

**Meeting of the Utah State Board of Education Acting as the
Governing Board for the Utah Schools for the Deaf and the Blind**

March 17, 2016

ADDENDUM

ACTION: Emergency Rule R277-752 (New)

1 **R277. Education, Administration.**

2 **R277-752. Adult Students with Disabilities and Informed Consent.**

3 **R277-752-1. Authority and Purpose.**

4 (1) This rule is authorized by:

5 (a) Utah Constitution Article X, Section 3, which vest general control and
6 supervision of public education in the Board;

7 (b) Subsection 53A-1-402(1)(c), which directs the Board to adopt rules
8 regarding services to students with disabilities;

9 (c) Section 53A-1-401(3), which allows the Board to adopt rules in accordance
10 with its responsibilities;

11 (d) The IDEA; and

12 (e) 34 CFR 300.520(b).

13 (2) The purpose of this rule is to:

14 (a) adopt procedures for appointing a parent of an adult student with a
15 disability, or if a parent is not available and willing, a surrogate parent or another
16 appropriate individual to represent the educational interests of the adult student with
17 a disability throughout the period of eligibility under the IDEA; and

18 (b) not intended to replace the other legal options for participating in the
19 decision making process for an adult student with a disability's education program,
20 like a limited power of attorney or guardianship.

21 **R277-752-2. Definitions.**

22 (1) “Adult student with a disability” is a student who has reached the age of
23 majority and meets eligibility criteria for special education and related services, as
24 defined in Board special education rules.

25 (2) “Age of majority” means age 18 or over for a student with a disability who
26 has not been determined to be incompetent under state law.

27 (3) “Educational representative” means:

28 (a) a parent of an adult student with a disability; or

29 (b) if a parent is not available and willing, then a surrogate parent or another
30 appropriate individual, who will represent the educational interests of the adult
31 student with a disability throughout the period of IDEA eligibility.

32 (4) “IEP team” means a group of individuals that is responsible for developing,
33 reviewing, and revising an IEP for a student with a disability.

34 (5) “Informed consent” means that an adult disabled student, parent or other
35 appropriate individual has sufficient information relevant to the adult disabled
36 student’s educational program to make a decision.

37 (6) “Lacks the ability to provide informed consent with respect to a student’s
38 educational program” means that an adult student with a disability is unable to:

39 (a) understand the nature and extent of the student’s rights to consent to an
40 educational program or to revoke consent to an educational program;

41 (b) understand the nature, extent and probable consequences of a proposed
42 educational program or option on a continuing or consistent basis;

43 (c) make a rational evaluation of the benefits or disadvantages of a proposed
44 educational decision or program as compared with the benefits or disadvantages of
45 another proposed educational decision or program on a continuing or consistent
46 basis; or

47 (d) communicate such understandings in any meaningful way.

48 (7) “LEA” includes, for purposes of this rule, the Utah Schools for the Deaf
49 and the Blind.

50 (8) “Notice of Transfer of Rights” means the notification an LEA must provide
51 to an individual and parent when a student with a disability reaches the age of
52 majority, which is age 18.

53 (9) “Surrogate parent” means an individual assigned to act as a parent for a
54 disabled student as set forth in Board special educations rules.

55 **R277-752-3. Notice of Transfer of Rights.**

56 (1) An LEA shall provide a Notice of Transfer of Rights to both an adult
57 student with a disability and either the parents, surrogate parents, or guardians of
58 an adult student with a disability within a reasonable time after an adult student with
59 a disability reaches the age of majority, but no less than 30 days before a student’s
60 next annual IEP.

61 (2) A Notice of Transfer of Rights shall include:

62 (a) notice that an adult student with a disability has reached the age of

63 majority causing the rights of parents or surrogate parents under the IDEA to transfer
64 to the adult student with a disability;

65 (b) a description of the rights transferred to an adult student with a disability
66 based upon the LEA's policy; and

67 (c) an adult student with a disability's right to invite or exclude the student's
68 parent's or surrogate parent's participation in meetings where decisions are being
69 made regarding the student's educational program.

70 (3) Based upon LEA policy, a Notice of Transfer of Rights may include:

71 (a) options for an adult student with a disability and parents or surrogate
72 parents that may include:

73 (i) limited power of attorney;

74 (ii) surrogate parent process;

75 (iii) guardianship; or

76 (iv) a determination by two or more professionals' written certification that the
77 professional determined the adult student with a disability lacks the ability to provide
78 informed consent with respect to the student's education program pursuant to
79 R277-752.

80 (b) copies of forms to facilitate options identified in Subsection R277-752-
81 3(3)(a), which may be created by the Board's office; and

82 (c) links to resources; and

83 (d) any other information an LEA deems appropriate to assist the adult
84 student with a disability and parent, surrogate parent, or guardian.

85 **R277-752-4. Procedure for Determining Ability to Provide Informed Consent**
86 **and Appointment of Educational Representative.**

87 (1) An adult student with a disability is presumed to be capable of making the
88 student's own decisions.

89 (2) The presumption in Subsection R277-752-4(1) may be overcome if an
90 adult student with a disability is determined by two or more professional's written
91 certification to lack the ability to provide informed consent with respect to the
92 student's educational program.

93 (3) In order to overcome the presumption, as described in subsection R277-
94 752-4(2), there must be at least one professional from each of the following lists who
95 determines an adult student with a disability lacks the ability to provide informed
96 consent with respect to the student's educational program:

97 (a) at least one of the following:

98 (i) a medical doctor licensed in the state where the doctor practices medicine;

99 (ii) a physician's assistant whose certification is countersigned by a supervising
100 physician meeting the criteria specified in subsection R277-752-4(3)(a)(i); or

101 (iii) a certified nurse practitioner.

102 (b) at least one of the following:

103 (i) a licensed clinical psychologist;

104 (ii) a licensed clinical social worker;

105 (iii) an attorney who is qualified to serve as a guardian ad litem for adults; or

106 (iv) a court-appointed special advocate for the adult student with a disability.

107 (4) A written certification shall include at least the following:

108 (a) name of the adult student with a disability being evaluated;

109 (b) name of the professional examining, observing, or interviewing the adult
110 student with a disability;

111 (c) professional degree or license that shows the professional qualifies to
112 make the determination and certification;

113 (d) statements that show the professional's determination:

114 (i) is based upon personal examination, observation, or interview of the adult
115 student with a disability as necessary to determine the student's ability or lack
116 thereof to provide an informed consent with respect to the student's educational
117 program;

118 (ii) is supported by specific factual information or data obtained in the
119 personal examination, observation, or interview of the adult student with a disability;

120 (iii) that the adult student with a disability lacks the ability to provide an
121 informed consent with respect to the student's education program;

122 (iv) that the professional informed the adult student with a disability of the
123 professional's determination verbally or in writing;

124 (v) how often a review of the adult student with a disability's lack of ability to

125 provide informed consent shall be made, and why, but which shall not be less than
126 annually;

127 (e) a declaration that the professional has read and understands:

128 (i) all parts of the determination process; and

129 (ii) the professional's duty to determine the adult student with a disability's
130 ability to provide informed consent with respect to the student's educational program
131 under the IDEA based upon examination, observation, or interview of the adult
132 student with a disability;

133 (f) the signature of the professional;

134 (g) the title of the professional;

135 (h) the address and email of the professional;

136 (i) the phone number of the professional;

137 (j) a witness's signature;

138 (k) the witness's address or email; and

139 (l) the witness's phone number.

140 (5) The professional who provides the certification may not:

141 (a) be an employee of the LEA currently serving the adult student with a
142 disability; or

143 (b) be related by blood or marriage to the adult student with a disability.

144 (6) A professional determination certifying an adult student with a disability is
145 incapable of providing informed consent may be made as early as 60 calendar days
146 prior to the adult student with a disability's age of majority or within a reasonable time
147 for the parent, surrogate parent, or other appropriate individual to represent the
148 educational interests of the adult student with a disability by participating in the
149 annual IEP meeting.

150 (7) The individual who seeks to have the determination made by two or more
151 professionals shall be responsible to pay for the professional's examination,
152 observation, or interview of the adult student with a disability and certifications.

153 (8) Upon receiving two or more professional certifications of an adult student
154 with a disability's inability to provide an informed consent with respect to the
155 student's education program, the LEA shall appoint in the following order:

156 (a) the spouse of an adult student with a disability if married;

157 (b) if there is no spouse or the spouse is unavailable or unwilling, then an
158 adult student with a disability's parents;

159 (c) if the parents are unavailable or unwilling, a surrogate parent; or

160 (d) if there is no surrogate parent or the surrogate parent is unavailable or
161 unwilling, then surrogate parent or another appropriate individual under the
162 circumstances.

163 (9)(a) Recertification of an adult student with a disability's inability to provide
164 informed consent must occur on or before the annual IEP team meeting where the
165 adult student with a disability's educational program will be discussed and consented
166 to for the next year.

167 (b) The recertification process shall consist of all requirements as set forth in
168 these procedures for certification.

169 (10) The professional's certification or the appointment may be challenged
170 subject to the following priority:

171 (a) a court appointed guardian;

172 (b) the adult student with a disability;

173 (c) the spouse of the adult student with a disability;

174 (d) a parent of the adult student with a disability;

175 (e) the nearest living relative of the adult student with a disability;

176 (f) a person who is seeking guardianship of the adult student with a disability
177 and has provided a copy of the guardianship documents filed in court; or

178 (g) any individual with a bona fide interest in and knowledge of the adult
179 student with a disability's ability to consent to the student's educational program.

180 (11)(a) A challenge to the professional certifications must be provided in
181 writing to the LEA.

182 (b) If a person making a challenge is unable to provide the challenge in
183 writing, then an LEA must obtain the information from the person making the
184 challenge and complete the written challenge.

185 (c) If a person making a challenge uses alternative communication, an LEA
186 must reasonably accommodate the person to obtain the challenge in writing.

187 (12) Upon receiving a written challenge, an LEA shall provide to the adult
188 student with a disability and the appointed education representative:

- 189 (a) a copy of the written challenge; and
190 (b) notice of action the LEA will take, which may include:
191 (i) the transfer of all educational rights back to the adult student with a
192 disability;
193 (ii) holding an IEP meeting for the purpose of compliance with IDEA with the
194 adult student with a disability and the individual with priority; or
195 (iii) any other action the LEA will take while the challenge is resolved through
196 the process set forth in Board special education rules.

197 **R277-752-5. Applicability of Rule to Adult Students with Disabilities.**

198 (1) This rule only applies if:

199 (a) there is a valid basis to conclude that an adult student with a disability
200 lacks the ability to provide informed consent with regard to the student’s educational
201 program; and

202 (b) an adult student with a disability has not been determined to be
203 incompetent by a court.

204 (2) This rule does not apply if:

205 (a) there is a valid limited power of attorney signed by an adult student with
206 a disability and a parent or other appropriate individual, to represent the educational
207 interests of the adult student with a disability throughout the IDEA eligibility period;
208 or

209 (b) there is a court-issued guardianship decree that provides the guardian will
210 represent the educational interests of the adult student with a disability throughout
211 the IDEA eligibility period.

212 **KEY: special education**

213 **Date of Enactment of Last Substantive Amendment: 2016**

214 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(c);**
215 **53A-1-401(3); IDEA; 34 CFR 300.520(b)**