ii) Using plain language, visual aids, or other communication supports;

(iii) Allowing trusted supporters chosen by the adult student to assist in understanding options and consequences;

(iv) Breaking complex decisions into smaller components; or

(v) Scheduling meetings at times when the adult student's capacity is typically at its highest level.

(4) If a surrogate or conditional surrogate is considered, the district and IEP team must first document why less restrictive means were not appropriate and what steps were taken to support the student's ability to participate meaningfully and independently in the IEP process without a surrogate or conditional surrogate.

(5) A school district is not responsible for the costs of a protective proceeding unless the school district is the Petitioner.

(6) Pursuant to OAR 581-015-2320(9), a child to whom rights transfer may request that a surrogate be appointed to exercise the child's special education rights.

(7) This rule applies to all students, including students who are incarcerated in a state or local adult or juvenile correctional facility or jail.

(8) Conditional Surrogate Implementation and Safeguards

(a) A conditional surrogate parent shall:

(i) Exercise authority only when the criteria described in this rule are met;

(ii) Involve the adult student in decision-making to the greatest extent possible, even during periods of impaired capacity;

(iii) Make decisions based on the adult student's known preferences, values, and previously expressed wishes;

(iv) Immediately cease exercising authority when the adult student's capacity is restored or when the adult student requests to resume decision-making authority.

(b) The school district shall:

(i) Document the basis for the appointment of a conditional surrogate;

(ii) Provide notice to the adult student and any relevant parties when conditional surrogate authority is activated or deactivated;

(iii) Review the need for conditional surrogate status at least annually or whenever requested by the adult student;

(iv) Maintain detailed documentation of all activations, decisions made, and deactivations; and

(v) Ensure that activation decisions are made by qualified personnel familiar with the adult student and their circumstances.

(c) The adult student retains the right to:

(i) Challenge any activation of conditional surrogate authority;

(ii) Request immediate review of surrogate decisions;

(iii) Revoke the conditional surrogate appointment at any time when they have capacity;

(iv) Choose their own conditional surrogate, subject to the qualifications in subsection (2)(c).

(9) Presumption of Capacity and Dignity Preservation: All determinations under this rule shall:

- (a) Begin with a presumption that the adult student has capacity to make educational decisions;
- (b) Recognize that capacity can fluctuate and that lack of capacity at one time does not establish a permanent lack of capacity;
- (c) Respect the adult student's autonomy and right to make decisions that others might consider unwise;
- (d) Utilize the least restrictive means necessary to ensure appropriate educational services;
- (e) Prioritize the adult student's own expressed preferences, values, and previously stated wishes in all decision-making processes.

Statutory/Other Authority: ORS 343.055 & ORS 343.155

Statutes/Other Implemented: ORS 343.155, ORS 343.181 & 34 CFR 300.520

History:

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