

# *Transitioning to Adulthood:*

## *Transfer of Rights at the Age of Majority*

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

### Introduction

The transition to adulthood is a significant milestone for all students, including disabled students and students experiencing disability. In Oregon, when students reach the age of 18, the rights that were previously held by their parents under the Individuals with Disabilities Education Act (IDEA) transfer to the students themselves. This means that the student will assume control over decisions related to their education, including their Individualized Education Program (IEP), unless they have had another adult appointed to make educational decisions through a protective proceeding as described in ORS Chapter 125.

This transition represents more than just a legal change – it’s an opportunity to honor students’ growing autonomy and self-determination. Schools should approach this process with a presumption of student competence and a commitment to providing appropriate support for decision-making rather than limiting student authority. This guidance provides an overview of the legal requirements and best practices for managing this important transition.

### Legal Framework: Federal and State Requirements

Under IDEA and Oregon law, specific federal and state requirements apply to disabled students and students experiencing disabilities reaching the age of majority:

- **Federal and State Requirements:** The transfer of rights is governed by 34 CFR § 300.520 and Oregon Administrative Rules (OAR 581-015-2320 through OAR 581-015-2330), which outline the procedures for notification and the conditions under which rights may not transfer.
- **Transfer of Rights:** All educational rights previously held by the parents transfer to the student, including the right to participate in IEP meetings, consent to evaluations, and make decisions regarding educational placement and services.
- **Notification Requirements:** The school district must inform both the student and the parents of the transfer of rights at least one year before the student reaches the age of majority. This notification should include information about what rights will be transferred and what responsibilities the student will assume.

### Preparing Students and Families for the Transfer of Rights

Effective preparation is key to a successful transition of rights at the age of majority. School districts should work with students and families well in advance of the student’s 18th birthday to ensure they understand the implications of the transfer.

### Building Self-Determination Skills

Self-determination – the ability to direct one’s own life and make informed choices – is essential for all students. Schools should:

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- Explicitly teach and provide opportunities to practice self-advocacy, informed decision-making, understanding rights and responsibilities, and effective communication.
- Honor student voices and choices throughout their educational experience.
- Recognize that developing self-determination skills is associated with improved post-school outcomes.

### **Early Planning**

- Begin discussions about the transfer of rights when students are 14-15 years old, as part of transition planning.
- Provide several years for students to practice decision-making skills and gradually assume more responsibility.
- Recognize that with early planning, many students will develop the skills needed to exercise their rights effectively.

### **Family Preparation**

- Help families understand how their role will shift from decision-maker to advisor and supporter.
- Provide resources on supported decision-making and how families can effectively support their young adult's autonomy.
- Discuss the dignity of risk – acknowledging that making mistakes and learning from them is an important part of development.

### **Practice Opportunities**

- Create structured opportunities for students to practice making educational decisions before they turn 18.
- Gradually increase student responsibility and leadership in the IEP process.
- Use supported decision-making approaches to build student capacity.

### **Steps for Implementing the Transfer of Rights**

As a disabled student or student experiencing disability approaches the age of majority, the following steps should be taken:

1. **Formal Notification:** Provide written notice to both the student and the parents at least one year before the student turns 18. This notice should clearly outline which rights will transfer to the student and include resources for further information.
2. **Review of Rights and Responsibilities:** In an IEP meeting with the student and their family, review the rights that will be transferred and discuss the student's responsibilities. Where appropriate, this meeting should include a discussion of supported decision-making options and any concerns about the student's capacity to make informed decisions.
3. **Assessment of Need for Support:** Determine what level of support, if any, the student might need to exercise their rights effectively. For most students, supported decision-making will be sufficient, but some students may require more structured support.

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4. **Document the Transfer:** On the student's 18th birthday, document the transfer of rights in the student's IEP and ensure that the student receives a copy of all relevant documents. Include specific information about any support mechanisms that have been agreed upon.
5. **Ongoing Support:** Provide ongoing support to the student as they begin to exercise their new rights. This might include additional training in self-advocacy, decision-making, and understanding their educational program.

### **Addressing Special Circumstances (Including Lack of Capacity to Provide Informed Consent)**

While most students will assume their rights at the age of majority, there are special circumstances where additional steps may be necessary:

- **Students Needing Decision-Making Support:** If a student may need support in exercising their rights, the IEP team should discuss supported decision-making options. This could include identifying trusted adults who can help explain information, explore options, and support communication.
- **Students Lacking Capacity:** If a student is determined to be unable to provide informed consent regarding their educational program, the IEP team may need to appoint a surrogate parent or representative. This process is covered in detail in the companion guidance document "Surrogate Parent Appointment for Students Lacking Capacity to Provide Informed Consent."
- **Students Under Guardianship:** If a court has appointed a legal guardian for the student, the rights will transfer to the guardian rather than the student. The district should obtain and document the guardianship order.
- **Alternatives to Guardianship:** Schools should inform families about alternatives to guardianship, including supported decision-making agreements, educational surrogate appointment, limited power of attorney, and other less restrictive options that preserve student autonomy while providing appropriate support.

### **Frequently Asked Questions (FAQs)**

#### **Q: When exactly do educational rights transfer to students?**

A: In Oregon, educational rights transfer to all students when they turn 18 (the age of majority), unless otherwise established following a protective proceeding and court order in accordance with state law.

#### **Q: What specific rights transfer to the student at age 18?**

A: All educational rights previously held by parents transfer, including the right to:

- Receive notice of and attend IEP meetings
- Consent to reevaluations
- Request for mediation or due process hearings to resolve disputes
- Access educational records
- Make decisions about the student's educational program

#### **Q: What notice must schools provide about the transfer of rights?**

A: Schools must notify both the student and the parents about the upcoming transfer of rights at least one year before the student turns 18. This notice should clearly explain which rights will transfer and what this means for the student and family.

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**Q: Can parents still attend IEP meetings after the transfer of rights?**

A: Yes, parents can still attend IEP meetings if invited by the student or the school district. However, the student is the primary decision-maker, and the parents' role is advisory unless the student chooses to delegate certain responsibilities to them, or a court has established guardianship.

**Q: What if a student wants their parents to continue making decisions?**

A: The student can choose to include their parents in decision-making in several ways:

1. Informally involving parents in discussions and considering their advice.
2. Signing a release allowing parents to access records and communicate with the school.
3. Creating a supported decision-making agreement that outlines the parents' role.
4. Executing a power of attorney for educational decisions.

**Q: How can schools determine if a student needs support with decision-making?**

A: Schools should observe and assess the student's decision-making in real contexts, provide opportunities to practice with support, and consider input from the student, family, and educators. The determination should focus on the student's understanding of options, ability to communicate preferences, and capacity to consider the consequences of choices.

**Q: What should we do if we're concerned a student may lack the capacity to make educational decisions?**

A: First, ensure the student has received appropriate accommodations and supports for decision-making. If concerns persist, refer to the companion guidance document on ensuring educational rights are protected, which outlines the determination process and criteria for determining capacity for adult students who may lack capacity to provide informed consent for their educational program.

**Q: What documentation is required for the transfer of rights?**

A: Schools should document:

- The notice provided to the student and parents at least one year before the student's 18th birthday.
- Discussions about the transfer of rights in IEP meeting notes.
- The actual transfer of rights in the IEP developed closest to the student's 18th birthday.
- Any agreements regarding supported decision-making or other accommodations.

**Q: How can schools support students in making informed decisions?**

A: Schools can:

- Provide explicit instruction in decision-making and self-advocacy.
- Create opportunities to practice decision-making with increasing responsibility.
- Offer information in accessible formats.
- Allow adequate time for processing information.
- Involve trusted supporters chosen by the student.
- Teach students how to evaluate options and consider consequences.