



# 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 than 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.

