

Transfer of Rights and Decision-Making Options for Adult Students

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Learning Targets

- I can explain to parents and students the Individuals with Disabilities Education Act's (IDEA's) transfer of rights provision.
- I can compare and contrast some decision-making options for students with disabilities who reach the age of majority.

September 1, 2022

Transfer of Rights



Transfer of Rights under IDEA

- Transfer of parental rights at age of majority (34 C.F.R. § 300.520)
 - (a) *General.* A State **may** provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)—
 - (1)(i) The public agency must provide any **notice** required by this part to both the **child and the parents**; and
 - (ii) **All rights** accorded to parents under Part B of the Act transfer to the child;

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Transfer of Rights under IDEA

- Transfer of parental rights at age of majority (34 C.F.R. § 300.520)
 - (a)(2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and
 - (a)(3) Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must **notify the child and the parents** of the transfer of rights.

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Transfer of Rights under IDEA

- Transfer of parental rights at age of majority (34 C.F.R. § 300.520)
 - (b) *Special Rule*. A State **must** establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act **if, under State law,** a child who has reached the age of majority, but has not been determined to be incompetent, **can be determined not** to have the ability to provide informed consent with respect to the child's educational program.
- *Georgia does **not** have such law.*

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Transfer of Rights under IDEA

- Definition of individualized education program (34 C.F.R. § 300.320)
 - (c) *Transfer of rights at age of majority.* Beginning not later than **one year** before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under §300.520.

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Transfer of Rights under Georgia Law

- Georgia Board of Education Rule 160-4-7-.06
 - (3) Transfer of Rights at Age of Majority. Beginning not later than one year before the student reaches age 18, the IEP must include a statement that the student has been informed of the student's rights under Part B of the IDEA, if any, which will transfer to the student on reaching age 18.

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Transfer of Rights under Georgia Law

- Georgia Board of Education Rule 160-4-7-.21(2) & (3)
 - Defines “age of majority” as “[t]he age at which, by law, a child assumes responsibilities of an adult. **In Georgia, the age of majority is 18.**”
 - Defines “adult student” as “[a] student with a disability, age 18 or older, to whom rights have transferred under the IDEA 2004 and Georgia Rule.”

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Transfer of Rights under IDEA

- Children's rights (34 C.F.R. § 300.625)
 - (b) Under the regulations for Family Educational Rights and Privacy Act (FERPA) in 34 CFR 99.5(a), the rights of parents **regarding education records** are transferred to the student at age 18.
 - (c) If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with §300.520, the **rights regarding educational records in §§300.613 through 300.624** must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents.

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Which rights are transferring?

- All rights under IDEA Part B
 - Examples
 - Right to receive notice of and attend IEP Team meetings
 - Right to consent to evaluations/reevaluations
 - Right to make educational decisions including to revoke services
 - Right to utilize dispute resolution processes (e.g., mediation, due process hearing)

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Which rights are transferring?

- All rights under FERPA incorporated in IDEA
 - Examples
 - Right to inspect and review education records
 - Right to request amendment of records
 - Right to consent to disclosure of personally identifiable information not meeting FERPA exceptions

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What notices must be provided to both the student and parent?

- Any notice required by Part B of the IDEA, Subpart E – Procedural Safeguards Due Process Procedures for Parents and Children (34 C.F.R. § 300.500-300.520)
 - Examples
 - Notice of IEP Team meetings (34 C.F.R. § 300.501(b)(2))
 - Prior Written Notice (34 C.F.R. § 300.503)
 - Procedural Safeguards Notice (34 C.F.R. § 300.504)

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How can school districts provide “proper and timely” notification?

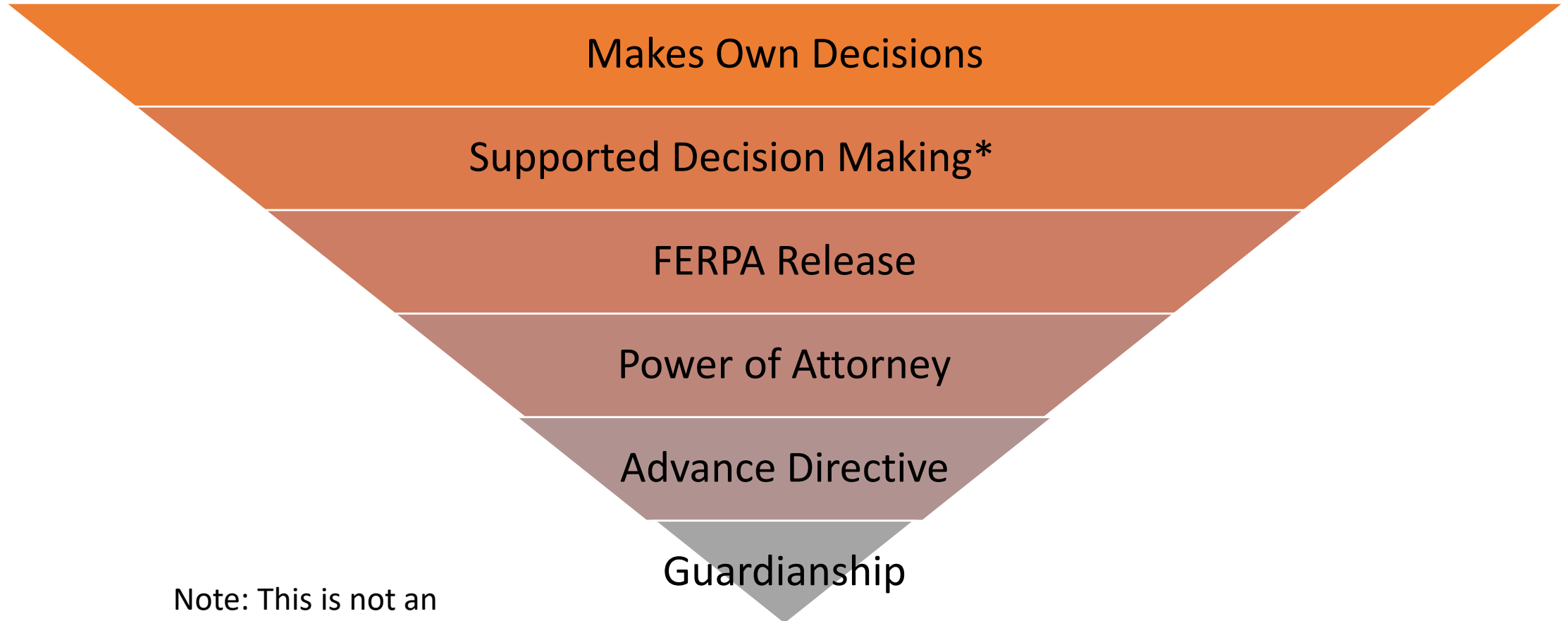
- Discuss transfer of rights with the student and parent **at least one year** before the student reaches 18.
 - Document the discussion
- **Clearly explain** the rights to the student
 - Provide to student in writing and explain in a manner the student can understand
- Provide **Prior Written Notice** to the student and parent a reasonable time before the student reaches 18 about the upcoming “change.”
 - The IEP could meet this requirement if all notice requirements under 300.503(b) are met.

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Decision-Making Options



Decision-Making Options



Note: This is not an exhaustive list

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Makes Own Decisions

- All rights under IDEA and FERPA reside with the adult student
- Adult student can designate parents as members of the IEP Team as “individuals who have knowledge or special expertise regarding the [adult student].” See 34 C.F.R. § 300.321(a)(6)
- All other rights under State and Federal law reside with the adult student (e.g., healthcare, finances, residence, occupation)

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FERPA Release

- Adult student consents in writing to the release of educational records that are protected under FERPA to another individual
- The release could be written broadly or narrowly (e.g., all FERPA rights regarding education records involving the adult student, only education records related to IDEA Part B, etc.)
- Adult student can revoke consent at any time

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Power of Attorney

- A Power of Attorney (POA) is “a writing or other record that grants authority to a person to act in the place of an individual.” O.C.G.A. § 10-6B-2(7).
- The person granting the authority is the “principal” and the person who is granted the authority is the “agent.”
- A POA can be written to give as little or as much power as the principal wishes.
- A POA can cover various tasks, such as signing papers, checks, and contracts and buying and selling property.

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Power of Attorney

- A POA is durable “unless it expressly provides that it is terminated by the incapacity of the principal.”
O.C.G.A. § 10-6B-4.
- A POA is executed by the signature of the principal and two witnesses (not the agent). O.C.G.A. § 10-6B-5(a).
- A principal can amend a POA at any time.

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Advance Directive for Health Care

- An advance directive for health care is a written document voluntarily executed to appoint a health care agent to make health care decisions and/or direct the withholding or withdrawal of life saving procedures (e.g., Do Not Resuscitate (DNR) order). See O.C.G.A. § 31-32-2 and 31-32-5.
- The person executing the directive is the “declarant.” The health care agent cannot be a physician or health care provider **directly involved** in the declarant’s health care.
- “Health care” includes any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for a declarant’s physical or mental health or personal care. O.C.G.A. § 31-32-2(5).

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Advance Directive for Health Care

- An advance directive for health care is executed by the signature of the declarant and two witnesses (not the health care agent or directly involved in declarant's health care, but one could be an employee of the health care facility).
O.C.G.A. § 31-32-5(c).
- A declarant can amend an advance directive for health care at any time.

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Guardianship

- A court order issued when “the court finds the adult lacks sufficient capacity to make or communicate significant responsible decisions concerning his or her health or safety.” O.C.G.A. § 29-4-1(a). (Probable cause standard)
- The court appoints a “guardian” to the adult who is called a “ward.”
- “No adult shall be presumed to be in need of a guardian unless adjudicated to be in need of a guardian pursuant to this chapter.” O.C.G.A. § 29-4-1(e).

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Guardianship

- What rights can be lost with guardianship?
 - Right to marry
 - Right to make, modify, or terminate contracts
 - Right to consent to medical treatment
 - Right to establish a residence or dwelling place
 - Right to change a residence or dwelling place
 - Right to revoke a revocable trust established by the ward
 - Right to bring or defend any action at law or equity, except an action relating to the guardianship. O.C.G.A. § 29-4-21(a) and 29-4-23(a).
- Guardianship can only be modified or terminated by court order.

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Guardianship

- All guardianships shall be “designed to encourage the development of maximum self-reliance and independence in the adult and shall be ordered only to the extent necessitated by the adult’s actual and adaptive limitations **after a determination that less restrictive alternatives to the guardianship are not available or appropriate.**” O.C.G.A. § 29-4-1(f).

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Supported Decision Making

- A method of developing decision-making skills by relying on supporters to assist a person in collecting information, processing information, and coming to a reasoned decision.
- Supported decision-making allows individuals with disabilities to make choices about their own lives with support from a team of people.
- Individuals with disabilities choose people they know and trust to be part of a support network to help with decision-making.
- From <http://supportmydecision.org> and <http://supporteddecisions.org>

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Supported Decision Making

- A [written agreement](#) identifying the support the adult needs (e.g., finances, health care, living arrangements, occupation) and who will provide the support (supporters).
- There is no Georgia law implementing this process/agreement but a person is not prevented from presenting a supported decision making agreement to a court as an informal alternative to guardianship.
- In a court case in Virginia, *Ross et al v. Hatch*, during a petition for guardianship, the judge ordered a limited guardianship where the guardians, among other things, assisted the ward in “making and implementing decisions” through “supported decision making.”

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Learning Targets

- Can you explain to parents and students the IDEA's transfer of rights provision?
- Can you compare and contrast some decision-making options for students with disabilities who reach the age of majority?

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ANY
QUESTIONS



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