



Turning 18

The Next Part of the Journey

RUBBER MEETS THE ROAD

Meet Ian

- Works full time at Safeway for 11 years
- Lives independently in a DDD group home
- Takes the bus, has a cell phone & girlfriend
- Parents have guardianship

Meet Ikaika

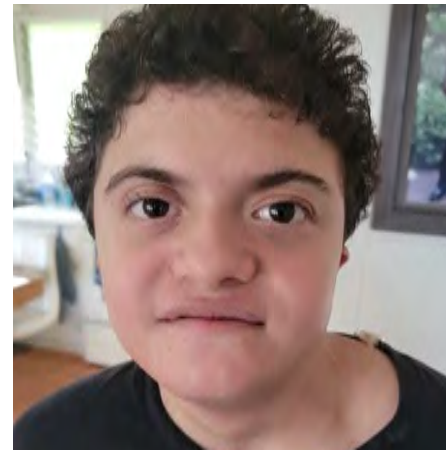
- 2022 Graduate from Kalaheo High
- Lives with parents for the foreseeable future
- Attends Windward Community College part time
- Parents had an Educational POA for school



Ian



Deb & her boys



Ikaika



Amanda & her boys

TRANSFER OF RIGHTS / ACT 182

What is it?

When does it start?

What are our options?

How do I get help?



<https://www.hawaiipublicschools.org/DOE%20Forms/Special%20Education/Ch60Guidelines.pdf>

Click on: Hawaii Administrative Rules, Chapter 60 Guidelines; open the PDF; go to Appendix F; scroll down to page 195-202



What is the Transfer of Rights / Age of Majority?



- From IDEA 300.520(a)
 - 1(i): The public agency (HIDOE) must provide any notice required by this part to both the child and the parents; and
 - (ii) All rights accorded to parents transfer to the child
- From HIDOE
 - Hawaii Revised Statutes (HRS) §577-1, the “age of majority” is when all persons residing in the state, who have attained the age of 18 years, shall be regarded as of legal age and their period of minority have ceased. An “adult student” is a student who has reached the age of majority.
- From Parents
 - When your child turns 18, you have to determine if your child can make their own educational decisions, needs help making those decisions, or cannot make those decisions on their own. You may need to have some additional paperwork between you and the school.



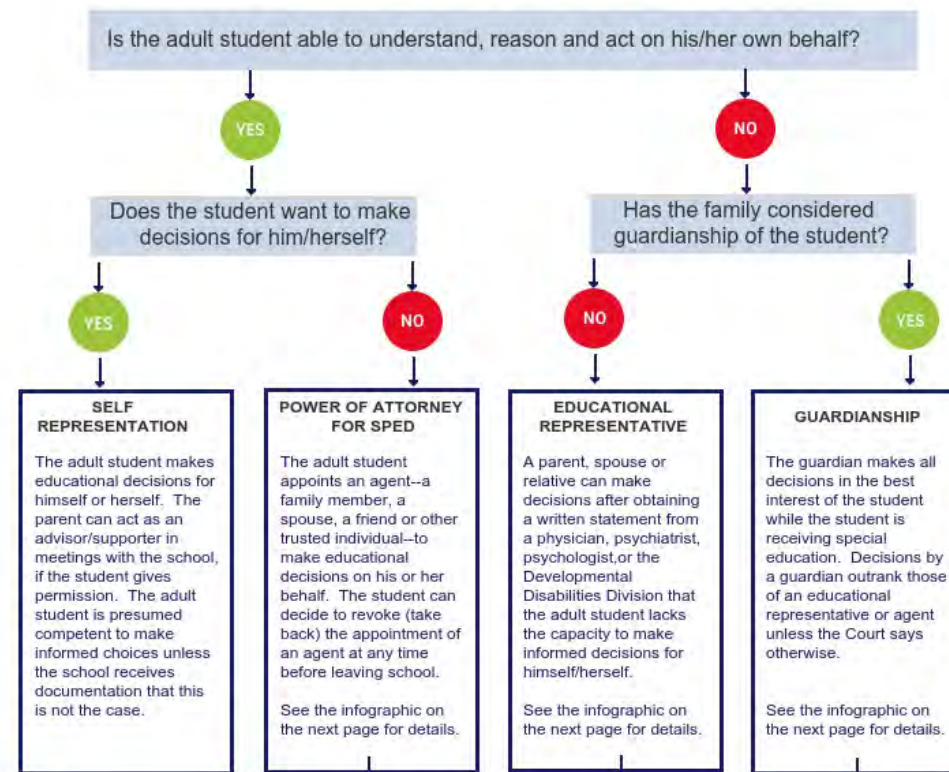
Fork in the Road



Transfer of Parental Rights at Age 18: An Informal Process for Determining if Representation May Be Needed for the Adult Student with a Disability

Parental rights under the Individuals with Disabilities Education Act (IDEA) transfer from the parent(s) to the adult student on the day the student turns 18 years of age. Parents are notified one year in advance of their child's 18th birthday that this transfer of rights means the student will have access to his or her education records, make his or her own education decisions, and have the authority to give or withhold consent for evaluations, services and placements. The discussion tool developed by SPIN below helps the student and family identify options for ensuring that the adult student is adequately represented and protected under IDEA until exiting special education.

A Process for Discussing Transfer of Rights Options



Documentation is provided to the school, and the school acknowledges the rights of the agent/guardian/educational representative to legally make decisions.



An Important Reminder:

NO ACTION IS AN ACTION



If you do not contact the school to let them know what you're planning,
they will assume your child will be self-representing themselves.



3 Action Options



Transfer of Parental Rights at Age 18: Options for Parents to Continue to Represent Their Adult Child Under IDEA



Power of Attorney Agent for SPED

The Power of Attorney for Special Education (POA SPED) is an option for students who:

- are considered to be capable of making informed decisions; and
- feel more comfortable having a parent or a trusted adult advocate on his/her behalf.

The POA SPED consists of a document written by the adult student with a disability that appoints an *agent* to make special education decisions only. The student can choose for his or her agent:

- a family member,
- a friend,
- any responsible adult,
- but not an owner or employee of the school the student attends.

There is no special form that must be used—just a written document containing required information that can be found in the sources at the bottom of this page.

The student can also revoke or take back the POA SPED at any time.

Once the POA SPED is witnessed by two individuals or notarized by a notary public, the school is given a copy for the student's file.



Educational Representative

When an adult student lacks the ability to understand, reason and act on his/her own behalf, Hawaii law allows for the parent(s) or the adult spouse of the student to act as the educational representative on behalf of the student.

Three kinds of information are needed:

- a statement by a qualified professional (primary physician, psychologist, psychiatrist) that the adult student lacks the capacity to make decisions,
- the name and contact information for the adult student, and
- the name, contact information and relationship to the adult student of the educational representative.

Once the school receives this information it will appoint the educational representative to participate in meetings about:

- the identification, evaluation and placement of the student;
- the provision of a free appropriate public education (FAPE), and
- providing input that takes into account the student's instructions, wishes, personal values and best interest.



Guardianship

Guardianship is a legal means of protecting children and adults who cannot:

- take care of themselves,
- make decisions in their own best interest,
- communicate their understanding of issues, and/or
- handle their assets (like money).

Parents are the natural guardians of their minor children and are often surprised that they must petition the Court, if they want to become the legal guardian of an adult child with a disability.

A judge makes the decisions about:

- whether guardianship is needed to protect the adult student,
- who is appointed guardian, and
- whether the guardian's powers are limited to some decisions or all aspects of the adult child's needs.

Some parents choose to avoid this option because of:

- the time involved;
- the out-of-pocket expense,
- the requirement to provide annual updates to the Court; and
- the availability of alternatives to guardianship that maintain their child's freedom of choice and self-determination.

What does a POA SPED do?

- Appoints an “Agent” to make educational decisions on behalf of the adult student
- Allows the Agent to participate in meetings with respect to
 - identification, evaluation, FAPE & placement decisions
- The Agent participates with the students best interests in mind



Powers Of Attorney

What goes in the POA

- Student information
- Agent information
- A statement indicating whether the adult student retains the power to make educational decisions while the POA SPED is in effect
- A statement with the method of revocation
- Date of execution in Hawaii
- Adult student signature

Power of Attorney for SpEd

You need a Letter from a Doctor

- Licensed in the state of Hawaii
- Primary Care Physician
- Psychologist
- Psychiatrist
- DDD Case Manager

Who can be an Ed Rep?

- Parent (default)
- Adult spouse
- Relative of student
- Surrogate Parent



What goes in the Letter

- Student information
- Who the Educational Representative is
- Relationship to student
- Contact information of both the student and the Ed. Representative
- Statement with the determination that the adult student's lack of capacity to make educational decisions or have informed consent.



Educational Representative



Guardianship Process

- Legal proceeding
- You will need a lawyer versed in family law
- Large costs up front
- Takes about 6 months
- Child/adult student must attend court hearing
- Annual report to the court by the guardian
- They can still vote & have other civil rights
- Most restrictive option
- Can be revoked by court



Things to Consider

- Must prove to the court your child is intellectually incapacitated (same letter as Ed. Rep.)
- Being disabled and being incapacitated are different and a disability is not a reason for guardianship
- The judge will ask your child if they agree to you being their guardian
- Who comes after you?

Guardianship



How do I decide what is
right for my family?



- Start thinking about this before age 18
- Talk to your child about what they want
- Then talk with friends, teachers, support groups/organizations to see what others have done, why they did it, ask questions, keep notes
- Make choices based on YOUR family needs
- Consider costs (notary, court)
- Gather information & documentation
- Remember: Unless you are applying for guardianship, these choices are ONLY while your child is in school – and you or your child can make changes at any time.



How to Find Help



- [Hoomana](#) Parents Supporting Parents
- [SPIN](#) Special Parent Information Network
- [LDAH](#) Leadership in Disability and Achievement Hawaii
- [Legal Aid Society](#) Income-based
- DOE: Care Coordinator / Sped Chair / VP / SSC
- [Footsteps to Transition](#)
Footstepstotransition.weebly.com

Debbie Kobayakawa

Hoomana Parent to Parent Support

Phone: 808-426-6879

Email: hoomanagroup@gmail.com

Web:

<https://sites.google.com/view/windwardautismprogram/parentfamily-support/hoomana>

Amanda Kaahanui

SPIN: Special Parent Information Network

Phone: 808-586-8126

Email: spin@doh.Hawaii.gov

Web: <https://spinhawaii.org/>

Web: <https://spinconference.org/>

Questions?

