

# Child Find

## ADULT STUDENT AND TRANSFER OF RIGHTS

July 7, 2022

Model operating procedures created by



Student Solutions

and

Thompson  
& Horton<sub>LLP</sub>

ATTORNEYS | COUNSELORS

**Disclaimer:** This information is provided for educational purposes only to facilitate a general understanding of the law or other regulatory matter. This information is neither an exhaustive treatment on the subject nor is this intended to substitute for the advice of an attorney or other professional advisor. Consult with your attorney or professional advisor to apply these principles to specific fact situations.

©2020 by Texas Association of School Boards, Inc.

TASB grants members/subscribers of TASB Student Solutions™ the limited right to customize this publication for internal (non-revenue generating) purposes only.

**CONTENTS**

ADULT STUDENT AND TRANSFER OF RIGHTS ..... 1

    What is Required..... 1

        Definitions..... 2

    Additional Procedures ..... 3

    Evidence of Implementation ..... 3

    Resources ..... 4

    Citations..... 4

## ADULT STUDENT AND TRANSFER OF RIGHTS

### What is Required

Except for a student who has been determined to be incompetent under state law, a student with a disability who is 18 years of age or older has the same rights to educational decision-making as a student without a disability. Therefore, when a student with a disability turns 18 years old, all rights under the IDEA transfer from the parent to the adult student, except that Campus Special Education Personnel must provide any notice required under the IDEA to both the adult student and the parent.

In addition, all rights under the Family Education Rights and Privacy Act (FERPA) transfer from the parent to the adult student except that consent is not required to disclose information to the parent if the adult student is a dependent student, or when another exception applies. See [WHEN CONSENT IS NOT REQUIRED TO DISCLOSE INFORMATION].

Campus Special Education Personnel must provide both the student and the student's parent written notification of the transfer of rights under the IDEA, as well as information and resources regarding guardianship and alternatives to guardianship, at least one year before the student's 18<sup>th</sup> birthday. The student's IEP must include a statement that Campus Special Education Personnel provided the required notice, information, and resources within the required timeframe.

This written transfer of rights notice must inform the student and the parents that:

- The student with a disability who is age 18 or older or whose disabilities of minority have been removed will have the same right to make educational decisions as a student without a disability;
- All rights granted to the parent under the IDEA will transfer to the student unless the parent or other individual has been granted guardianship, except that Campus Special Education Personnel must provide any notice required under IDEA to the adult student and the parent; and
- All rights granted to the parent under the IDEA will transfer to an 18-year-old who is incarcerated in an adult or juvenile state or local correctional institution unless the parent or other individual has been granted guardianship.

Campus Special Education Personnel must also provide information and resources regarding guardianship and alternatives to guardianship—including supportive decision-making—and other supports and services that may enable the student to live independently at least one year before the student's 18<sup>th</sup> birthday. Campus Special

Education Personnel must also provide this information upon request by the student or student's parent at any time.

Additionally, upon the student turning age 18, Campus Special Education Personnel must also provide the student and the student's parents written notice related to the transfer of rights, information and resources regarding guardianship and alternatives to guardianship, and contact information about where to seek additional information.

Campus Special Education Personnel must continue to provide any notice required by the IDEA to both the adult student and the parent after the transfer of rights. However, providing the parent Prior Written Notice of an ARD meeting does not constitute an invitation or create a right for the parent to attend the meeting. Prior Written Notice also does not create a right for the parent to consent to or participate in the proposal or refusal reflected in the Prior Written Notice. However, the adult student or Campus Special Education Personnel may invite the parent, as an individual with knowledge or special expertise regarding the adult student, to be a member of the ARD Committee. In addition, an adult student who holds rights under the IDEA is not prohibited from executing a supported decision-making agreement or a valid power of attorney after the transfer of parental rights.

## Definitions

“Guardianship” is a legal process that removes rights and privileges from a person aged 18 and older who is considered incapacitated under state law. The process involves the court system and an attorney. Unless parents have gained guardianship of their student with a disability or made other legal arrangements, all rights including signing and agreeing to the IEP will be transferred to the student upon turning 18.

“Supportive decision-making agreement” is an alternative to guardianship that involves supporting and accommodating an adult with a disability to enable the adult to make life decisions. In a supported decision-making agreement, the 18-year-old student chooses someone (called a “supporter”) they trust to help them get information they need to make an informed decision, consider their options, understand the risks, and communicate their decisions to others. The law does not place any restrictions on who may become a supporter. Typically, the supporter may be a family member, relative or friend. But the adult with a disability may only enter a supported decision-making agreement voluntarily, without being influenced by others. The student and the supporter fill out and sign a legally valid supported decision-making agreement form and have it witnessed or notarized, as required by law.

“Power of attorney” is a legal document that gives someone else the legal power to act on your behalf. The power of attorney must be signed before a notary public, and it must be executed by someone 18 years of age or older who is of sound mind and who knows what he/she is doing when they sign the document.

## **Additional Procedures**

Campus Special Education Personnel will keep track of the birthdays for those students on their caseload turning 17 and 18 years old during that school year.

Where possible, Campus Special Education Personnel will provide written notice regarding the transfer of rights and resources regarding guardianship and alternatives to guardianship during the student's ARD meeting closest in time before the student's 17<sup>th</sup> birthday. If Campus Special Education Personnel are unable to provide this notice for some reason during the ARD meeting closest in time before the student's 17<sup>th</sup> birthday, it should be provided at another time no later than the student's 17<sup>th</sup> birthday.

Prior to the student's 18<sup>th</sup> birthday Campus Special Education Personnel will discuss guardianship options or alternatives to guardianship (including supported decision-making agreements and power of attorney documents) with the parent or guardian to determine whether the parent or guardian plans to seek appointment as the student's guardian or obtain other legal rights following the student's 18<sup>th</sup> birthday.

Campus Special Education Personnel will document all efforts to explain the transfer of rights to students and to provide the requisite notices and safeguards in a timely manner. This will be documented in the IEP and should be included in the minutes/deliberations of the ARD meeting.

Unless the parent or guardian has been appointed legal guardianship of the student, Campus Special Education Personnel will consult with the student to determine whether the student would like to include the parent or guardian, or any other individual with information relevant to the student, to any ARD meeting following the transfer of rights.

If an adult student provides the Campus Special Education Personnel with a supported decision-making agreement, a power of attorney, or other legal document which appoints another individual, including the parent, to make educational decisions on behalf of the adult student, Campus Special Education Personnel will consult with the District's Special Education Director to determine the legality and validity of the document before allowing the appointed person to make educational decisions for the adult student.

The District will maintain documentation requirements of compliance associated with Texas Student Data System (TSDS), Public Education Information Management System (PEIMS), and State Performance Plan (SPP). District staff will provide training, with follow up, to ensure the documentation required is in place and compliant.

## **Evidence of Implementation**

- ARD/IEP
- Notice of Transfer of Rights Provided Before 17<sup>th</sup> Birthday

- Notice of Transfer of Rights Provided on 18<sup>th</sup> Birthday
- Documentation of Student Birthdays on Caseload
- List of Resources Related to Guardianship and Alternatives to Guardianship
- Prior Written Notice
- Legal Documents Related to Guardianship or Powers of Attorney
- Supported Decision-Making Agreement
- Documentation for the state in TSDS, PEIMS, and SPP

## **Resources**

[The Legal Framework for the Child-Centered Special Education Process: Adult Student and Transfer of Rights - Region 18](#)

[Notice of Procedural Safeguards - Texas Education Agency](#)

[Guide to the ARD Process - Texas Education Agency](#)

[Notice of Transfer of Rights - Texas Education Agency](#)

[Adult Student - SPEDTEX](#)

[OSERS Letter to Bieker \(July 20, 2000\) - U.S. Department of Education](#)

## **Citations**

Board Policy EHBAE; 34 C.F.R. 99.31(a), 99.5(a), 300.520, 300.625; Texas Education Code 29.017; Texas Estates Code 1357.002; Texas Family Code Chapter 31; 19 TAC 89.1049