
A BILL FOR AN ACT

RELATING TO EDUCATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the partnership
2 between parents, families, professionals, and students is
3 cornerstone to the success of student achievement. From a
4 student's first day of school until the completion of the
5 student's education, hundreds, possibly thousands, of
6 educational decisions have been made for or by that student.
7 Until a student reaches the age of eighteen, most of those
8 decisions are made by parents, family members, or guardians in
9 consultation with teachers or education officials. However,
10 when a student reaches the age of eighteen, that adult student
11 is presumed to be capable of making the adult student's own
12 educational decisions and to have the confidence to participate
13 fully in meetings to make educational decisions, unless
14 determined to be incapable of making decisions. Students at
15 this transition point, regardless of their capacity, may benefit
16 from continued participation, guidance, and advice from the



1 people on whom they have always relied to make educational
2 decisions.

3 With regard to the numerous decisions and planning
4 activities related to a student with a disability who is
5 receiving special education and related services, parents of
6 adult students can only participate in these activities if they
7 are either invited by the student or obtain legal guardianship
8 over the student. While these options create a vehicle for
9 parental participation, they are not comprehensive enough to
10 meet the diverse needs of the students and families in our
11 State.

12 The legislature further finds that guardianships are
13 expensive, labor intensive, and involve a time-consuming process
14 that results in the transfer of all decision-making authority
15 from the student to the guardian. Some students may have the
16 capacity and desire to make other life decisions for themselves,
17 but do not feel confident in making educational decisions and
18 may require continued assistance. There are also other families
19 that philosophically strive to maintain the rights of their
20 adult children, regardless of their capacity, and are able to do
21 so because of the array of alternatives to guardianship in the



1 health care, welfare, housing, and financial systems. In these
2 instances, guardianship would not be an appropriate option.

3 The purpose of this Act is to provide a comprehensive array
4 of options for adult students with a disability to ensure their
5 ability to make educational decisions that are consistent with
6 the needs of the student in a manner that is respectful to the
7 values of the student and family by:

- 8 (1) Establishing a power of attorney for special
9 education;
- 10 (2) Establishing the process to appoint an educational
11 representative for an adult student who lacks
12 capacity; and
- 13 (3) Clarifying the authority of a guardian of an adult
14 student.

15 SECTION 2. Chapter 302A, Hawaii Revised Statutes, is
16 amended by adding a new part to be appropriately designated and
17 to read as follows:

18 "PART . ADULT SPECIAL EDUCATION TRANSFER OF RIGHTS FOR
19 STUDENTS WITH DISABILITIES UPON REACHING THE AGE OF MAJORITY

20 §302A- Power of attorney for special education. (a)

21 When a student with disabilities reaches the age of majority all
22 rights are presumed to transfer to the adult student. The adult



1 student is authorized to make any and all decisions related to
2 the adult student's education, including but not limited to
3 individualized education programs.

4 (b) An adult student may give an individual instruction to
5 assist in the development and implementation of the adult
6 student's educational programs. An adult student may execute a
7 power of attorney for special education. Unless related to the
8 student by blood, marriage, or adoption, an agent shall not be
9 an owner, operator, or employee of the educational institution
10 at which the adult student is receiving special education
11 services. The power of attorney for special education shall be:

- 12 (1) A written document;
- 13 (2) Executed in the State of Hawaii;
- 14 (3) Notated with the date of execution;
- 15 (4) Specific in identifying the agent by first and last
16 name and relationship to the adult student;
- 17 (5) Indicative of whether the adult student retains the
18 power to make educational decisions while the power is
19 in effect;
- 20 (6) Revocable, with the method of revocation stated in the
21 document;
- 22 (7) Signed by the adult student; and



- 1 (8) Witnessed by one of the following methods:
- 2 (A) Signed by two individuals who either witnessed
- 3 the signing of the instrument by the adult
- 4 student or received the adult student's
- 5 acknowledgment of the veracity of the signature
- 6 on the instrument; or
- 7 (B) Acknowledged before a notary public in the State
- 8 of Hawaii.
- 9 (c) If the power of attorney for special education
- 10 document does not include the provisions listed above, the power
- 11 of attorney is invalid and fails to authorize an agent to make
- 12 decisions for the adult student.
- 13 (d) Unless otherwise specified in the power of attorney
- 14 for special education, the authority of an agent shall be
- 15 effective throughout the adult student's eligibility for special
- 16 education, and shall cease to be effective upon revocation by
- 17 the adult student.

18 **§302A- Revocation of the power of attorney for special**

19 **education.** (a) An adult student may revoke the designation of

20 an agent in writing to the supervising teacher.

21 (b) A teacher, agent, or guardian who is informed of a

22 revocation shall promptly communicate the fact of the revocation



1 to the supervising teacher and to any educational institution at
2 which the student is receiving special education services.

3 (c) A decree of annulment, divorce, dissolution of
4 marriage, or legal separation shall revoke a previous
5 designation of a spouse as agent unless otherwise specified in
6 the decree or in a power of attorney for special education.

7 (d) A power of attorney for special education that
8 conflicts with an earlier power of attorney for special
9 education revokes the earlier power of attorney for special
10 education to the extent of the conflict.

11 **§302A- Appointment of an educational representative;**
12 **conditions.** (a) An educational representative may be appointed
13 if a student lacks decisional capacity to provide informed
14 consent. A determination that the adult student lacks capacity,
15 or that another condition exists that affects the adult
16 student's instruction shall be made by a qualified licensed
17 professional, such as the student's primary physician,
18 psychologist, psychiatrist, or the department of health
19 developmental disabilities division.

20 (b) The transfer of rights for an adult student who lacks
21 capacity to an educational representative shall be valid
22 throughout the adult student's eligibility for special



1 education. Determinants of the lack of decisional capacity may
2 include the following:

3 (1) The student's inability to understand the nature,
4 extent, and probable consequences of a proposed
5 educational program or option, on a continuing or
6 consistent basis;

7 (2) The student's inability to make a rational evaluation
8 of the benefits or disadvantages of a proposed
9 educational decision or program as compared with the
10 benefits or disadvantages of another proposed
11 educational decision or program, on a continuing or
12 consistent basis; or

13 (3) The student's inability to communicate such
14 understanding in any meaningful way.

15 Upon a determination that an adult student lacks decisional
16 capacity to provide informed consent, the qualified professional
17 shall document appropriately and make reasonable efforts to
18 inform the adult student of the adult student's lack of
19 capacity. The parent(s) of the adult student may act as the
20 educational representative (unless the adult student is married,
21 in which event the adult student's adult spouse shall be
22 designated as the educational representative). If the parent or



1 adult spouse is not available or competent to give informed
2 consent, the department shall appoint the educational
3 representative from among the following: a competent adult
4 brother or sister, adult aunt or uncle, or grandparent. If
5 these relatives are not willing and able to serve as the adult
6 student's educational representative, then a surrogate parent
7 (who is not an employee of the department of education) shall be
8 designated to serve in this capacity by the department.

9 **§302A- Reconsideration of the need for an educational**
10 **representative.**

11 (a) If the adult student, educational representative, or
12 qualified professional believes the adult student has regained
13 decisional capacity, the adult student shall be assessed for
14 capacity by a qualified professional who shall determine whether
15 or not the adult student has regained decisional capacity and
16 shall document the decision and the basis for the decision and
17 provide the findings of the reconsideration in writing to be
18 entered into the adult student's educational record. The
19 qualified professional shall notify the adult student and the
20 educational representative of any changes in the adult student's
21 educational program.



1 (b) A special education decision made by an educational
2 representative for an adult student shall be effective without
3 judicial approval.

4 **§302A- Decisions by guardian.** Absent a court order to
5 the contrary, a special education decision of a guardian
6 appointed pursuant to chapter 560 takes precedence over that of
7 an agent or educational representative.

8 **§302A- Duties and roles of the agent and educational**
9 **representative.** (a) The agent and educational representative
10 shall have the same duties and responsibilities.

11 (b) The agent and the educational representative shall be
12 afforded the opportunity to participate in meetings with respect
13 to:

- 14 1) The identification, evaluation, and educational
15 placement of the student;
- 16 2) The provision of free, appropriate public education to
17 the student; and
- 18 3) The provision of input in accordance with the adult
19 student's individual instructions or other wishes, if
20 any, to the extent known.

21 Otherwise, the agent and the educational representative shall
22 participate in accordance with the determination of the



1 student's best interest. In determining the student's best
2 interest, the student's personal values, to the extent known,
3 shall be taken into consideration.

4 **§302A- Educational information.** The agent for the power
5 of attorney for special education or educational representative
6 is authorized to make educational decisions for a student and
7 has the same rights as the student to request, receive, examine,
8 copy, and consent to the disclosure of the individualized
9 education plan or any other educational records.

10 **§302A- Effect of copy.** A copy of a transfer of
11 student's rights, revocation of the power of attorney for
12 special education, the finding of lack of capacity, or the
13 reconsideration of the appointment of an educational
14 representative has the same effect as the original."

15 SECTION 3. This Act shall take effect on July 1, 2008.



Report Title:

DOE; SPED; Transfer of Rights

Description:

Establishes a power of attorney for special education.
Establishes the process to appoint an educational representative
for an adult student who lacks capacity. Clarifies the
authority of a guardian of an adult student. (CD1)

