

MEMORANDUM

To: Glenna Gallo, Director of Special Education Services
From: Utah Special Education Advisory Panel (USEAP)
Subject: R277-752 Adult Students with Disabilities and Informed Consent
Date: May 9, 2016

In our role as an advisory panel, we have a duty to comment publicly on any rules or regulations proposed for issuance by the State regarding the education of students with disabilities. We have thoroughly reviewed and discussed the proposed rule R277-752 Adult Students with Disabilities and Informed Consent.

It is the feeling of this panel that rule R277-752:

- Restricts the rights of an adult student with a significant disability to make a decision regarding informed consent in the activities for his/her educational program.
- Undermines the educational process established that teaches the adult student with a significant disability to be self-determined and a self-advocate.
- Creates an avenue that allows for an individual to purposefully make educational decisions for the adult student with disabilities that may not be in the best interest of the student.
- Puts educators in the position of facilitating the determination of whether an adult student with a significant disability is incompetent or lacks the ability to provide informed consent.
- May allow for the communication and decision-making methods and capabilities of a non-verbal adult student with a significant disability to be misinterpreted and misrepresented.
- Will create another layer of paperwork, timelines, and cost to those seeking evaluations by professionals to determine the ability of the adult student with a significant disability to provide informed consent.
- Is not essential because the legal process of obtaining Guardianship and Power of Attorney is well-established, available, accessible, affordable and legally grants, as designated by Utah law, another individual to represent the best interests of the adult student with a significant disability.
- Is not necessary because the IEP is already designed to be a team process that allows for the adult student with a significant disability to have the assistance needed to make supported decisions. According to Utah Special Education Rule, the student with disabilities who gives informed consent may be assisted in the IEP and in decisions by

persons of knowledge that include parents and close relations. The student and the IEP team may also invite individuals who have knowledge and/or special expertise regarding the student.

Instead of adopting Rule R277-752, we suggest the Utah State Board of Education recommend that LEAs:

- Examine, enforce, and improve the process of informing and instructing the parents/guardians and the adult student with significant disabilities about the transfer of rights at age of majority as required by IDEA.
- Extensively educate the parent/guardian and the adult student with disabilities regarding resources to obtain Guardianship or Power of Attorney and the implications that it will have on their participation in determining the educational activity of the student.
- Consider that the IEP is a document that is allowed to be revised and amended. If a parent or guardian has intended to seek Guardianship or Power of Attorney but has not done so prior to the IEP meeting, the IEP can be created by obtaining informed consent from the adult student with a significant disability and then amended if/when Guardianship or Power of Attorney is obtained by the parent/guardian.
- Support educators in their efforts, methods, and curriculum to effectively teach students with significant disabilities how to make appropriate choices and to communicate their interests and preferences to the best of their abilities.