
**TRANSFER OF PARENTAL RIGHTS: THE IMPACT OF
SECTION 615(M) OF THE INDIVIDUALS WITH
DISABILITIES EDUCATION ACT**

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ABSTRACT

Section 615(m) of the Individuals with Disabilities Education Act (IDEA) permits states to transfer the rights accorded parents to adult students with disabilities. While some students, parents, and educators may seize the “transfer of rights” as an opportunity for growth and empowerment as students transition into adulthood, for many others it is a consequential crossroads for choosing between risking to close avenues for enforcing students with disabilities’ educational rights in the short term and seeking guardianship orders that may restrict myriad decision-making rights into the future. Worse, the IDEA’s transfer-of-rights requirements are frequently misstated by researchers, judges, and civil society organizations, thereby confusing rather than clarifying parents and students’ choices. This Article surveys the state-level transfer-of-rights rules and guidance that have contributed to raising the stakes of transfer-of-rights considerations. While 50 of 54 jurisdictions surveyed choose to transfer parental rights to adult students as the IDEA permits, we found that only 40% of transfer-of-rights statutes or regulations in these “transfer” jurisdictions comply with IDEA requirements. Also, only 40% of these statutes or regulations establish optional procedures for appointing educational representatives for students considered unable to give informed consent, while fewer recognize guardianship alternatives that effectively avoid parental rights transfers (36%). Only three states, Connecticut, Indiana, and Virginia, have transfer-

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of-rights regulations that appear to do all three. We also found that state educational agencies' guidance documents too frequently misinform parents, students, and educators about transfer-of-rights rules (42%) or fail to mention guardianship alternatives (70%). We conclude with commonsense recommendations for how state policymakers, the U.S. Department of Education, and special education adjudicators can intervene to lower the stakes caused by many jurisdictions' uneven transfer-of-rights rules and guidance.

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INTRODUCTION

In 1997, the Individuals with Disabilities Education Act (IDEA) was amended to allow states to transfer to students becoming adults the rights that IDEA Part B had previously conferred on their parents.¹ Since then, most states have adopted laws and regulations to codify the transfer-of-rights process. When parental rights transfer, adult students become empowered to approve their individualized education programs (IEPs), consent to changes of placement or reevaluations, and request due process hearings, among other important educational rights. The consequences have been decidedly uneven. On the one hand, parental rights transfers reinforce students' standing in society and at law as full-fledged decision-makers.² On the other, many parents may question their adult children with disabilities' readiness to handle navigating the IDEA's complex provisions, particularly when their adult children have intellectual or developmental disabilities (IDD).³

Because the IDEA does not permit states to transfer parental rights to students who have been "determined to be incompetent,"⁴ guardianship represents a clear way for parents

1. See Individuals with Disabilities Education Act Amendments of 1997, Pub. L. No 105-17, § 615(m), 111 Stat. 37, 98-99 (codified as amended at 20 U.S.C. § 1415(m)).

2. See discussion *infra* Part II.

3. See discussion *infra* Part II.

4. IDEA Amendments of 1997 § 615(m). While legal incompetence is defined variably by individual states, generally "the definition includes the incapacity to make responsible decisions due to mental or physical disabilities or illnesses, or due to drug addiction or inebriety." Deborah Rebore & Perry Zirkel, *Transfer of Rights Under the Individuals with Disabilities Act: Adulthood with Ability or Disability?*, 2000 BYU EDUC. & L.J. 33, 44 (2000).

to prevent IDEA rights from transferring to their adult children. Although guardianship may be a surefire way for parents to secure their right to initiate due process complaints or lawsuits on behalf of adult students, it comes at the cost of restricting important decision-making rights that accompany adulthood and potentially impeding adults with disabilities' opportunities to fully and effectively participate in society. In some cases, guardianship even opens the door to abuse and exploitation.⁵ By contrast, less restrictive means for parents to retain IDEA Part B rights, such as educational powers of attorney, may be relatively underutilized, despite carrying fewer drawbacks.

Some researchers and practitioners have postulated that the prospect of transferring parental rights does in fact prompt parents to pursue guardianship,⁶ notwithstanding the difficulty of isolating parents' education-related concerns from those regarding the panoply of other rights (e.g., to contract, marry, consent to medical care, etc.) that simultaneously transfer to students at adulthood.⁷ Pending further exploration of how states' transfer-of-rights processes in practice factor into the complex motives surrounding parental decisions to seek guardianship, a systematic accounting of state rules⁸ governing these processes is warranted to describe the normative landscape in which parents, students, and schools are operating.

This Article makes significant contributions to this issue by describing the results of the first comprehensive survey⁹ of state

5. Dorothy Squatrito Millar & Adelle Renzaglia, *Factors Affecting Guardianship Practices for Young Adults with Disabilities*, 68 *EXCEPTIONAL CHILD* 465, 465 (2002).

6. J. Matt Jameson, Tim Riesen, Shamby Polychronis, Barbara Trader, Susan Mizner, Jonathan Martinis & Dohn Hoyle, *Guardianship and the Potential of Supported Decision Making with Individuals with Disabilities*, 40 *RSCH. & PRAC. FOR PERSONS WITH SEVERE DISABILITIES* 36, 39 (2015).

7. See Rebore & Zirkel, *supra* note 4, at 43.

8. Throughout this Article, we use the term "rules" to refer broadly to state statutes, regulations, and policies describing transfer of rights.

9. This survey was supported by an Institute for Education Sciences-funded participatory action research project led by the Institute for Community Inclusion at the University of

transfer-of-rights provisions and relating them to existing literature describing schools' contributions to guardianship rates. In short, state transfer-of-rights rules, related guidance, and court practice evidence a broad lack of imagination that justify concerns that transfer-of-rights-processes may encourage parents to seek guardianship. Regardless of whether the IDEA contributes to guardianship rates, the Section 615(m) transfer-of-rights provision appears to have sown confusion among policymakers, researchers, and practitioners that persists among parents, students, and school personnel. Concerningly, most state laws and regulations fail to provide clear alternatives to guardianship that avoid parental rights transfers,¹⁰ while guidance by many state educational agencies (SEA) on these laws and regulations similarly fail to alert parents and students to such alternatives, potentially leading more parents to pursue guardianship than otherwise.

This Article proceeds in four parts. Part I summarizes the history of the IDEA's transfer-of-rights provision and clarifies what the IDEA requires. Part II contextualizes the survey findings amid increasing scrutiny of guardianship orders for persons with IDD and the hostile environment that parents face when taking administrative or legal action on behalf of their adult children to whom rights have transferred. Part III shares findings of the authors' comprehensive survey, analyzing the extent to which states satisfy federal criteria for transfer-of-rights rules and adopt non-mandatory components, and assessing the accuracy and completeness of SEA guidance. Part IV provides recommendations for policymakers, courts, and

Massachusetts-Boston in partnership with Massachusetts Advocates Standing Strong (MASS) and Self-Advocacy Association of New York State (SANYS). The "Guardianship, Alternatives, and Transfer of Rights (GATOR) Talks" project aims to explore the relationship between special educators' transfer-of-rights and guardianship discussions and key predictors of transition outcomes for students with IDD. *Exploring How Transfer-of-Rights and Guardianship Discussions May Affect Transition Outcomes for Students with Intellectual Disabilities*, INST. FOR CMY. INCLUSION, <https://gator.communityinclusion.org> (last visited Mar. 19, 2021). The authors are both paid consultants on this project.

10. See, e.g., 05-071-101 ME. CODE R. § II (LexisNexis 2017); 07-034 MISS. CODE R. §§ 300.320(c), 300.520 (LexisNexis 2020); 19 TEX. ADMIN. CODE § 89.1049 (2020).

civil society to close the gaps identified in the survey, namely, that states update their rules and guidance, that the U.S. Department of Education (ED) leverage federal dollars to incentivize good practices, and that courts adopt equitable procedural accommodations to cure standing defects. These measures could prove vital in ensuring that measures adopted to implement Section 615(m) do not inadvertently contribute to unnecessary guardianship petitions.

I. CLARIFYING THE IDEA TRANSFER-OF-RIGHTS PROVISIONS

Pre-IDEA emendation, many states lacked laws, policies, or guidelines for educational decision-making authority once students reached the age of majority.¹¹ Although the 1997 IDEA amendments permitting parental rights transfer to adult students sought to resolve confusion among states,¹² confusion about the IDEA's requirements persists, exacerbating rather than relieving parents' anxieties surrounding their changing roles and responsibilities toward their transition-age children.¹³ Until 1997, the IDEA was silent as to whether decision-making authority remained in the hands of parents or transferred to students when they became adults under state law. The IDEA's procedural safeguards afford parents numerous rights, but the IDEA did not specify whether parents' continued exercise of

11. *Quick Turn Around Forum—A Brief Analysis of a Critical Issue in Special Education: Age of Majority*, NAT'L ASSOC. STATE DIR. SPECIAL EDUC. INC., Aug. 1999, at 1, 4 (reporting that only twenty-three of forty states responding to a survey indicated having transfer-of rights-laws, policies, or guidelines).

12. *Id.* at 3; Rebores & Zirkel, *supra* note 4, at 38 ("The 1997 amendments to the IDEA specifically address the issue of whether an older IDEA-eligible student is entitled to rights held by the parent upon reaching the age of majority under state law. Specifically, IDEA 1997 permits states to transfer the parent's rights to the student when the student achieves the age of majority.").

13. See, e.g., NAT'L CTR. FOR LEARNING DISABILITIES, IDEA PARENT GUIDE (2006), <https://www.nclld.org/wp-content/uploads/2014/11/IDEA-Parent-Guide.pdf>; Michael S. Kutzin & Allison Landwehr, *Navigating Your Child's Special Education Program: A Guide for Parents and Guardians*, SENIORLAW, <https://www.seniorlaw.com/navigating-your-childs-special-education-program-a-guide-for-parents-and-guardians/> (last visited Mar. 19, 2021) ("[P]arents and guardians of children with disabilities are confused and overwhelmed when faced with decisions regarding their children's educational future.").

these rights on behalf of students after they attain the age of majority, and when other important rights—for instance, the right to vote¹⁴—would conflict with state competency laws. Over time, this confusion may have led certain school districts to encourage parents to become legal guardians over their adult children in order to clarify who had decision-making authority under state law.¹⁵

The 1997 IDEA amendments attempted to clarify that states can decide how to handle the interaction between state law on legal adulthood and federal law on special education services.¹⁶ The legislative history of the 1997 emendations refers to this kind of confusion several times to justify the inclusion of this provision.¹⁷ Transfer of rights ranked among the IDEA amendments' five express purposes, namely, to ensure that "on reaching the age of majority under State law, children with disabilities understand their rights and responsibilities under part B" ¹⁸ Instead of instructing states to adopt a uniform approach, IDEA defers to states' traditional freedom to regulate issues about adults' decision-making capacity. The full text of Section 615(m) is provided below:

14. The age of legal adulthood, or "age of majority," is eighteen years old in most states and the District of Columbia. However, the age of majority is nineteen in Alabama and Nebraska and twenty-one in Mississippi.

15. Pam Lindsey, Barbara Guy, Michael L. Wehmeyer & James Martin, *Age of Majority and Mental Retardation: A Position Statement of the Division on Mental Retardation and Developmental Disabilities*, 36 EDUC. & TRAINING MENTAL RETARDATION & DEV'L DISABILITIES 3, 13 (2001); see also Judith C. Saltzman & Barbara S. Hughes, *Planning with Special Needs Youth upon Reaching Majority: Education and Other Powers of Attorney*, 1 NAELA J. 41, 46 (2005) (debunking "the popular assumption . . . that there *must* be a transfer of rights to the child at the age of majority" under IDEA).

16. See Individuals with Disabilities Education Act Amendments of 1997, Pub. L. No 105-17, § 615(m), 111 Stat. 37, 98-99 (codified as amended at 20 U.S.C. § 1415(m)).

17. For example, Part I of House Report No 104-614 of the IDEA Improvement Act of 1996 states:

Problems have arisen when a child with a disability attains the age of majority. In order to clarify the situation, a new IEP provision on transfer of rights has been included. The bill clarifies that when a child is considered incapable of making educational decisions, the State will develop procedures for appointing the parent or another individual to represent the interests of the child.

H.R. REP. NO 104-614, pt. 1 (1996).

18. IDEA Amendments of 1997 § 681(b)(4).

(m) Transfer of Parental Rights at Age of Majority.—

(1) In general.—A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

(A) the public agency shall provide any notice required by this section to both the individual and the parents;

(B) all other rights accorded to parents under this part transfer to the child;

(C) the agency shall notify the individual and the parents of the transfer of rights; and

(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

(2) Special rule.—If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child

throughout the period of eligibility of the child under this part.¹⁹

Relatedly, IDEA Section 614(d)(1)(A)(vii)(III) requires IEPs to include statements regarding transfer of rights a year before a transfer would occur under State law.²⁰

Section 615(m)'s awkward language,²¹ read together with Section 614(d)(1)(A)(vii)(III), makes three basic points. First, states, not the federal government, decide whether students or their parents will make educational decisions when students become adults. Second, if states decide that parental rights will transfer to students, they must: (a) exclude students "determined to be incompetent" from transfers, (b) provide required notices to both parents and students after transfer, (c) apply the transfer rule to incarcerated students, and (d) notify both students and parents at least one year in advance of the transfer. Third, for adult students who have not been "determined to be incompetent" but are determined by the state as unable to provide the parental consent required by the IDEA, states must have procedures for appointing representatives. Thus, the IDEA lets states decide whether parental rights transfer, while setting certain procedural requirements for doing so.

While Section 615(m)(2) may admit various interpretations,²² Section 615(m)(1) is comparatively clear: individual states, not

19. Individuals with Disabilities Education Act Amendments of 1997, Pub. L. No 105-17, 111 Stat. 37, 98-99 (codified as amended at 20 U.S.C. § 1415(m)). Congress did not substantially alter this text in the IDEA Amendments of 2004 or its regulations. *See* Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No 108-446 § 615(m), 118 Stat. 2647, 2730. Thus, largely the same language is located at 20 U.S.C. § 1415(m) and 34 C.F.R. § 300.520.

20. IDEA Amendments of 1997 § 614(d)(1)(A)(vii)(III) (codified as amended at 20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(cc)).

21. Deborah Rebores and Perry Zirkel were among the first to criticize Section 615(m)'s opacity. *See* Rebores & Zirkel, *supra* note 4, at 34.

22. While the IDEA clearly does not require states to transfer parental rights to students when they become adults, it is less clear whether the IDEA requires or merely allows states to adopt procedures for appointing educational representatives for adult students deemed unable to give the consent required by the IDEA. The IDEA's legislative history suggests the Section 615(m)(2) special rule is permissive. *Compare* H. R. REP. No 104-614, at 28 (1996), *and* S. REP. No

the federal government, determine whether parental rights transfer to adult students. However, Section 615(m) has frequently been misinterpreted as *requiring* states to transfer parental rights.²³ Such misstatements are common in the growing body of pertinent literature,²⁴ undermining the plentiful accurate restatements.²⁵ Moreover, many researchers who stop short of clearly misstating the IDEA's transfer-of-

105-17, at 50 (1997), and H. R. REP. No 105-95, at 124 (1997), with S. REP. No 104-275, at 51 (1996); see also Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, 71 Fed. Reg. 46,713, 46,713 (Aug. 14, 2006) (to be codified at 34 C.F.R. pt. 300).

23. Dorothy Millar, among the most prolific authors on transfer of rights, was also among the first to misstate the IDEA's transfer-of-rights provisions. See Millar & Renzaglia, *supra* note 5, at 446 ("Once the student reaches the age of majority, however, it should be noted that IDEA states that parental rights must be transferred to the young adult, unless the student is considered to be 'incompetent.'" (citation omitted)).

24. See, e.g., Kate MacLeod, "I Should Have Big Dreams": A Qualitative Case Study on Alternatives to Guardianship, 52 EDUC. & TRAINING AUTISM & DEV'L DISABILITIES 194, 194 (2017) ("In addition to requiring transition planning, the IDEA mandates that all rights accorded to parents under the IDEA 'transfer' to the student once he or she reaches the age of majority, so that the student will be able to make his or her own independent decisions."); Arlene S. Kanter, *Guardianship for Young Adults with Disabilities as a Violation of the Purpose of the Individuals with Disabilities Education Improvement Act*, 8 J. INT'L AGING L. & POL'Y 1, 4 (2015) ("The [IDEIA] requires that once a student with a disability reaches the age of majority, the school must transfer all educational rights of the parents to the student as part of the transition planning process."); Dorothy Squatrito Millar, *Comparison of Transition-Related IEP Content for Young Adults with Disabilities Who Do or Do Not Have a Legal Guardian*, 44 EDUC. & TRAINING DEV'L DISABILITIES 151, 152 (2009) [hereinafter Millar, *Comparison of Transition-Related IEP Content*] ("Section 615(m) . . . states that the right of transfer is to occur for all students with disabilities . . ."); Dorothy Squatrito Millar, *Self-Determination in Relation to Having or Not Having a Legal Guardian: Case Studies of Two School-Aged Young Adults with Developmental Disabilities*, 43 EDUC. & TRAINING DEV'L DISABILITIES 279, 279 (2008) [hereinafter Millar, *Self-Determination*] ("When a student reaches the age of majority, IDEA mandates that all the rights accorded to the parents are to transfer to the student . . ."); see also Erin M. Payne-Christiansen & Patricia L. Sitlington, *Guardianship: Its Role in the Transition Process for Students with Developmental Disabilities*, 43 EDUC. & TRAINING DEV'L DISABILITIES 3, 9 (2008) (implying that transfer of rights simply "occurs" rather than ascribing occurrences to federal or state law).

25. See, e.g., Elisa Hyman, Dean Hill Rivkin, & Stephen A. Rosenbaum, *How IDEA Fails Families Without Means: Causes and Corrections from the Frontlines of Special Education Lawyering*, 20 AM. U. J. GENDER, SOC. POL'Y & L. 107, 140 (2011); Yael Zakai Cannon, *Who's the Boss?: The Need for Thoughtful Identification of the Client(s) in Special Education Cases*, 20 AM. U. J. GENDER, SOC. POL'Y & L. 1 (2011); Saltzman & Hughes, *supra* note 15, at 46; Susan G. Clark & Timothy Lillie, *Growing Up with Disabilities: Education Law and the Transition to Adulthood*, 20 DISABILITY STUDIES Q. (2000); Rebore & Zirkel, *supra* note 4, at 33; see also Lindsey et al., *supra* note 15, at 5-6 (clarifying that Section 615(m) states that a state "may provide that all rights accorded to the parents under Part B of the IDEA will transfer to the student" while later describing the provision as an "IDEA mandate to transfer rights").

rights provisions misleadingly imply that all states transfer rights, failing to account for states, such as Colorado and Pennsylvania, whose general age of majority differs from the age of majority for educational purposes.²⁶ Troublingly, much of this misinformation is generated through federal funds,²⁷ countering the ED's largely accurate guidance.²⁸ Prominently, the National Council on Disability's (NCD) 2019 *Turning Rights into Reality* report states that the IDEA "generally requires—once students in special education reach the age of majority (usually 18, depending on state law)—the school to transfer all of their parents' educational rights to them as part of the transition planning process."²⁹ Numerous civil society resources amplify

26. See, e.g., Sheida K. Raley, Karrie A. Shogren, Jonathan G. Martinis & Michael L. Wehmeyer, *Age of Majority and Alternatives to Guardianship: A Necessary Amendment to the Individuals with Disabilities Education Improvement Act of 2004*, J. DISABILITY POL'Y STUDIES 1, 1 ("Under the Individuals with Disabilities Education Improvement Act, students gain the right and responsibility to make their own educational decisions when they reach the age of majority, unless it is determined that a student is incompetent or cannot provide informed consent for educational decisions. In 47 states, the age of majority is 18 years, while a small group of states elect to set higher majority ages or establish graduation from high school as the age of majority if the student is not yet 18 years." (parentheticals omitted) (citations omitted)); Payne-Christiansen & Sitlington, *supra* note 24, at 9 ("Individuals who have reached the age of majority, regardless of their disability label, are considered to have the rights accorded to an adult in that state, unless the individual has been declared legally incompetent.").

27. See, e.g., Raley et al., *supra* note 26, at 9.

28. See U.S. DEP'T OF EDUC., OFF. OF SPECIAL EDUC. PROGRAMS, DEAR COLLEAGUE LETTER 9 (Dec. 5, 2014) [hereinafter DEAR COLLEAGUE LETTER], <https://sites.ed.gov/idea/files/idea-letter.pdf> ("The IDEA permits, but does not require, a State to transfer all rights accorded to parents under the IDEA to students who are in an adult or juvenile, State or local correctional facility when the student with a disability reaches the age of majority under State law, unless the student has been determined to be incompetent under State law." (citing 34 C.F.R. § 300.520)); see also Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 73 Fed. Reg. 73,006, 73,010 (Dec. 1, 2008) (to be codified at 34 C.F.R. pt. 300) ("Section 615(m)(1) of the Act allows, but does not require, a State to transfer all rights accorded to parents under Part B of the Act to children who have reached the age of majority under State law.").

29. NAT'L COUNCIL ON DISABILITY, TURNING RIGHTS INTO REALITY: HOW GUARDIANSHIP AND ALTERNATIVES IMPACT THE AUTONOMY OF PEOPLE WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES 29 (2019) [hereinafter NCD 2019 REPORT] (emphasis added). While the report is correct that the age of majority in most states is eighteen, it curiously cites to a blog post instead of state statutes or regulations as support for that proposition. See *id.* at 29 n.37.

this misunderstanding.³⁰ In fact, the IDEA and its regulations do not *require* states to transfer parental rights to adult students, and at least four states do not.³¹

Judges have committed the same error. For example, shortly after the 1997 amendments, the Eighth Circuit Court of Appeals erroneously implied that federal law, not state law, dictates parental rights transfers.³² Predictably, district court judges have also been led astray. A district court judge in Connecticut construed Section 615(m) thus: “While Congress sought to protect individual children by providing for parental involvement in the development of state plans and policies and in the formulation of the child’s IEP, all procedural rights accorded to the parents transfer to the student when the student reaches the age of majority.”³³ More recently, a district court judge in Tennessee stated: “The IDEA provides when a child with a disability reaches the age of majority under state law, all

30. See, e.g., NYS PROMISE, NYS PROMISE CASE MANAGEMENT: A FIELD GUIDE FOR CASE MANAGERS AND FAMILY COACHES 15:2 (2018) (advising that “[a]s part of the transition process, service providers, school staff and parents should inform youth that in New York state, the transfer of rights automatically moves from parents and guardians to the youth when the youth turns 18,” even though New York in fact is a non-transfer jurisdiction); D. Hart, R. Nemeth Cohen & M. Dragoumanos, UNIV. OF MASS. BOS. INST. FOR CMTY. INCLUSION, MASSACHUSETTS TRANSITION TIMELINE (2012), http://www.kanecountytpc.com/uploads/8/3/5/1/83518542/timeline_2012_f.pdf (recommending special educators to “[c]onfirm that a Transfer of Parental Rights has occurred, or a formal Guardianship process has been completed” while omitting alternatives named in Massachusetts regulations).

31. See discussion *infra* Section III.A. These four states account for approximately 13% of the approximately 4.2 million students with autism, developmental delay, emotional disturbance, intellectual disabilities, multiple disabilities, specific learning disabilities, and traumatic brain injury receiving special education services. *IDEA Section 618 Data Products: Static Tables*, U.S. DEP’T OF EDUC., <https://www2.ed.gov/programs/osepidea/618-data/static-tables/index.html> (Jan. 29, 2021) (scroll down to Part B Child Count and Educational Environments, 3. Number of students ages 6 through 21 served under *IDEA*, Part B, by disability and state, and click on the 2019-2020 Excel file). Although transfer-of-rights considerations are informed by much more than disability category, for the purpose of this calculation, we assume that transfer-of-rights considerations are more germane for students with disabilities falling within these IDEA categories.

32. *Birmingham v. Omaha Sch. Dist.*, 220 F.3d 850, 853–54 (8th Cir. 2000) (holding superseded by statute).

33. *Bruno v. Greenwich Bd. of Educ.*, No 3:02-cv-2192, 2006 U.S. Dist. LEXIS 1885, at *8 (D. Conn. Jan. 6, 2006).

rights accorded to the parents transfer to the child.”³⁴ And again, a district court judge in Texas declared that: “Parents are given the authority to enforce their child’s IDEA rights, but that authority transfers to the child when he or she turns 18 years old.”³⁵ While numerous courts have accurately construed the IDEA’s transfer-of-rights provisions as permissive,³⁶ the persistence of the IDEA mandate misnomer among courts underscores the confusion the unclear language of Section 615(m) has helped to sow. Thus, in many instances the 1997 amendments appear to have exacerbated rather than reduced confusion about the implications of adulthood for IDEA rights.

II. TRANSFER OF RIGHTS’ HIGH STAKES

While signaling the importance of according students with disabilities equal rights when they become adults, in 2001 the Board of Directors of the erstwhile Division on Mental Retardation and Developmental Disabilities of the Council on Exceptional Children (CEC) voiced concerns that Section 615(m) “will lead to a circumstance where parents and family members will feel compelled to obtain guardianship or other legal decision-making status over their son or daughter when they might not otherwise do so.”³⁷ The Board noted that this outcome would depend on state practice: “If the only activities in which a state engages relate to the legal requirements for notification, parents and family members might become legitimately alarmed that their decision-making authority will be undermined.”³⁸ But if states were to “adopt a philosophy of supporting students to become more self-determined and to become meaningful participants in the planning process (from

34. *Harris v. Cleveland City Bd. of Educ.*, No 1:17-cv-00121, 2018 U.S. Dist. LEXIS 33149, at *12 (E.D. Tenn. Mar. 1, 2018).

35. *J.A. v. Tex. Educ. Agency*, No 1:19-cv-921, 2020 U.S. Dist. LEXIS 108362, at *2 (W.D. Tex. June 21, 2020).

36. See, e.g., *Reyes ex rel. E.M. v. Manor Indep. Sch. Dist.*, 850 F.3d 251, 253 (5th Cir. 2017); *Loch v. Edwardsville Sch. Dist. No 7*, 327 F. App’x 647, 650 (7th Cir. 2009).

37. *Lindsey et al.*, *supra* note 15, at 13.

38. *Id.*

elementary school onward) . . . then the implied threat may be removed.”³⁹ In this way, transfer of rights can “serve as a catalyst to school districts to implement instructional practices and educational experiences that enhance self-determination and student involvement.”⁴⁰

Unfortunately, two important measures suggest that Section 615(m) and states’ rules thereunder have raised the stakes of parental rights transfers. First, researchers and practitioners have postulated that transfer-of-rights discussions may unnecessarily induce parents to seek guardianship rather than allow parental rights to transfer.⁴¹ Second, court and hearing officer decisions denying parents standing to sue on behalf of adult students to whom rights have transferred may incentivize parents to use guardianship as a means to avoid transfers, even at the cost of long-term legal capacity restrictions.⁴² These trends appear to have elevated transfer of rights from a mere administrative formality to a consequential crossroads, and the following sections discuss them in turn.

A. Rights Transfers May Lead to Guardianship

Congress did not intend for parents to “use State guardianship procedures in order to retain any rights that would otherwise transfer to the child.”⁴³ Indeed, because incompetency adjudications intervene with the fundamental rights for an adult’s foreseeable future,⁴⁴ guardianship should never be obtained solely to remedy transfer-of-rights concerns. Yet in many cases Section 615(m)’s language may have that effect. Arguably, Section 615(m)’s clearest statement is that

39. *Id.*

40. *Id.* at 10.

41. *See id.* at 13.

42. *Id.* at 13.

43. S. REP. NO 104-275, at 53 (1996).

44. *See, e.g.,* Jennifer L. Wright, *Guardianship for Your Own Good: Improving the Well-Being of Respondents and Wards in the USA*, 33 INT’L J.L. & PSYCHIATRY 350, 354 (2010) (arguing that intervening with fundamental rights may have a “significant negative impact on their physical and mental health, longevity, ability to function, and reports of subjective well-being”).

states may not transfer parental rights to adult students whom courts have declared incompetent.⁴⁵ Because Section 615(m) neither mentions alternative means for avoiding parental rights transfers nor obligates states to adopt special proceedings, the IDEA's plain language implies that guardianship may be the only surefire way of doing so. As a result, it stands to reason that parents might use guardianship as a tool to prevent IDEA rights from transferring to their adult children with IDD and that this motivation may have an outsize influence on their decisions to do so.

Although empirical evidence remains wanting, researchers and practitioners have warned of a link between IDEA's transfer-of-rights provisions and guardianship petitions.⁴⁶ For example, one researcher found in 2007 that student focus group participants in one Michigan school district first learned about guardianship at IEP meetings where a teacher asked them, "Do you have a guardian?" while reviewing an IEP form.⁴⁷ Thereafter, in 2008 researchers found that a segregated Iowan school for students with "more significant developmental disabilities" aged two through twenty-one had a "blanket policy towards guardianship."⁴⁸ Further, a 2015 survey of mostly parents indicated that school personnel were as or more likely to be the first to recommend guardianship, compared with other potential referrer groups, including service

45. See *supra* Part I; Individuals with Disabilities Education Act, 20 U.S.C. § 1415(m) (excepting from transfer an adult student "who has been determined to be incompetent under State law").

46. See, e.g., Eliana J. Theodorou, *Supported Decision-Making in the Lone Star State*, 93 N.Y.U. L. REV. 973, 1009 (2018) (observing that "transition counselors at schools often erroneously tell parents they must obtain guardianship in order to stay involved in their child's education planning"); Tina Sarkar, *Intellectual and Developmental Disability: Transition to Adulthood and Decision Making Process*, 8 INT'L J. CHILD HEALTH & HUM. DEV. 517, 518 (2015) (noting that certain legal clinic clients "were advised to become legal guardians by their child's medical or education provider").

47. Dorothy Squatrito Millar, *"I Never Put it Together": The Disconnect Between Self-Determination and Guardianship—Implications for Practice*, 42 EDUC. & TRAINING DEV'L DISABILITIES 119, 125 (2007) [hereinafter Millar, *"I Never Put it Together"*]; accord Millar, *Comparison of Transition-Related IEP Content*, *supra* note 24, at 152.

48. Payne-Christiansen & Sitlington, *supra* note 24, at 12, 14–17.

providers, family or friends, and medical professionals, among others.⁴⁹ Similarly, a 2019 survey of twenty parents whose children were participating in a New York City pilot project signaled that school personnel were among likely guardianship referrer groups.⁵⁰ Parent testimonials collected for the NCD's 2019 *Turning Rights into Reality* report indicate that, for at least some parents, transfer-of-rights discussions with school personnel led them to consider guardianship.⁵¹ Other researchers have argued that some states have effectively codified recommending guardianship as a routine part of transfer-of-rights discussions, despite the fact that this undermines the IDEA's goal of supporting students to become self-determined.⁵² Taken together, these inquiries state a plausible case for tracing parents' decisions to initiate guardianship petitions to advice they receive from school personnel prompted by states' transfer-of-rights rules.

Even so, these inquiries likely fall short of demonstrating Section 615(m) to be the singular cause of guardianship

49. Jameson et al., *supra* note 6, at 42, 47 (characterizing school personnel as a "primary source of an initial recommendation" for guardianship, despite only 173 of 726 responses identifying "school personnel" as initial guardianship referrers while nearly as many responses indicated "adult or social service personnel" or "family friend or family member" — 155 and 156 of 726, respectively). Moreover, the researchers curiously asked only respondents *who had not obtained guardianship* whether they had been recommended to do so and by whom. *See id.* at 44–45. Thus, even if school personnel were marginally more likely than other groups to recommend that parents seek guardianship, they certainly do not appear to do so persuasively.

50. ELIZABETH PELL, SUPPORTED DECISION-MAKING NEW YORK: EVALUATION REPORT OF AN INTENTIONAL PILOT 44 (2019), <https://sdmny.hunter.cuny.edu/wp-content/uploads/2019/12/Pell-SDMNY-Report-2019.pdf>.

51. NCD 2019 REPORT, *supra* note 29, at 31–32.

52. Carrie E. Rood, Arlene Kanter & Julie Causton, *Presumption of Incompetence: The Systematic Assignment of Guardianship within the Transition Process*, 39 RSCH. & PRAC. FOR PERSONS WITH SEVERE DISABILITIES 319, 323 (2015) ("Although the [IDEA] does not require the appointment of a guardian, per se, the regulations do seem to create the context in which parents will move toward guardianship as a necessity to continue to ensure services for their child."); *see also* Lindsey et al., *supra* note 15, at 6 (asserting that "it is both ethical and necessary . . . that state and local education agencies support and enhance students' capacity to provide informed consent and assume their rights and responsibilities by developing programs that provide opportunities to enhance student self-determination and to learn and practice skills crucial to the attainment [of] adult status").

petitions.⁵³ Also, sweeping declarations of a “school-to-guardianship” pipeline, such as those suggested by the NCD,⁵⁴ and amplified by others,⁵⁵ may overstate available empirical research.⁵⁶ Moreover, available empirical research has not explored whether this pipeline persists in non-transfer jurisdictions.⁵⁷ While the aforementioned studies proffer a plausible case that school personnel influence some parents’ decisions to pursue guardianship, other sources’ pervasive stereotypes and implicit biases regarding the decision-making capacity of persons with IDD also likely influence parents’ guardianship considerations.⁵⁸ Indeed, because IDEA parental rights typically transfer at the same time as other rights,⁵⁹ empirical research that isolates the influence of school personnel recommendations from other compelling reasons for pursuing guardianship is likely needed to substantiate direct causal claims.

53. Cf. Kanter, *supra* note 24, at 15 (likely overstating that Section 615(m) “may be the reason that many parents seek to become guardians”).

54. 5 NAT’L COUNCIL ON DISABILITY, BEYOND GUARDIANSHIP: TOWARD ALTERNATIVES THAT PROMOTE GREATER SELF-DETERMINATION 92–94 (2018) [hereinafter NCD 2018 REPORT].

55. See, e.g., Raley et al., *supra* note 26, at 2.

56. For example, inferring support for the pipeline hypothesis from findings that most guardianship petitions involve school-age youth would appear to disregard that IDEA parental rights in most states transfer at the same time as other rights, which might be of greater concern to parents than IEP planning. See *id.* at 2 (discussing Millar & Renzaglia, *supra* note 5, at 465). Similarly, citing the Jameson et al., *supra* note 6, study for the proposition that “parents were advised to seek guardianship by educational personnel more often than by any other sources” seems to overlook both that most (63%) survey respondents reported that they had not been recommended guardianship and also that the “adult or social service personnel” and “family friend or family member” groups were nearly as frequent referrers as “school personnel” (173 versus 155 and 156, respectively, out of 726 total responses). See Jameson et al., *supra* note 6, at 42, 44–45.

57. These include Maryland, Nebraska, New York, and Pennsylvania. See *infra* Section III.A.3.

58. See generally Laura VanPuymbrouck, Carli Friedman & Heather Feldner, *Explicit and Implicit Disability Attitudes of Healthcare Providers*, 65 REHAB. PSYCH. 101, 115 (2020) (discussing a study demonstrating that although a majority of healthcare providers self-report not being biased against people with disabilities, implicitly, a majority were biased).

59. Colorado is one notable exception, where the age of majority for “educational purposes” is twenty-one years old, while the legal age of majority for other rights is eighteen years old. See *infra* Section III.A.1.

Yet, calculating the precise share of guardianship petitions that are traceable to school personnel and states' transfer-of-rights rules also likely misses the point, since it is easy to imagine how a school-to-guardianship pipeline might come into being. Many parents both respect school personnel's expertise over educational matters and also have difficulty mastering the IDEA's complex procedures.⁶⁰ And, although many individual instructors have students' best interests at heart, chronic underfunding of special education services may incentivize shortcuts, in some cases possibly truncating in-depth conversations about the implications of rights transfers.⁶¹ At the same time, as students deepen their transition planning and adult service providers enter onto the scene, educational decisions become more multifaceted.⁶² Also, students' final years of IDEA eligibility may prove the most crucial: possibly their last chance to transition into postsecondary opportunities or to resolve simmering disputes with school districts.⁶³ Amid such pressures, and combined with existential anxieties about their children's futures, it is easy to surmise how parents may under-examine the import of guardianship's ramifications in service of expediency and certainty. Indeed, subtle nudges, rather than outright recommendations, from trusted school personnel, however benign or well-intended, may be sufficient to induce them to seek guardianship, especially when parents often have incomplete information about guardianship and its

60. See Saltzman & Hughes, *supra* note 15, at 44.

61. More nefariously, in some cases school personnel may actively take advantage of adult students to whom parental rights have transferred. *Blackman v. District of Columbia*, 72 F. Supp. 3d 249, 253–54 (D.D.C. 2014) (reproaching school district for “totally indefensible” and “egregious” conduct, i.e., barring adult student’s attorney from attending IEP meeting, summoning police to remove attorney from school premises, and attempting to bribe student *ex parte* with an iPad).

62. See Saltzman & Hughes, *supra* note 15, at 43, 47, 50–53 (discussing how the student, school, parent, and power of attorney work together to make students’ educational decisions).

63. See *id.* at 50–52 (discussing the importance of transitioning and how these new expectations can lead to “meltdowns”); see also Millar, “*I Never Put it Together*,” *supra* note 47, at 128–29.

far-reaching effects.⁶⁴ Furthermore, lack of accurate information about guardianship may lead parents and school personnel alike to contemplate it lightly.⁶⁵

B. Transfers May Cost Parents Standing to Sue

The potential negative effects of allowing parental rights to transfer are less explored in the literature. Specifically, court and hearing officer decisions indicate that parents who allow parental rights to transfer to their adult children often lose standing to sue on their behalf.⁶⁶ Even where court proceedings are not directly responsible for parents obtaining guardianship,⁶⁷ courts, state review officers, and hearing officers have frequently ruled that federal and state transfer-of-rights provisions prevent parents from bringing due process complaints and lawsuits to protect adult students' substantive IDEA rights.⁶⁸ Thus, even where parents choose to allow rights to transfer to avoid the long-lasting and far-reaching effects of incompetence adjudications, they may encounter immediate procedural barriers that may endanger students' educational rights in their last years of eligibility.

64. See, e.g., Millar, *Comparison of Transition-Related IEP Content*, *supra* note 24, at 152 ("Although the IEP manual suggests that guardianship-related issues be discussed, statements such as this may be interpreted that guardian appointments are needed.").

65. See Millar, *"I Never Put it Together," supra* note 47, at 123–27 (observing information deficits about the ramifications of guardianship among students, parents, and educators).

66. See Reyes ex rel. E.M. v. Manor Indep. Sch. Dist., 850 F.3d 251, 253 (5th Cir. 2017).

67. See *id.* at 254–55.

68. See, e.g., *id.*; Loch v. Edwardsville Sch. Dist. No. 7, 327 Fed. App'x 647 (7th Cir. 2009); Pratt v. Pleasant Valley Cmty. Sch. Dist., No. 3-13-cv-00097, 2015 U.S. Dist. LEXIS 193810 (S.D. Ia. Aug. 13, 2015); Neville v. Dennis, No. 07-2202-CM, 2007 U.S. Dist. LEXIS 74231 (D. Kan. Oct. 3, 2007); Rivera v. Fremont Union High Sch. Dist., No. 5:12-cv-05713, 2013 U.S. Dist. LEXIS 126043 (N.D. Cal. Aug. 30, 2013) (hearing officer had dismissed plaintiff's complaint due to rights transfer); *In re Student v. Montachusett Regional Vocational Technical Sch.*, BSEA # 19-07993, 119 LRP 15757 (Apr. 22, 2019); *In the Matter of Anon.*, 2012-05, Alleged Violations of the Individuals with Disabilities Education Act (IDEA) and Montana Special Education Laws, 2013 Mont. Off. Pub. Inst. LEXIS 1 (Jan. 25, 2013); *In the Matter of Due Process Hearing Request for [Student], by and through her parents, [Parents] v. [District]*, LEA-13-006, 113 LRP 47193 (Apr. 3, 2013).

District courts routinely invoke rights to transfer to bar parents from asserting claims on behalf of the adult students.⁶⁹ While courts may occasionally expunge excess formalism by hearing officers,⁷⁰ more frequently they epitomize rigidity, thereby incentivizing parents to prevent transfers by the most certain means possible to preserve their ability to sue. *Ravenna School District Board of Education v. Williams* presents an archetypal case of judicial stinginess.⁷¹ Although both a hearing officer and state review officer declined to dismiss the administrative due process complaint filed by a mother eight months after her child turned eighteen years old, the district court readily obliged.⁷² The court could not square Ohio's regulation transferring "[a]ll rights accorded to parents under Part B of the IDEA" to adult students unless they have been adjudicated incompetent,⁷³ reasoning that alternatively, "no rights could ever be transferred because the parents always retain their rights."⁷⁴ But just because pre-transfer parental rights change hands does not necessarily mean that post-transfer rights expressly conferred on parents by federal and state law, namely, the continued right to receive notices, may be abrogated. However, Ohio is one of the eighteen transfer jurisdictions whose transfer-of-rights rules fail to recognize parents' post-transfer right to notice pursuant to Section

69. Many state review and hearing officers appear to have adopted formalistic approaches to parents' post-transfer standing like the courts. *See, e.g.,* *Student v. Montachusett Reg'l Vocational Tech. Sch.*, BSEA #1907993 (Apr. 17, 2019); *B.G. v. Ocean City Bd. of Educ.*, No 13-5166, 2014 WL 4798647, at *7 n.4 (D.N.J. Sept. 26, 2014); *B.A.W. v. E. Orange Bd. of Educ.*, No 10-4039, 2010 WL 3522096, at *3 n.2 (D.N.J. Aug. 31, 2010); *Student with a Disability*, 115 LRP 33576, No 2015-6423-IDEA (May 28, 2015).

70. *See* *Rivera v. Fremont Union High Sch. Dist.*, No 5:12-cv-05714, 2013 U.S. Dist. LEXIS 126043, at *2-3 (N.D. Cal. Aug. 30, 2013).

71. No 5:11-cv-1596, 2012 U.S. Dist. LEXIS 111817, at *8 (N.D. Ohio Aug. 9, 2012).

72. Declining to defer to the SEA's interpretation of its own regulation, the court found "no question that the hearing officer and [state legal review officer] erred in concluding that Williams retained rights once her daughter reached the age of majority." *Id.*

73. *Id.* at *5 (construing OHIO ADMIN. CODE § 3301-51-05(D)(1)(b) (2014)).

74. *Id.* at *7.

615(m)(1)(A),⁷⁵ arguably demonstrating how poorly drafted transfer-of-rights regulations may affect adult students' substantive IDEA rights.

But even more carefully crafted state transfer of regulations have fallen prey to misinterpretation. In *Doe v. Westport Board of Education*, a district court subjected Connecticut's relatively progressive regulation—one of the few to recognize parents' post-transfer right to notice, establish a special rule pursuant to Section 615(m)(2), and refer to guardianship alternatives⁷⁶—to a cramped construction that obliterated parents' substantive claims to tuition reimbursement for a unilateral private placement.⁷⁷ The hearing officer dismissed their administrative complaint due to their lack of standing: the parents' child turned eighteen years old on May 15, 2018, three months before the parents had requested a due process hearing.⁷⁸ Connecticut unambiguously provides first that when a student turns eighteen years old, the Board of Education “shall provide any notices required by the IDEA . . . to such child and the parents of such child” and then that “all *other*” parental rights transfer.⁷⁹ Finding “no express or implied additional exception for parental reimbursement rights,” the court found no reason to deviate from the regulations' plain language.⁸⁰ Instead, the

75. See *infra* Section III.A.2. Although Ohio Administrative Code § 3301-51-05(D)(2)(c) requires schools to notify both parents and students that rights transfer, it does not expressly recognize parents' right to continue to receive all notices due students after other parental rights transfer.

76. See *infra* Section III.A.3.

77. See *Doe v. Westport Bd. of Educ.*, No 3:18-cv-01683, 2020 U.S. Dist. LEXIS 29911, at *13–16 (D. Conn. Feb. 21, 2020).

78. *Id.* at *20.

79. CONN. AGENCIES REGS. § 10-76d-12(b)(1)–(2) (2015) (emphasis added).

80. *Doe*, 2020 U.S. Dist. LEXIS 29911, at *9. *Contra* *Latynski-Rossiter v. District of Columbia*, 928 F. Supp. 2d 57, 62 (D.D.C. 2013) (finding such a construction absurd because it would cause parents' right to reimbursement to evaporate upon their child's eighteenth birthday, incentivizing school districts to drag their feet, and allowing an adult child to “sue for financial harms that he or she never incurred; if successful, the child would receive funds that he or she never earned,” thereby obliging parents to sue their own children to recoup private tuition costs). Similarly, in *Pratt v. Pleasant Valley Community School District*, the court recognized that parents' right to reimbursement did not “evaporate” when GL turned 18 years old and allowed

court reasoned that since parents' right to reimbursement was contingent on a hearing officer's agreement, dissolving that right at the student's age of majority was nonfatal to the IDEA's purpose.⁸¹ Moreover, the court sanctimoniously observed that parents had declined to take advantage of the guardianship alternatives expressly provided by Connecticut's regulations to avoid parental rights transfers.⁸²

Further, such judicial formalism may disproportionately affect unrepresented parents unable to afford legal assistance. For example, in *Harris v. Cleveland City Board of Education*, the mother of an eighteen-year-old with attention-deficit/hyperactivity disorder and autism proceeded pro se in district court to overturn an adverse hearing officer ruling but was dismissed by the district court for lack of standing, even though she likely never received notice of the transfer of parental rights.⁸³ Unlike in *Doe*, where the parents presumably had notice that IDEA rights would transfer, Ms. Harris would not have had a right to such notice because she was contesting the school district's determination that her son was ineligible for special education services while he was seventeen years old.⁸⁴ Not only had she likely not been informed of parental rights transfers (much less its effects on her standing), the district court's formalistic scruples contrasted starkly with the Harris' socioeconomic situation: throughout high school, Harris and his mother were living in various domestic violence shelters.⁸⁵ Moreover, while the court overlooked other technical defects in

them to pursue this claim for compensation on their own behalf. No. 13-cv-00097, 2015 U.S. Dist. LEXIS 193810, at *4 (S.D. Iowa Aug. 13, 2015).

81. *Doe*, 2020 U.S. Dist. LEXIS 29911, at *13–14.

82. *Id.* at *13. As noted in Section III.B.3 *infra*, the Connecticut SEA's *A Parent's Guide to Special Education in Connecticut* does not mention these guardianship alternatives, complicating the court's imputation of knowledge of them to the parents. See CONN. STATE DEP'T OF EDUC. BUREAU OF SPECIAL EDUC., A PARENT'S GUIDE TO SPECIAL EDUCATION IN CONNECTICUT 30 (2021), https://portal.ct.gov/-/media/SDE/Special-Education/Parents_Guide_SE.pdf.

83. No. 17-cv-00121, 2018 U.S. Dist. LEXIS 33149, at *2, *7 (E.D. Tenn. Mar. 1, 2018).

84. *Id.* at *3.

85. *Id.* at *1–2.

the mother's pro se filing,⁸⁶ after finding Ms. Harris lacked standing, it stonily invoked Rule 11(a) of the Federal Rules of Civil Procedure to dismiss the complaint because it lacked her son's signature,⁸⁷ without granting Ms. Harris leave to amend her complaint.⁸⁸ Even if technically correct, the court's formalism belied its own technical gaffes, insofar as it erroneously ascribed parental rights transfers to federal law rather than Tennessee law.⁸⁹ Although Ms. Harris's complaint was filed after her son turned eighteen years old, filing it before his birthday would have been unlikely to preserve her standing.⁹⁰

Indeed, though numerous courts have recognized alternative means to preserving standing other than guardianship,⁹¹ they

86. For example, she incorrectly named the City of Cleveland Schools as the Defendant, which the district court readily substituted. *Id.* at *6.

87. *Id.* at *8–9.

88. Which she did appear to have requested, albeit imperfectly. *See id.* at *14–15.

89. *Id.* at *12 (“The IDEA provides when a child with a disability reaches the age of majority under state law, all rights accorded to the parents transfer to the child.”); *see also* discussion *supra* Part I. Indeed, one might infer that the court shoehorned a prejudgment of the merits of the mother's claims into its standing determination, perhaps reflecting prejudices against both pro se plaintiffs and stereotypes about people with disabilities. To the latter point, following its observation that Michael alone retained the right to consent to services, the court gratuitously noted that Michael had been “earning high grades and meeting the graduation requirements,” thereby demonstrating “his ability to succeed.” *Harris*, 2018 U.S. Dist. LEXIS 33149, at *12. Further, in its factual recitations, the court noted Michael's curriculum included an advanced placement European history course and his “A” grade in that class, which seems gratuitous in a dismissal premised on standing. *Id.* at *3.

90. *See* *Loch v. Bd. of Educ.*, No. 3:06-cv-17, 2007 U.S. Dist. LEXIS 36501 (S.D. Ill. May 18, 2007), *aff'd by* *Loch v. Edwardsville Sch. Dist. No 7*, 327 Fed. App'x. 647, 650 (7th Cir. 2009); *see also* *Neville v. Dennis*, No. 07-2202, 2007 U.S. Dist. LEXIS 74231, at *2–3 (D. Kan. Oct. 3, 2007). *But see* *Castillo v. Sch. Bd. of Broward Cnty.*, No. civ-Dimitrouleas, 2015 U.S. Dist. LEXIS 186579, at *4 (S.D. Fla. 2015) (agreeing “with Defendants that this action must also be dismissed for lack of standing, as Plaintiff, Mery Castillo, does not have standing to bring an action on behalf of her son, Yanni Castillo, who was not a minor at the time Plaintiff filed the Complaint, and is not alleged to have been determined incompetent under state law”).

91. *See, e.g.*, *Wong v. Bd. of Educ.*, 478 F. Supp. 3d 229, 245 (D. Conn. 2020) (power of attorney); *Shaw v. District of Columbia*, No. 17-00738, 2019 U.S. Dist. LEXIS 20526, at *42 (D.D.C. Feb. 8, 2019) (power of attorney); *Meares v. Rim of the World Unified Sch. Dist.*, No. cv-14-1156, 2015 U.S. Dist. LEXIS 107474, at *12–14 (C.D. Cal. Aug. 13, 2015) (Assignment of Educational Decision-Making Authority form); *Stanek v. St. Charles Cmty. Unit Sch. Dist. #303*, 783 F.3d 634, 642 (7th Cir. 2015) (delegation of rights); *Klein Indep. Sch. Dist. v. Hovem*, 745 F. Supp. 2d 700, 735 (S.D. Tex. 2010) (power of attorney); *Weyrick v. New Albany-Floyd Cnty.*

appear far from foolproof. For example, in *Pratt v. Pleasant Valley Community School District* the district court stated that “a parent may not assert claims on the child’s behalf once the latter turns eighteen,” even though the case was filed before the child’s eighteenth birthday and the parent plaintiffs filed a “Notification that [GL] Has Formally Authorized Linda Pratt to Represent Him in Educational and Legal Issues,” wherein the child authorized his mother “to continue to represent his interests in all legal proceedings until his 22nd birthday.”⁹² Similarly, in *In the Matter of Anonymous, 2012-05, Alleged Violations of the Individuals With Disabilities Education Act (IDEA) and Montana Special Education Laws*⁹³ the state review officer declined to honor an adult student’s two duly executed durable powers of attorney (one for education and the other for health care), by repeatedly stating that the student as an adult retained parental rights to notice, etc. notwithstanding those instruments.⁹⁴ Further, some parents unwittingly rely on statutory power of attorney forms where the state’s statute governs instruments relating only to financial matters.⁹⁵

Consol. Sch. Corp., No. 4:03-cv-0095, 2004 U.S. Dist. LEXIS 26435, at *14 (S.D. Ind. Dec. 23, 2004) (power of attorney). Many state review officers have done so, too. *See, e.g.*, Charlotte-Mecklenburg Schs. Bd. of Educ., 18 E.D.C. 03019, 119 L.R.P. 20683 (Dec. 18, 2018) (power of attorney); Santa Clara Unified Sch. Dist., Nos. 2015030117, 2014120222, 115 L.R.P. 44329 (Aug. 24, 2015) (Assignment of Educational Decision-Making Authority); R.O.W.V.A. Cmty. Unit Sch. Dist., Ill. State Educ. Agency No. 2008-0560, 113 LRP 5316 (June 8, 2009) (delegation of rights); J.O. ex. rel. D.O. v. New Milford Bd. of Educ., OAL Dkt No. E.D.S. 1503-05 (Feb. 28, 2005) (informal “writing”); Beachwood City Sch. Dist., 104 LRP 25307 (Mar. 11, 2004) (power of attorney); Westport Bd. of Educ., LRP 20168 (Oct. 17, 2001) (informal consent form). *But see* Reg’l Sch. Dist. No. 1, 107 LRP 65449 (Oct. 22, 2007) (holding that a power of attorney executed after a due process complaint filed does not retroactively cure the standing defect).

92. *Pratt v. Pleasant Valley Cmty. Sch. Dist.*, No. 3:13-cv-00097, 2015 U.S. Dist. LEXIS 193810, at *2–3 (S.D. Iowa Aug. 13, 2015).

93. *Anonymous*, No. OSPI 2012-05, 2013 Mont. Off. Pub. Inst. LEXIS 1 (Jan. 25, 2013) (final report).

94. *Id.* at *15.

95. *See* Student with a Disability, LEA-13-006, 113 LRP 47193 (Apr. 3, 2013); *see also* Lincoln-Sudbury Reg’l Sch. Dist. & Rachel R., BSEA No. 11-2546, 16 MSER 424 (Nov. 29, 2010) (holding that a student’s statement in IEP that she delegated financial decision-making authority to parents did not satisfy Massachusetts regulation regarding delegation of educational decision-making authority).

While it is uncertain that Congress intended for school districts to use transfer-of-rights rules as a cudgel for quashing due process and court complaints, court and hearing officer practice seems to have provided strong incentives for states to adopt transfer-of-rights provisions, and possibly, for school districts to drag their feet, so to speak, when putative IDEA disputes arise in the year before rights transfer.⁹⁶ Although it is impossible to attribute states' motivation for availing IDEA Section 615(m) to authorize transfers of parental rights to students, the fact that so many have done so since the IDEA's 1997 amendments suggests that states derive some benefit from transferring rights that warrants further exploration.

III. IMPLEMENTING THE IDEA TRANSFER-OF-RIGHTS PROVISION

We reviewed fifty-four jurisdictions' (the fifty states, District of Columbia, Puerto Rico, schools operated by the Department of Defense (DOD), and schools funded by the Bureau of Indian Education (BIE)) transfer-of-rights rules pursuant to Section 615(m). Although fifty of these fifty-four jurisdictions default to transferring parental rights to adult students, they regulate these transfers in divergent ways. Most jurisdictions codify the process in special education statutes or regulations,⁹⁷ but many of these provisions are rudimentary. Other jurisdictions set their transfer rules only through SEA guidance.⁹⁸ Also, most jurisdictions' transfer-of-rights statutes or regulations appear not to satisfy the IDEA's basic requirements. Concerningly, most state-level transfer-of-rights statutes or regulations neither describe special rules regarding adult students considered unable to provide informed consent, nor reference other readily available alternatives to guardianship that avoid transfers.⁹⁹

96. See *Latynski-Rossiter v. District of Columbia*, 928 F. Supp.2d 57, 62 (D.D.C. 2013).

97. See *infra* Appendix A: Table of State Transfer-of-Rights Statutes and Regulations.

98. See *infra* Appendix B: Table of SEA Transfer-of-Rights Guidance.

99. For example, for decades special education attorneys have assisted parents with using educational powers of attorney to retain educational decision-making authority. See generally Saltzman & Hughes, *supra* note 15, at 48.

Furthermore, many jurisdictions' uninspired transfer policies are compounded by SEA guidance that is either incomplete, inaccurate, or misleading. Thus, regardless of the missing empirical pieces of the transfer-of-rights-to-guardianship puzzle, combined with the parents' loss of standing to sue post-transfer, the normative landscape seems primed to induce parents to avoid transfers even at the high cost of obtaining guardianship.

The following sections probe the aforementioned trends in turn. Section III.A.1 presents broad trends in states' implementation of IDEA Section 615(m), while Sections III.A.2–3 assess more granularly the extent to which states' transfer-of-rights rules appear to satisfy the IDEA's requirements and refer to either special proceedings or other alternatives to guardianship. Next, Section III.B considers the extent to which the policies and guidance issued by SEAs accurately explain states' transfer-of-rights rules and describes three tendencies that may unnecessarily incline parents to seek guardianship. Taken together, the state-level rules for and agency guidance on transfer of rights shine a light on compelling incentives for parents to seek guardianship, independently of what the IDEA does and does not require.

A. Transfer-of-Rights Rules

As our survey shows, fifty of fifty-four jurisdictions surveyed transfer parental rights to students when students reach the age of majority in those jurisdictions pursuant to Section 615(m).¹⁰⁰ This first-blush appearance of uniformity, however, masks considerable variation in how states have regulated transfer-of-rights processes and also likely justifies researchers' concerns that the 1997 IDEA amendments may have had the effect of pushing parents to pursue guardianship despite Congress' original intent. Few states' transfer-of-rights statutes or regulations expressly encourage school districts to recommend

100. See *infra* Table 1.

parents to seek guardianship for certain adult students.¹⁰¹ Even so, most statutes or regulations clearly indicate that guardianship prevents rights transfers, while only a minority describe special rules or alternatives to guardianship that avoid them.

1. Overview

Forty-six states, the District of Columbia, Puerto Rico, DOD-operated schools, and schools funded by the BIE default to transferring parental rights to students with disabilities when they become adults.¹⁰² Forty-five of these fifty jurisdictions have adopted transfer-of-rights statutes or regulations setting forth their transfer rules, while Missouri,¹⁰³ North Dakota,¹⁰⁴

101. See, e.g., 005-18-008 ARK. CODE R. § 8.08.3.2(A) (LexisNexis 2020) (“It is appropriate for the LEA to inform the parent of a student who may be determined to not have the ability to provide informed consent with respect to his/her education program to seek to obtain such legal guardianship from an appropriate circuit or juvenile court, dependent upon the age and status of the youth or young adult in question.”); N.M. CODE R. § 6.31.2.13(K)(2) (LexisNexis 2021) (“[E]ach annual IEP review for a child who is age 14 or older shall include a discussion of the rights that will transfer when the child turns age 18 and, as appropriate, a discussion of the parents’ plans for obtaining a guardian before that time.”).

102. Although we attempted to include additional U.S. territories, the transfer-of-rights rules in American Samoa, Guam, Northern Marianas, and Virgin Islands are unclear. See, e.g., AM. SAMOA DEP’T OF EDUC., SPECIAL EDUC. DIV., POLICIES AND PROCEDURES TO IMPLEMENT PART B OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (2020), <https://www.doe.as/district/department/7-special-education/1922-untitled.html> (choose “American Samoa Special Education Division Policies and Procedures Manual”); GUAM DEP’T OF EDUC., DIV. OF SPECIAL EDUC., NOTICE OF PROCEDURAL SAFEGUARDS: PARENT RIGHTS (2011), <https://www.gdoe.net/District/Department/2-Special-Education/Portal/procedural-safeguards> (choose “English Procedural Safeguards”).

103. Missouri has incorporated the federal IDEA regulations by reference into its state regulations; however, since federal law does not determine whether parental rights transfer, Missouri’s regulations do not clearly state its stance on rights transfers, though the state’s SEA guidance does. See DIV. OF SPECIAL EDUC., MO. DEP’T OF ELEMENTARY & SECONDARY EDUC., PARENT’S GUIDE TO SPECIAL EDUCATION IN MISSOURI 13 (2008).

104. Although North Dakota’s special education law and regulations are unclear about transfer, its Department of Public Instruction’s guidelines provide that rights do transfer. N.D. DEP’T OF PUB. INSTRUCTION, PARENTAL RIGHTS FOR PUBLIC SCHOOL STUDENTS RECEIVING SPECIAL EDUCATION SERVICES: NOTICE OF PROCEDURAL SAFEGUARDS 11 (2018), <https://www.nd.gov/dpi/education-programs/special-education> (scroll down and click on the expand option next to “Special Education State Guidelines”; then open the “Parental Rights for Public School Students Receiving Special Education Services Notice of Procedural Safeguards” PDF).

Oklahoma, Puerto Rico, and the BIE appear to have provided for the transfer of rights through policies and guidance rather than statutes or regulations.¹⁰⁵ Parental rights appear not to transfer only in Maryland, Nebraska, New York, and Pennsylvania; although among these non-transfer jurisdictions, only Maryland has adopted a statutory provision clearly stating so,¹⁰⁶ whereas discerning Nebraska's, New York's, and Pennsylvania's transfer-of-rights rules requires resort to SEA policies and guidance.¹⁰⁷

Although the vast majority of transfer-of-rights statutes and regulations are easy to interpret, a handful of jurisdictions' rules are less straightforward. For example, though Mississippi's transfer-of-rights regulation indicates that rights do transfer, the state's age of majority is twenty-one years old, while its law only guarantees special education services through the end of students' twentieth year, which makes it unclear to which students with disabilities the transfer would apply.¹⁰⁸ Similarly,

105. OKLA. STATE DEP'T OF EDUC., SPECIAL EDUCATION HANDBOOK 109 (2017), <https://sde.ok.gov/documents-forms> (click handbook link then download non-highlighted changes PDF); DEPARTAMENTO DE EDUCACIÓN DE P.R., MANUAL DE PROCEDIMIENTOS DE EDUCACIÓN ESPECIAL, 64, 356–57, 368 (2020), <https://de.pr.gov/wp-content/uploads/2020/10/manual-de-educacion-especial-2020-1.pdf>; DIV. OF PERFORMANCE & ACCOUNTABILITY, BUREAU OF INDIAN EDUC., SPECIAL EDUCATION PRACTICES AND PROCESSES 53 (2012), https://cdn.ymaws.com/www.copaa.org/resource/resmgr/SREC_Files/American_Indian/Special_Education_Practices_.pdf.

106. MD. CODE ANN., EDUC. § 8-412.1(a) (2021). Rights will transfer in Maryland only if one of six specific circumstances arise. *See id.*

107. LLOYA FRITZ, NEB. DEP'T OF EDUC. SPECIAL POPULATIONS OFF., GRADUATION CONSIDERATIONS FOR STUDENTS WITH DISABILITIES: A DECISION-MAKING FRAMEWORK FOR IEP TEAMS 24 (rev. 2011), <https://transition.ne.gov/sites/default/files/grad-readiness-7-11.pdf>; Memorandum from James P. DeLorenzo, Statewide Coordinator for Special Educ., N.Y. Educ. Dep't. to District Superintendents et al., Individuals with Disabilities Education Act (IDEA) Part B Final Supplemental Regulations Issued December 1, 2008 and Effective December 31, 2008 – Non-Regulatory Guidance 2 (2009), <http://www.p12.nysed.gov/specialed/idea/nonregulatoryguidancememo.htm>; PA. DEP'T OF EDUC., INDIVIDUALS WITH DISABILITIES EDUCATION ACT PART B: POLICIES AND PROCEDURES UNDER 34 CFR §§ 300.101–300.176 15 (2018), <https://www.education.pa.gov/K-12/Special%20Education/Pages/default.aspx> (click on “IDEA-B Regs and Policies,” then click on “IDEA-B Policies and Procedures 2018”).

108. *Compare* 07-034 MISS. CODE R. § 300.520(a) (LexisNexis 2020) (citing MISS. CODE ANN. § 1-3-27 (2021)) (stating that parental rights generally transfer to students when they reach the state's age of majority, which is twenty-one years old), *with* MISS. CODE ANN. § 37-23-1 (2021)

in Colorado, parental rights transfer to students at age twenty-one, yet Colorado law guarantees special education services only through the end of the semester in which students turn twenty-one years old; thus, the rights transfer would only apply for, at most, a few months.¹⁰⁹ In both states, it is unclear whether the underlying policy rationale for transferring parental rights to so few students outweighs the potential confusion caused by these provisions. Pennsylvania law, like Colorado law, provides that the age of majority for educational purposes is twenty-one years old,¹¹⁰ though Pennsylvania's SEA policy interprets this provision to completely prevent parental rights from transferring, even though students in Pennsylvania twenty-one years and older may still be eligible to receive special education services.¹¹¹ For the purposes of this Article, when grouping jurisdictions, we have attempted to take statutes, regulations, and policies at face value, and consider Mississippi and Colorado to fall within the category of transfer jurisdictions, while deeming Pennsylvania a non-transfer jurisdiction. Finally, we have included Michigan among transfer jurisdictions because its regulatory definitions of "parent" imply that parental rights transfer to adult students.¹¹²

Our survey indicates limitations in the transfer-of-rights statutes or regulations across the forty-five¹¹³ transfer jurisdictions. Only eighteen (40%) appear to satisfy the IDEA's

(limiting special education services through the age of twenty). One way to resolve this apparent contradiction is that parental rights transfer only to students receiving compensatory education services while they are twenty-one years or older.

109. Compare 1 COLO. CODE REGS. § 301-8, 2220-R-6.02(9) (LexisNexis 2020) (stating that parental rights generally transfer to students when they turn 21 years old), with 1 COLO. CODE REGS. § 301-8, 2220-R-2.08 (LexisNexis 2020) (allowing each student "to complete the semester in which the 21st birthday occurs or attend until he/she graduates, whichever comes first").

110. 22 PA. CODE § 11.11(a)(1) (2020); see also PA. DEP'T OF EDUC., *supra* note 107.

111. PA. DEP'T OF EDUC., *supra* note 107, at 2 (stating that students are eligible for special education services through the end of the semester in which they turn twenty-one years old); see also Jonathan T. v. Lackawanna Trail Sch. Dist., No. 3:03cv522, 2004 U.S. Dist. LEXIS 2915, at *13 nn.3 & 4 (M.D. Pa. Feb. 26, 2004) (citing SEA guidance on 24 PA. STAT. ANN. § 13-1301(2021)).

112. MICH. ADMIN. CODE. R. 340.1701b(d)(viii) (2021).

113. This number excludes Maryland, which has a transfer-of-rights-regulation, but is a non-transfer jurisdiction.

basic requirements for parental rights transfers. At the same time, only eighteen (40%) transfer jurisdictions' transfer-of-rights rules refer to procedures for appointing educational representatives consistent with Section 615(m)(2). Only sixteen (36%) transfer jurisdictions' transfer-of-rights rules mention other alternatives to guardianship for parents and students to avoid the effects of rights transfers. The only three (6%) transfer jurisdictions that satisfy all these criteria are Connecticut, Indiana, and Virginia.

Table 1. State-Level Transfer-of-Rights Rules

Jurisdiction	Do IDEA parental rights transfer?	Is there a transfer-of-rights statute or regulation?	Does it clearly satisfy all IDEA requirements?	Does it refer to a special rule?	Does it mention alternatives to guardianship?
AL	Yes	Yes	Yes	Yes	No
AK	Yes	Yes	Yes	No	No
AZ	Yes	Yes	No	No	Yes
AR	Yes	Yes	Yes	No	No
BIE	Yes	No	N/A	N/A	N/A
CA	Yes	Yes	No	No	No
CO	Yes	Yes	No	No	No
CT	Yes	Yes	Yes	Yes	Yes
DE	Yes	Yes	No	Yes	Yes
DOD	Yes	Yes	No	Yes	No
DC	Yes	Yes	No	Yes	Yes
FL	Yes	Yes	Yes	Yes	No
GA	Yes	Yes	No	No	No
HI	Yes	Yes	No	Yes	Yes
ID	Yes	Yes	No	Yes	No
IL	Yes	Yes	Yes	No	Yes
IN	Yes	Yes	Yes	Yes	Yes
IA	Yes	Yes	Yes	Yes	No
KS	Yes	Yes	Yes	No	No
KY	Yes	Yes	No	No	No
LA	Yes	Yes	Yes	Yes	No
ME	Yes	Yes	Yes	No	No
MD	No	Yes	N/A	N/A	N/A

Jurisdiction	Do IDEA parental rights transfer?	Is there a transfer-of-rights statute or regulation?	Does it clearly satisfy all IDEA requirements?	Does it refer to a special rule?	Does it mention alternatives to guardianship?
MA	Yes	Yes	No	No	Yes
MI	Yes	Yes	No	No	No
MN	Yes	Yes	No	No	No
MS	Yes	Yes	Yes	Yes	No
MO	Yes	No	N/A	N/A	N/A
MT	Yes	Yes	No	No	No
NE	No	No	N/A	N/A	N/A
NV	Yes	Yes	No	Yes	No
NH	Yes	Yes	No	No	Yes
NJ	Yes	Yes	No	No	No
NM	Yes	Yes	No	No	Yes
NY	No	No	N/A	N/A	N/A
NC	Yes	Yes	No	Yes	No
ND	Yes	No	N/A	N/A	N/A
OH	Yes	Yes	No	No	No
OK	Yes	No	N/A	N/A	N/A
OR	Yes	Yes	Yes	No	Yes
PA	No	No	N/A	N/A	N/A
PR	Yes	No	N/A	N/A	N/A
RI	Yes	Yes	Yes	No	No
SC	Yes	Yes	No	Yes	Yes
SD	Yes	Yes	Yes	Yes	No
TN	Yes	Yes	No	No	No
TX	Yes	Yes	Yes	No	Yes
UT	Yes	Yes	Yes	No	No
VT	Yes	Yes	No	No	No
VA	Yes	Yes	Yes	Yes	Yes
WA	Yes	Yes	No	Yes	Yes
WV	Yes	Yes	No	No	No
WI	Yes	Yes	No	No	Yes
WY	Yes	Yes	No	No	No
Totals	50	46	18	18	16
Percent	93% (of 54)	85% (of 54)	40%	40% (of 45)	36% (of 45)

Jurisdiction	Do IDEA parental rights transfer?	Is there a transfer-of-rights statute or regulation?	Does it clearly satisfy all IDEA requirements?	Does it refer to a special rule?	Does it mention alternatives to guardianship?
			(of 45) ¹¹⁴		

While this survey indicates a clear preference among states to transfer parental rights to students when they become adults, it also suggests that states have not carefully established the rules for such transfers. While this may be due to a combination of Section 615(m)'s inscrutable language and a lack of attention to this particular issue, presumably the basic requirements established by the IDEA aim to prevent parental-rights-transfer processes from pushing parents to seek guardianship, consistent with Congress's original intent. However, that so few states' transfer-of-rights statutes or regulations appear to satisfy these requirements is concerning, as these divergences may contribute to encouraging parents to seek guardianship. Relatedly, that so few states' transfer-of-rights statutes or regulations expressly reference means other than guardianship for navigating rights transfers would appear to undercut Congress' intent to avoid funneling adult students into unnecessary guardianship vis-à-vis rights transfers.

2. Basic requirements

As stated earlier, for jurisdictions that choose to transfer parental rights to students when they become adults, the IDEA requires that they (1) exclude students adjudicated incompetent from such transfers,¹¹⁵ (2) include incarcerated students,¹¹⁶ (3)

114. The forty-five transfer jurisdictions with transfer-of-rights rules exclude Maryland, which has a transfer-of-rights statute but is a non-transfer jurisdiction.

115. 20 U.S.C. § 1415(m)(1); 34 C.F.R. § 300.520(a) (2020); *accord* 73 Fed. Reg. 73,006, 73,010 (Dec. 1, 2008) (clarifying that "in accordance with section 615(m)(1) of the Act and § 300.520(a)(1)(i), the public agency must provide any notice required under Part B of the Act to the child and the parents.>").

116. 20 U.S.C. § 1415(m)(1)(D); 34 C.F.R. § 300.520(a)(2) (2020).

respect parents' post-transfer right to notice,¹¹⁷ and (4) ensure students and parents both are notified of prospective transfers at least one year in advance.¹¹⁸ While most transfer jurisdictions' statutes or regulations satisfy most of these requirements, only 40% (18 of 45) appear to satisfy all four, despite the IDEA's express provisions. Although the IDEA does not prescribe how states satisfy these requirements,¹¹⁹ that most transfer-specific statutes or regulations fail to do so certainly does not bode well that states' transfer-of-rights practices conform to Congress' intent that Section 615(m) not prompt parents to seek guardianship.

Table 2. State-Level Transfer-of-Rights Rules' Compliance with Federal Law

Question	Yes	No
Do parental rights transfer to adult students in this jurisdiction?	AL, AK, AZ, AR, BIE, CA, CO, CT, DE, DOD, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MA, MI, MN, MS, MO, MT, NV, NH, NJ, NM, NC, ND, OH, OK, OR, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY (50 of 54)	MD, NE, NY, PA (4 of 54)
Does the transfer jurisdiction have a statute or regulation that provides for transfer of rights?	AL, AK, AZ, AR, CA, CO, CT, DE, DOD, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MA, MI, MN, MS, MO, MT, NV, NH, NJ, NM, NC, OH, OR, RI, SC, SD, TN, TX,	BIE, MO, ND, OK, PR (5 of 50)

117. 20 U.S.C. § 1415(m)(1)(C); 34 C.F.R. § 300.520(a) (2020).

118. 20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(cc); 34 C.F.R. § 300.320(c) (2020).

119. For example, IDEA-compliant transfer-of-rights rules may presumably be set through agency guidance rather than statute or regulation.

Question	Yes	No
	UT, VT, VA, WA, WV, WI, WY (45 of 50)	
Does the transfer jurisdiction's statute or regulation clearly except students "determined to be incompetent"?	AL, AK, AZ, AR, CA, CT, DE, DOD, DC, FL, HI, ID, IL, IN, IA, KS, KY, LA, ME, MA, ¹²⁰ MI, MN, MS, NV, NH, NJ, NM, NC, OH, OR, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI (40 of 45)	CO, GA, MT, VT, WY (5 of 45)
Does the transfer jurisdiction's statute or regulation clearly establish whether parental rights transfer to incarcerated students?	AL, AK, AR, CT, FL, IL, IN, IA, KS, LA, ME, MN, MS, MO, OH, OR, RI, SD, TX, UT, VT, VA, WA (22 of 45)	AZ, CA, CO, DE, DOD, DC, GA, HI, ID, KY, MA, MI, MT, NV, NH, NJ, NM, NC, SC, TN, WV, WI, WY (23 of 45)
Does the transfer jurisdiction's statute or regulation recognize parents' right to notice post-transfer?	AL, AK, AR, CA, CT, FL, IL, IN, IA, KS, LA, ME, MA, MS, NV, NJ, NM, NC, OR, RI, SD, TX, UT, VT, VA, WV, WI (27 of 45)	AZ, CO, DE, DOD, DC, GA, HI, ID, KY, MD, MI, MN, MT, NH, OH, SC, TN, WA, WY (18 of 45)
Does the transfer jurisdiction's statute or regulation require notice at least one year before age of majority?	AL, AK, AR, CA, CO, CT, DE, DOD, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MN, MS, MT, NV, NJ, NM, OH, OR,	AZ, HI, MA, MI, NH, NC, TN, WY (8 of 45)

120. Although 603 Mass. Code Regs. 28.07(5)(a) excludes from transfers students for whom a "parent has sought and received guardianship from a court of competent jurisdiction," we consider this language to be synonymous with Section 615(m)'s "determined to be incompetent." See also MICH. ADMIN. CODE r. 340.1701b(d)(viii) (defining "parent" to include adult students only "if a legal guardian has not been appointed by appropriate court proceedings").

Question	Yes	No
	RI, ¹²¹ SC, SD, TX, UT, VT, VA, WA, WV, WI (37 of 45)	
Does the transfer jurisdiction satisfy all four IDEA requirements?	AL, AK, AR, CT, FL, IL, IN, IA, KS, LA, ME, MS, OR, RI, SD, TX, UT, VA (18 of 45)	AZ, CA, CO, DE, DOD, DC, GA, HI, ID, KY, MA, MI, MN, MT, NV, NH, NJ, NM, NC, OH, SC, TN, VT, WA, WV, WI, WY (27 of 45)

The greatest area of convergence between federal and state transfer-of-rights rules regards incompetency adjudications: 89% (40 of 45) of state transfer-of-rights rules clearly except students adjudicated incompetent from parental rights transfers. Colorado's regulations, for example, provide that parental rights transfer at age twenty-one, without mentioning any of Section 615(m)'s other requirements.¹²² Similarly, Georgia's and Montana's regulations are among the briefest we reviewed.¹²³ Vermont's transfer-of-rights regulation appears to be the clearest outlier, since it is relatively detailed but fails to include a clear statement that parental rights do not transfer to

121. Although 200-20 R.I. Code R. § 6.7.4(A) does not expressly require notice of transfer at least one year before the age of majority, it incorporates by reference the federal regulatory provision that does so.

122. 1 COLO. CODE REGS. § 301-8, 2220-R-6.02(9) (2021).

123. Georgia's and Montana's one-line regulations contrast other states' robust statutes. Compare GA. COMP. R. & REGS. 160-4-7.06(3) (2021), and MONT. ADMIN. R. 10.16.3502 (2021), with, e.g., HAW. REV. STAT. ANN. §§ 302A-491-98 (LexisNexis 2021), 105 ILL. COMP. STAT. ANN. 5/14-6.10 (LexisNexis 2020), and S.C. CODE ANN. §§ 59-33-310-70 (2020). That said, numerous transfer jurisdictions' one-liners do specify that incompetency adjudications foreclose transfers. See, e.g., 707 KY. ADMIN. REGS. 1:340.6(11) (2020); 05-071-101 ME. CODE R. app. 1, p. 256 (LexisNexis 2020); MINN. R. 3525.2810(1)(A) (2019); TENN. COMP. R. & REGS. 0520-01-09.21 (2021); 206-07 WYO. CODE. R. § 6(g) (LexisNexis 2020).

adult students who have been adjudicated incompetent.¹²⁴ That nearly all state transfer-of-rights rules satisfy this requirement seems to show how the language of Section 615(m) has contributed to popular assumptions that guardianship is a singular means for avoiding transfers.

The second greatest area of consistency between federal and state rules regards notice requirements: 82% (37 of 45) of state transfer-of-rights rules have a clear requirement that school districts notify students and parents of impending transfers at least one year in advance.¹²⁵ Notably, we did not find clear statutory or regulatory notice requirements in Arizona, Hawaii, or Massachusetts despite these states' relatively progressive transfer-of-rights rules, all of which refer to alternatives to guardianship for avoiding parental rights transfers.¹²⁶ Because federal law and regulations prescribe one year's notice of transfer in a separate section than rights transfers,¹²⁷ many state rules similarly codify notice requirements separately. Although most transfer jurisdictions' rules appear consistent with the federal floor,¹²⁸ a select few appear to require not merely notice of transfer, but also information about parents' and students' options for navigating the transfer of rights.¹²⁹ Relatedly, several transfer jurisdictions appear to require school districts to notify parents and students not only that transfer may occur, but also which parental rights will transfer, although it remains to be

124. See 22-06 VT. CODE R. § 2365.1.12(c) (2020) (referring to students "determined to be incompetent under State law," but merely providing that "the guardian or educational surrogate parent shall receive any notice required by these rules.").

125. Several transfer jurisdictions require notice more than a year in advance. See, e.g., N.M. CODE R. § 6.31.2.13(K)(2) (LexisNexis 2021).

126. See discussion *infra* Section III.A.3.

127. See 34 C.F.R. § 300.320(c) (2020).

128. Curiously, a few states appear to require notice of transfer only to students, not parents. See, e.g., KAN. ADMIN. REGS. § 91-40-18(e) (2021).

129. See, e.g., D.C. CODE § 38-2571.04(c) (2020); TEX. EDUC. CODE ANN. § 29.017(c)(1)(B) (West 2020). Similarly, Illinois requires that parents be provided with copies of a statutory delegation of rights form. 105 ILL. COMP. STAT. ANN. 5/14-6.10(b) (LexisNexis 2020). Also, several jurisdictions emphasize "discussion" instead of mere notice. See, e.g., N.M. CODE R. § 6.31.2.13(K)(2) (LexisNexis 2021); W. VA. CODE R. § 126-16-5 (2021).

seen whether such subtle differences affect how schools deliver notifications in practice.¹³⁰

Transfer jurisdictions' rules are less likely to recognize parents' post-transfer right to notice: 60% (27 of 45) clearly recognize that parents' right to notice survives transfer of rights. Few transfer jurisdictions' rules affirm parents' continued role as members of the IEP team.¹³¹ Among them are Illinois, whose transfer-of-rights statute provides:

Nothing in this Section shall be construed to deny a student with a disability who has reached majority age the right to have an adult of his or her choice, including, but not limited to, the student's parent, assist the student in making decisions regarding the student's individualized education program.¹³²

Florida's transfer-of-rights regulation is especially instructive: it not only avers parents' continued role but also explicates how this role is consistent with transfers by stating that the right to notice is a right that is "shared" by both the parent and the student.¹³³ Indeed, the absence of explicit statutory or regulatory recognition of this continued right to notice may fuel

130. Compare 511 IND. ADMIN. CODE 7-43-5(d) (2021) (requiring students and parents to be "informed of the transfer"), and 707 KY. ADMIN. REGS. 1:340.6(11) (2020) ("[N]otify the child with a disability and the parents of the transfer."), with, e.g., MINN. R. 3525.2810(1)(A)(8)(b) (2019) ("[T]he pupil and the pupil's parents must be informed of those rights . . . that will transfer."), and 8 VA. ADMIN. CODE § 20-81-180(B)(2) (2020) (requiring "that the student and parent(s) have been informed of the rights that will transfer").

131. See, e.g., 19 TEX. ADMIN. CODE § 89.1049(d) (recognizing "the adult student or the school district may invite individuals who have knowledge or special expertise regarding the student, including the parent"); 8 VA. ADMIN. CODE § 20-81-180(B)(4)–(5) (permitting LEAs to "continue to invite the parent(s), as appropriate, as bona fide interested parties knowledgeable of the student's abilities, to participate in meetings where decisions are being made regarding their adult student's educational program" and any student to "invite the student's parent(s) to participate in meetings where decisions are being made regarding the student's educational program").

132. 105 ILL. COMP. STAT. ANN. 5/14-6.10(a) (LexisNexis 2020); see also S.C. CODE ANN. § 59-33-320 (2020) ("Nothing in this article may be construed to deny an adult student eligible for special education the right to have an adult of his choice support the student in making decisions regarding the student's individualized education program.").

133. FLA. ADMIN. CODE ANN. r. 6A-6.03311(8)(a) (2021).

some parents' fear of being sidelined from educational planning rather than merely shifting into the lesser role of invited IEP team member.¹³⁴

The area of greatest divergence between federal and state rules regards transfer of rights for incarcerated students: 49% (22 of 45) do so, while the remainder do not specifically provide that parental rights also transfer to them, unlike Section 615(m)(1)(D). However, state transfer-of-rights rules differ with regard to the timing of transfers. Fifteen jurisdictions specify that parental rights transfer upon incarceration,¹³⁵ while nine transfer-of-rights rules appear to limit transfers to incarcerated students who have reached the age of majority,¹³⁶ though Texas's rules are aoristic.¹³⁷ Although section 615(m)(1)(D) may be ambiguous with regard to the timing of parental rights transfers to incarcerated students, presumably states must comply with their respective laws governing whether

134. In at least one case, a hearing officer dismissed a complaint in part because the officer concluded that the school district "had no responsibility to contact [an adult student's father] because [the student] had attained the age of majority and a transfer of rights already occurred." *L.H. o/b/o R.H. v. Florence Twp. Bd. of Educ.*, No. EDS 6558-02, 2002 N.J. AGEN LEXIS 857, at *5 (N.J. Off. Admin. Law Nov. 6, 2002).

135. See ALA. ADMIN. CODE r. 290-8-9-.08 (2020); 5-18-009 ARK. CODE R. § 09.07.1.1(C) (LexisNexis 2020); 105 ILL. COMP. STAT. ANN. 5/14-6.10(a) (LexisNexis 2020); IOWA ADMIN. CODE r. 281-41.250(1)(b) (2021); KAN. STAT. ANN. § 72-3431(d) (West 2020); LA. ADMIN. CODE tit. 28, § 520(A)(2) (2021); 05-071-101 ME. CODE R. app. 1, p. 256 (LexisNexis 2020); 07-034 MISS. CODE R. § 300.520(a)(2) (LexisNexis 2020); OHIO ADMIN. CODE 3301-51-05(D)(2)(b) (2014); OR. ADMIN. R. 581-015-2325(5) (2021); 200-20 R.I. CODE R. § 6.8.1(U)(2) (LexisNexis 2020); S.D. ADMIN. R. 24:05:30:16.01(3) (2021); UTAH ADMIN. CODE R. 277-750-2 (LexisNexis 2020) (incorporating UTAH STATE BOARD OF EDUC., SPECIAL EDUC. RULES IV.U.c (2020)).

136. See, e.g., ALASKA ADMIN. CODE tit. 4, § 52.620 (2021); CONN. AGENCIES REGS. §10-76d-12(c) (2015); FLA. ADMIN. CODE ANN. r. 6A-6.03311(8)(d) (2021); 511 IND. ADMIN. CODE 7-43-5(c) (2021); MINN. R. 3525.2810(1)(A) (2019); 19 TEX. ADMIN. CODE § 89.1049(b) (2020); 22-06 VT. CODE R. § 2365.1.12(b) (2020); 8 VA. ADMIN. CODE § 20-81-180(A) (2020); WASH. ADMIN. CODE § 392-172A-05135(2) (2021).

137. Indeed, Texan legislators and regulators appear to have adopted divergent views. Compare TEX. EDUC. CODE ANN. § 29.017(b) (West 2020) (applying transfers to all students "who are incarcerated in an adult or juvenile, state or local correctional institution"), with 19 TEX. ADMIN. CODE § 89.1049(b) (2020) (limiting transfers to incarcerated students who are 18 years old).

incarceration has the effect of premature emancipation with respect to other rights.¹³⁸

Thus, while most transfer jurisdictions' rules appear to satisfy most of the IDEA's four basic requirements, only 40% (18 of 45) clearly satisfy all four. As noted earlier, federal law does not specifically require that state rules comply with Section 615(m)(1)'s prescriptions;¹³⁹ nevertheless, our finding that most transfer jurisdictions' rules do not include these procedural safeguards may indicate the prevalence of problematic practices that warrant further attention.

3. *Special rules and alternatives to guardianship*

Further, although Section 615(m)(2) of the IDEA does not require transfer jurisdictions to establish proceedings specifically for adult students who are "unable to provide informed consent" but have not been adjudicated incompetent, eighteen transfer jurisdictions appear to have done so. In Table 3 below, jurisdictions were included if their statute or regulation mentioned a Section 615(m)(2)-style special rule, even though for several such jurisdictions we were unable to locate either in the statute or regulation itself or in SEA policies a description of the proceedings created through those rules (indicated by an asterisk "*").¹⁴⁰ Similarly, although the IDEA does not require transfer jurisdictions to create additional alternatives to guardianship that would avoid rights from transferring to adult students,¹⁴¹ we found sixteen that have done so. Taken together, twenty-six (58%) transfer jurisdictions

138. Whether each transfer jurisdiction's transfer-of-rights rule regarding incarcerated students is consistent with its emancipation law is beyond the scope of this review. *Cf. In re Marriage Baumgartner*, 930 N.E.2d 1025, 1032–33 (Ill. 2010) (finding that courts frequently consider lengthy incarceration was a factor in emancipating minors, but finding none that had emancipated a minor solely on the basis of incarceration) (cataloging cases).

139. See DEAR COLLEAGUE LETTER, *supra* note 28; see also discussion *supra* Part I and accompanying notes 28–32.

140. We excluded jurisdictions that mention special rules in SEA policy or guidance but lack a statutory or regulatory provision. See, e.g., PUERTO RICO DEPARTAMENTO DE EDUCACIÓN, MANUAL DE PROCEDIMIENTOS DE EDUCACIÓN ESPECIAL 64, 368 (2020).

141. See *supra* notes 13, 16, 18, 22–25, 29.

have statutory or regulatory provisions referring to a special rule or another alternative to guardianship that avoids rights transfers, while eight (18%) have both. Consequently, while recognizing that parents and students may utilize alternatives to guardianship not expressly identified in special education statutes or regulations,¹⁴² our survey indicates that most transfer jurisdictions fail to clearly acknowledge them as valid means of doing so in their transfer-of-rights rules.

Table 3. Special Rules and Alternatives to Guardianship in Transfer-of-Rights Rules

Question	Yes	No
Does the transfer jurisdiction's statute or regulation have procedures for adult students "determined not to have the ability to provide informed consent"?	AL*, AR*, CT, DE, DOD, DC, FL, HI, ID, IN, IA*, LA, MS*, NC*, OR, SC, SD, VA, WA (19 of 45)	AK, AZ, CA, CO, GA, IL, KS, KY, ME, ¹⁴³ MA, MI, MN, MT, NV, NH, NJ, NM, OH, RI, TN, TX, UT, VT, WV, WI, WY (26 of 45)
Does the transfer jurisdiction's statute or regulation recognize other alternatives to	AZ, CT, DE, DC, HI, IL, IN, ¹⁴⁴ MA,	AL, AK, AR, CA, CO, DOD, FL, ¹⁴⁵ GA, ID, IA, KS, KY,

142. For example, California courts have recognized Assignment of Educational Decision-Making Authority form as valid parental rights delegations, even though these lack statutory or regulatory recognition. *See, e.g.,* Meares v. Rim of the World Unified Sch. Dist., No EDCV 14-1156-JGB, 2015 U.S. Dist. LEXIS 107474, at *12-14 (C.D. Cal. Aug. 13, 2015).

143. Because Maine's regulations simply copy and paste Section 615(m)(2), without stating whether Maine itself has such a regulation, we consider Maine's regulation not to have a special rule. *See* 05-071-101 ME. CODE R. app. 1 (LexisNexis 2020).

144. Indiana allows for educational representatives to be appointed for adult students at their request, IND. ADMIN. CODE 7-43-6(a)(1) (2021), pursuant to a written certification that a student is "incapable of providing informed consent," *id.* at 7-43-6(a)(2), (f). Thus, for the purposes of this survey we consider Indiana's educational representative both as a separate alternative to guardianship and also as a special procedure for students deemed incapable of providing informed consent.

145. Note that section 6A-6.03311(8)(a) of Florida's administrative code states that either a guardian or a guardian advocate appointment will prevent rights from transferring. FLA. ADMIN. CODE ANN. r. 6A-6.03311(8)(a) (2021). However, for the purposes of this analysis we

Question	Yes	No
guardianship that avoid transfer?	NH, NM, SC, TX, VA, WA, WI (15 of 45)	LA, ME, MI, MN, MS, MT, NV, NJ, NC, OH, OR, RI, SD, TN, UT, VT, WV, WY (30 of 45)
Does the transfer jurisdiction's statute or regulation have both a procedure for students "determined not to have the ability to provide informed consent" and recognize other alternatives to guardianship?	CT, DE, DC, HI, IN, SC, VA, WA (8 of 45)	AL, AZ, AK, AR, CA, CO, DOD, FL, GA, ID, IL, IA, KS, KY, LA, ME, MA, MI, MN, MS, MT, NV, NH, NJ, NM, NC, OH, OR, RI, SD, TN, TX, UT, VT, WV, WI, WY (37 of 45)

In some jurisdictions, school districts may routinely appoint educational representatives for students even in the absence of a codified procedure.¹⁴⁶ Of those transfer jurisdictions with statutes or regulations pursuant to the Section 615(m)(2) special rule for adult students not adjudicated incompetent but determined unable to consent to special education services by other means, five refer to procedures that have been or may be

have considered the "guardian advocate" as a lesser form of guardianship rather than an alternative to guardianship, even though the guardian advocate under Florida law does not require an adjudication of incompetence because the guardian advocate is nevertheless appointed by a court. FLA. STAT. § 393.12(2)(a) (2020).

146. *See, e.g.*, S.D. DEP'T OF EDUC., SOUTH DAKOTA PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS 39 (rev. 2020), <https://doe.sd.gov/sped/documents/parentalrights/Eng.pdf> ("If, consistent with State law, an eligible child whose rights have *not* been terminated or assigned to another party by a court is determined not to have the ability to provide informed consent with respect to their educational program, the school district shall appoint the parent or, if the parent is not available, a surrogate parent to represent the educational interests of the child throughout the child's eligibility under Part B of the IDEA."); St. Paul Indep. Sch. Dist. #625, No 07-092C, 07 LRP 60685 (Minn. State Educ. Agency June 4, 2007) (ordering the school district "to immediately cease any practice of appointing 18-year-old students a surrogate parent following an IEP determination that the student is not capable or competent to make educational decisions for him/herself"); Application of a Child with a Disability, Appeal No 05-131, (N.Y. State Educ. Dep't Mar. 15, 2006) (determining that students age 18 and up may be assigned surrogate parents at their request).

established by SEAs that we are unable to locate either codified in regulations or published on SEAs' websites.¹⁴⁷ Another four jurisdictions' special rules are minimalist: they either cursorily empower the IEP team to appoint an educational representative if its members determine an adult student is unable to consent,¹⁴⁸ or refer to such determinations without providing greater details about the process or standards for doing so.¹⁴⁹ Florida's special rule, if it can be considered such, appears to place the onus on the parent to be appointed by a court as an adult student's educational representative, rather than create a special procedure.¹⁵⁰ The remaining nine jurisdictions with substantive special rules are discussed below.

The nine state-level procedures adopted pursuant to section 615(m)(2) generally follow the same three steps. First, one or more professionals examine the adult student and determine in writing that the student cannot provide informed consent for educational decisions.¹⁵¹ Next, the SEA or local educational agency (LEA) appoints an educational representative for the student on the basis of that determination, often with a preference for the student's parent.¹⁵² Last, the student receives notice of either the appointment or the incapacity determination and has an opportunity to challenge.¹⁵³ In most cases, the appointment appears to last for the remainder of the

147. ALA. ADMIN. CODE r. 290-8-9-.08(8) (2020) ("[T]he State shall establish procedures . . ."); 5-18.8-8.08 ARK. CODE R. § 8.08.3.2 (LexisNexis 2020) ("The LEA must use the procedures established by the State . . ."); IOWA CODE § 256B.6(3) (2021) ("The director of the department of education may establish standards . . ."); 07-034 MISS. CODE R. § 300.520(b) (LexisNexis 2020) ("The MDE has established procedures . . ."); N.C. GEN. STAT. § 115C-109.2(b) (2020) ("[T]he State Board shall establish procedures . . .").

148. IDAHO CODE ANN. § 33-2002(4) (2021); IOWA CODE § 256B.6(3); S.D. ADMIN. R. 24:05:30:16.01(3) (2021).

149. See 32 C.F.R. § 57.6(b)(19)(v)(D) (2020).

150. See FLA. ADMIN. CODE ANN. r. 6A-6.03311(8)(e) (2021).

151. *E.g.*, CONN. AGENCIES REGS. §10-76d-12(g)(1) (2015).

152. *E.g.*, *id.* § 10-76d-12(g)(2); WASH. ADMIN. CODE § 392-172A-05135(4)-(5) (2021) (listing parents as preferred second only to spouses).

153. *E.g.*, CONN. AGENCIES REGS. § 10-76d-12(g)(1).

student's eligibility for special education services, although two states require annual renewal.¹⁵⁴

Of the nine jurisdictions with codified special rules, Louisiana is the only transfer jurisdiction that initiates educational representative appointment proceedings exclusively upon the parent's request.¹⁵⁵ Indeed, Louisiana's proceedings diverge from others in that only the requesting parent may be appointed representative and no independent consent-related finding is required.¹⁵⁶ The other eight jurisdictions' proceedings require certifications by independent professionals not employed by the SEA or LEA that a student is unable to provide informed consent.¹⁵⁷ Presumably, anyone may invoke the special rule in the other eight jurisdictions,¹⁵⁸ even though all but the District of Columbia so provide. Of them, only Delaware entrusts both incapacity determinations and educational representative appointments to the IEP team,¹⁵⁹ apparently during the course of an IEP team meeting. This, like Louisiana's procedure, raises important ethical and due process concerns.¹⁶⁰

Generally, an LEA¹⁶¹ may appoint educational representatives upon written determinations of incapacity, affording the proceedings at least the appearance of greater due process. Five jurisdictions require two professionals not employed by the SEA or LEA to personally examine the student, while Hawaii and South Carolina require only one professional. Connecticut, the District of Columbia, Hawaii, Indiana, South Carolina, Virginia, and Washington prescribe

154. *E.g., id.* § 10-76d-12(g)(3); WASH. ADMIN. CODE § 392-172A-05135(5)(c) (2021).

155. LA. ADMIN. CODE tit. 28, § 520(B) (2021).

156. *See id.*

157. *See, e.g.,* CONN. AGENCIES REGS. § 10-76d-12(g)(1).

158. *See, e.g.,* S.C. CODE ANN. § 59-33-340 (2020).

159. *See* DEL. CODE. ANN. tit. 14, § 3132(b)(3)–(4) (2020).

160. *See* Lindsey et al., *supra* note 15, at 13 (“The IEP team is clearly not to make any judgments about a student’s capacity as it relates to the transfer of rights, as that is a legal determination.”); *see also* NCD 2019 REPORT, *supra* note 29, at 30.

161. The District of Columbia makes its SEA responsible for educational representative appointments. D.C. Code Mun. Regs. tit. 5, § 3035.3 (LexisNexis 2021).

the kinds of professionals qualified to make incapacity determinations.¹⁶² These generally include licensed physicians, physician's assistants, nurse practitioners, psychologists, psychiatrists, and in two instances, court-appointed guardians ad litem.¹⁶³ Only the District of Columbia, Hawaii, Indiana, South Carolina, and Virginia specify the criteria for finding a student unable to consent, all of which involve variations on the student's ability to understand the ramifications of educational decisions, rationally evaluate various options, or communicate decisions.¹⁶⁴ Notably, only South Carolina's statute requires examiners to assess a student's ability to perform these tasks with reasonable accommodations or the support of others.¹⁶⁵

Further, most special rules expressly allow students, or other interested adults not employed by a SEA or LEA, to challenge educational representative appointments.¹⁶⁶ But with the exception of South Carolina, these jurisdictions do not require that students or others be notified of this right.¹⁶⁷ Indeed, Virginia's special rules provide that the professionals who determine the student incapable of consent are responsible for providing notice, even though generally the SEA or LEA ultimately oversees the appointment procedure.¹⁶⁸ The SEA or LEA provides notice only in the District of Columbia,

162. *See, e.g.*, S.C. CODE ANN. § 59-33-340 ("The [professional] must certify in writing to the local education agency in which the adult student is enrolled that he has examined or interviewed the student and . . . finds the student incapable of communicating, with or without reasonable accommodations, his wishes, interests, or preferences regarding his educational program.").

163. *See, e.g., id.*; WASH. ADMIN. CODE § 392-172A-05135(5)(a)(v) (2021) (allowing guardian ad litem to serve as one of two professionals affirming the student's incapability).

164. D.C. Code Mun. Regs. tit. 5, § 3035.8 (LexisNexis 2021); HAW. REV. STAT. ANN. § 302A-493(b) (LexisNexis 2021); 511 IND. ADMIN. CODE 7-43-6(f) (2021); S.C. CODE ANN. § 59-33-340(b) (2020); 8 VA. ADMIN. CODE § 20-81-180(C)(3)(c) (2020).

165. S.C. CODE ANN. § 59-33-340(1)(a).

166. *See, e.g.*, 8 VA. ADMIN. CODE § 20-81-180(C)(f) (2020).

167. *Compare, e.g., id.* § 20-81-180(B)(b) (providing only notice to students and parents that a procedure exists to make a determination without notice of the student's right to challenge said determination), *with* S.C. CODE ANN. § 59-33-340(2) (2020) ("The superintendent also shall notify the student in writing that he has a right to challenge the designation of the educational representative.").

168. *See* 8 VA. ADMIN. CODE § 20-81-180(C)(a) (2020).

Louisiana, and South Carolina.¹⁶⁹ Moreover, although these jurisdictions entrust professionals to inform students, they are only required to inform them of their determination, not specifically that a process to appoint them an educational representative has been initiated or that their examination could result in such an appointment, much less that they have a right to challenge either the professional's determination or the appointment, or how they might exercise that right.¹⁷⁰ Without information or support, it is difficult to imagine that in practice many students who have been determined by one or more licensed professionals unable to consent in practice will avail themselves of their right to challenge. To this end, only the District of Columbia affirmatively obliges the SEA to notify students of their right to challenge and also to assist students to register their objections.¹⁷¹

On the one hand, as the NCD 2019 report signals, "extra-judicial processes raise due process concerns in that rights are being taken away from the student without court adjudication."¹⁷² On the other hand, the same report appears to describe the District of Columbia special procedure positively.¹⁷³ This dualism aptly captures the advantages and disadvantages of such rules and the challenges faced by special education policymakers. For the NCD, in an education system marred by a school-to-guardianship pipeline,¹⁷⁴ an extrajudicial process resulting in a time-bound appointment limited to educational matters, especially if it cannot be used as evidence of incapacity in subsequent court proceedings,¹⁷⁵ may represent progress. Indeed, some parent litigants have demanded that

169. D.C. Code Mun. Regs. tit. 5, § 3035.13 (LexisNexis 2021); LA. ADMIN. CODE tit. 28, § 520(B)(3) (2021); S.C. CODE ANN. § 59-33-340(2).

170. See sources cited *supra* note 169.

171. See D.C. Code Mun. Regs. tit. 5, § 3035.14 (LexisNexis 2021).

172. NCD 2019 REPORT, *supra* note 29, at 30; see also Kanter, *supra* note 24, at 14.

173. See NCD 2019 REPORT, *supra* note 29, at 51.

174. See NCD 2018 REPORT, *supra* note 54.

175. 14-926 DEL. ADMIN. CODE § 20.2.2 (2021); D.C. Code Mun. Regs. tit. 5, § 3035.12 (LexisNexis 2021).

their states adopt such procedures.¹⁷⁶ Alternatively, for some, these procedures may merely transplant the stigmatizing, medicalized judicial mechanisms for stripping persons with disabilities of core rights into educational settings intended to facilitate students' growth.¹⁷⁷ Moreover, increased use of these appointment procedures may indicate that parents are unnecessarily sidelining their children from educational decision-making opportunities that could be vital building blocks for their decision-making skills. Whatever the case, our survey suggests that state-level special rules remain uncommon, so it may be premature to judge the real-life impacts of such proceedings on students.

Indeed, a limited number of statutes and regulations that more clearly aim to prevent transfer-of-rights processes from becoming a guardianship funnel recognize voluntary alternatives to guardianship, allowing adult students to either transfer parental rights back to their parents or to share educational decision-making authority with them. Yet only sixteen transfer jurisdictions' transfer-of-rights rules refer to alternatives to guardianship.¹⁷⁸ Some transfer jurisdictions have created simple forms, sometimes called "delegation forms," that adult students may use to allow their parents to continue to exercise parental rights under the IDEA.¹⁷⁹ Uniquely, Oregon's transfer-of-rights regulation lets adult students voluntarily request a surrogate parent appointment using a procedure designed for wards of the state and unaccompanied youth.¹⁸⁰ At least four jurisdictions allow adult students to enter

176. See, e.g., *J.A. v. Tex. Educ. Agency*, No 1:19-CV-921-RP, 2020 U.S. Dist. LEXIS 108362, at *3 (W.D. Tex. June 21, 2020); *Rivera v. Fremont Union High Sch. Dist.*, No 5:12-CV-05714, 2013 U.S. Dist. LEXIS 126043, at *2–3 (N.D. Cal. Aug. 30, 2013).

177. See Kanter, *supra* note 24, at 14–15 (arguing that section 615(m)(2) contributes to "perpetuating the stigma of disability that the [IDEA] was enacted to eradicate").

178. See *supra* Table 3.

179. See, e.g., DEL. CODE ANN. tit. 14, § 3132(b)(2) (2020) ("A child with a disability with capacity may authorize an agent to exercise rights through . . . a standard voluntary grant of authority form published by the Department.").

180. OR. ADMIN. R. 581-015-2325(4) (2021).

into supported¹⁸¹ or shared¹⁸² decision-making arrangements with parents and others. Six of the jurisdictions recognizing alternatives to guardianship only do so in passing.¹⁸³ Similarly, the alternative to guardianship available under Indiana's regulations is merely a voluntary version of its special rule governing educational representative appointments.¹⁸⁴ In other jurisdictions, these alternatives are only recognized in SEA policies, if at all.¹⁸⁵

The transfer-of-rights rules in Arizona, Delaware, the District of Columbia, Hawaii, Illinois, Massachusetts, South Carolina, Texas, and Virginia go further. While Connecticut, Delaware, the District of Columbia, New Hampshire, New Mexico, South Carolina, Texas, Virginia, and Washington recognize powers of attorney as revocable instruments for adult students to transfer parental rights to other adults of their choice, only Hawaii specifically creates a statutory power of attorney for special education.¹⁸⁶ Also, Arizona, Connecticut, Delaware, Illinois, Massachusetts, and South Carolina recognize adult students' right to delegate parental rights voluntarily to another adult.¹⁸⁷ Delaware's regulation and South Carolina's statute direct their respective SEAs to develop standardized forms for rights delegations, while Arizona's and Illinois's statutes both include forms that students can easily fill out to make their delegation

181. D.C. Code Mun. Regs. tit. 5, §§ 3034.2 to .3 (LexisNexis 2021); TEX. EDUC. CODE ANN. § 29.017(e) (West 2020); WIS. STAT. § 115.807(4) (2021). Arguably, South Carolina also does so, albeit obliquely. *See* S.C. CODE ANN. § 59-33-320 (2021).

182. 603 MASS. CODE REGS. 28.07(5)(b) (LexisNexis 2021).

183. CONN. AGENCIES REGS. § 10-76d-12(e), (h) (2015); 14-926 DEL. ADMIN. CODE § 20.1.2 (2021); N.H. CODE ADMIN. R. ANN. ED. 1120.01(c) (2021); N.M. CODE R. § 6.31.2.13(K)(1) (LexisNexis 2021); WASH. ADMIN. CODE § 392-172A-05135(5) (2021); WIS. STAT. § 115.807(4).

184. 511 IND. ADMIN. CODE 7-43-6(a)(1) (2021).

185. *See infra* Table 4.

186. HAW. REV. STAT. ANN. § 302A-491(b) (LexisNexis 2021).

187. All these jurisdictions save Connecticut and Delaware refer to these instruments as delegations. Connecticut describes it as a "writing" whereby an adult student notifies "the board of education that the parent of such child shall continue to have the right to make educational decisions on behalf of such child notwithstanding the fact the child has turned eighteen years of age," and Delaware dubs it a "voluntary grant of authority." CONN. AGENCIES REGS. § 10-76d-12(e) (2015); 14-926 DEL. ADMIN. CODE § 20.1.2 (2021).

official.¹⁸⁸ Although Arizona's statutory form appears to require notarization, its statute also appears to offer the most flexibility as far as how students delegate rights: their delegations may be made "in writing, by audio or video means or in any other alternative format that is necessitated by the pupil's disability."¹⁸⁹ Because both powers of attorney and delegation forms effectively transfer parental rights from adult students back to their parents or to other adults, courts and hearing officers have generally held that these instruments confer standing on parents to bring claims on behalf of adult students.¹⁹⁰

District of Columbia, Texas, and Wisconsin recognize supported decision-making as a guardianship alternative that avoids parental rights transfers.¹⁹¹ Although supported decision-making may be an attractive alternative to guardianship,¹⁹² none of these jurisdictions' transfer-of-rights rules specify whether the parent of an adult student indicated as a supporter would have standing to sue on the adult student's behalf.¹⁹³ Archaic as courts' standing doctrines may be with regard to IDEA claims, entering into supported decision-making agreements, which generally do not result either in a transfer of rights from the student with disability to a parent, or sharing those rights with the parent, may divert adult students from guardianship while not solidifying their parents' standing to sue on their behalf. Thus, while inclusion of supported decision-making as an alternative approach to navigating

188. ARIZ. REV. STAT. ANN. § 15-773(D) (2020); 105 ILL. COMP. STAT. ANN. 5/14-6.10(c)(2)(e) (LexisNexis 2020).

189. ARIZ. REV. STAT. ANN. § 15-773(D)-(E) (2020).

190. See Saltzman & Hughes, *supra* note 15, at 48.

191. D.C. Code Mun. Regs. tit. 5, §§ 3034.2 to .3 (LexisNexis 2021); TEX. EDUC. CODE ANN. § 29.017(e) (West 2020); WIS. STAT. § 115.807(4) (2021).

192. Six other transfer jurisdictions have passed statutes recognizing supported decision-making agreements without referencing these instruments in their transfer-of-rights rules. ALASKA STAT. § 13.56 (2018); NEV. REV. STAT. ANN. § 162a (West 2021); 42 R.I. Gen. Laws § 42-66.13-1 (2019); IND. CODE ANN. § 34-30-2-126.8 (2019); N.D. CENT. CODE § 30.1-36.01 (2019); DEL. CODE ANN. tit. 16, § 94a (2016).

193. See D.C. Code Mun. Regs. tit. 5, §§ 3034.2 to .3; TEX. EDUC. CODE ANN. § 29.017(e); WIS. STAT. § 115.807(4).

transfer of rights likely signals a positive intent, without clear rules or policies clarifying that parents of students who choose supported decision-making do not sacrifice their right to sue,¹⁹⁴ parents concerned about preserving their legal standing might opt for delegations or powers of attorney, which appear to be honored by many courts and hearing officers.

Last, only Massachusetts recognizes “share[d] decision-making.”¹⁹⁵ Although in practice it may be virtually indistinguishable from a supported decision-making arrangement, its legal consequences of Massachusetts seem more straightforward. Presumably, where parents share IDEA rights, they may effectively bring suit on behalf of adult students. Indeed, while Massachusetts’s regulations are silent as to whether parents may initiate administrative or court proceedings on behalf of adult students with whom they share decision-making, at least one hearing officer decision suggests that sharing decision-making may preserve parents’ right to sue.¹⁹⁶ It is unclear whether adult students must also sign complaints brought by their parents (presumably “sharing” rights does not allow parents to act unilaterally). However, unlike a power of attorney, which may be validly executed so long as it is notarized or witnessed, or the delegation form, shared decision-making may only be effectuated in the presence of the IEP team.¹⁹⁷

Despite the availability of these alternatives to guardianship, few transfer-of-rights rules appear to specifically require that school districts notify parents and students of them. Instead, transfer-of-rights rules generally require that school districts notify only parents and students of when the transfer will occur

194. For example, hearing officers have found Massachusetts’ *Hearing Rules for Special Education Appeals* instructive to determine post-transfer standing. *Montachusett Reg’l Vocational Tech. Sch.*, BSEA # 1907993, 2019 MSE LEXIS 17, at *18–19 (Apr. 17, 2019).

195. MARCIA MITTNACHT, MASS. DEP’T ELEMENTARY & SECONDARY EDUC., ADMIN. ADVISORY SPED 2011-1: AGE OF MAJORITY (2010), https://www.doe.mass.edu/sped/advisories/11_1.html.

196. See *Lincoln-Sudbury Reg’l Sch. Dist. & Rachel R.*, BSEA No 11-2546, 2010 MSE LEXIS 68, at *68 (Nov. 29, 2010).

197. *Id.* at *18; 603 MASS. CODE REGS. 28.07(5)(b) (LexisNexis 2021).

and that the transfer has occurred.¹⁹⁸ Only the District of Columbia, Illinois, Texas, and Wisconsin expressly require school districts to notify parents and students about their rights transfer options.¹⁹⁹ Although other transfer jurisdictions appear in practice to disseminate model notice forms, only Texas appears to standardize this practice through a regulatory directive that the SEA do so.²⁰⁰ While South Carolina does not expressly require parent and student notice of alternatives to guardianship, it likely exceeds mere notice by uniquely requiring that educational decision-making be incorporated into all students' transition planning from their thirteenth birthday onward.²⁰¹ Indeed, in doing so, South Carolina's regulation may be the one that most closely responds to the CEC's call in 2001 to "adopt a philosophy of supporting students to become more self-determined and to become meaningful participants in the planning process."²⁰²

B. SEA Guidance

Although it is impossible to discern from statutory and regulatory provisions how prevalent information about alternatives to guardianship may be, that only four transfer jurisdictions' statutes or regulations appear to require school districts to provide information to parents and students about these options seems consistent with anecdotal reports that schools present guardianship as the only option for avoiding

198. See discussion *supra* Section III.A.1.

199. D.C. CODE § 38-2571.04(c) (2020); 105 ILL. COMP. STAT. ANN. 5/14-6.10(b) (LexisNexis 2020); TEX. EDUC. CODE ANN. § 29.017(c)(1)(B) (West 2020); WIS. STAT. § 115.807(4) (2021). Relatedly, Virginia requires specific notice of its special rule for appointing educational representatives for adult students deemed unable to give informed consent. 8 VA. ADMIN. CODE § 20-81-180(B)(1)(b) (2020).

200. TEX. EDUC. CODE ANN. § 29.017(c-3) (West 2020); see TEX. EDUC. AGENCY, NOTICE OF TRANSFER OF RIGHTS: MODEL FORM WITH INFORMATION AND RESOURCES 2, 7-9 (2019) (providing information and sample documentation related to Texas's supported decision-making requirements).

201. S.C. CODE ANN. § 59-33-360 (2021).

202. Lindsey et al., *supra* note 15, at 13.

rights transfers.²⁰³ Indeed, regardless of the alternatives to guardianship made available to parents and students in more progressive transfer-of-rights rules, it seems more likely that parents, students, and school personnel would learn about their jurisdictions' transfer-of-rights rules by consulting guidance produced by SEAs than by combing through statutes and regulations. Not only are parents, students, and school personnel more likely to read and consult agency guidance, but the agencies presumably have greater insights and expertise with regard to the education system's stakeholders than legislatures and greater flexibility in maintaining and updating guidance documents than regulations.

Thus, technical deficiencies in state statutes or regulations might conceivably be overcome by complete and accurate guidance from SEAs. Conversely, progressive statutes or regulations may be undercut by inaccurate or incomplete guidance. However, concerns about the effects of incomplete transfer-of-rights rules are only exacerbated by surveying the policies and guidance of transfer jurisdictions' educational agencies. In addition to surveying transfer-of-rights statutes and regulations, we reviewed at least one guidance or policy document from each transfer jurisdiction to determine whether these accurately and completely restated federal and state transfer-of-rights laws, and how they described either guardianship or alternative means for navigating rights transfers. Notwithstanding notable exceptions, many SEAs' guidance present false guardianship-or-transfer dichotomies, overlook guardianship alternatives that avoid transfer recognized by state law, and dubiously describe school personnel as subject matter experts on whom parents and students should rely for counseling.

203. See, e.g., Payne-Christiansen & Sitlington, *supra* note 24, at 13–17.

1. *Overview*

In Table 4 below, forty-three transfer jurisdictions' transfer-of-rights guidance are presented.²⁰⁴ For each jurisdiction we attempted to obtain SEA-issued manuals or other resource materials targeting either parents, special educators, or students. First, we excluded guidance that failed to address the topic of transfer of rights. Where available, we reviewed age-of-majority-specific informational resources. In their absence, we reviewed special education manuals or handbooks for parents, and where those failed to address parental rights transfers, we turned to procedural safeguards notices. In some instances, we reviewed multiple sources of SEA guidance, while generally excluding informational resources developed by civil society organizations or school districts. These sources were obtained through state-specific internet keyword searches and scans of each SEA's website.²⁰⁵ We were unable to locate information specific to transfer of rights in guidance or policies from California, the DOD, Kentucky, Nevada, Tennessee, Vermont, and Wyoming.

Then, we determined whether each jurisdiction's guidance accurately and completely restated state and federal law. For this criterion, a jurisdiction's guidance was determined to have done so only if the guidance both accurately stated the local statute or regulation, if any, and also, if needed, accurately conveyed federal law's basic requirements for transfer-of-rights-processes, independently of whether these were accurately reflected in the local statute or regulation. Understanding that practice-oriented guidance documents may not recite each statutory or regulatory provision, we considered restatements to be accurate and complete if they addressed at

204. We excluded non-transfer jurisdictions from this review. While New York and Pennsylvania do not clarify their non-transfer policies in SEA guidance, Maryland and Nebraska do. See MD. STATE DEP'T OF EDUC., PARENTAL RIGHTS: MARYLAND PROCEDURAL SAFEGUARDS NOTICE 21 (rev. 2021); FRITZ, *supra* note 107, at 23.

205. Consequently, it is likely that the sources reviewed constitute a representative sample of available guidance rather than a comprehensive inventory.

least three of the four IDEA basic requirements, in addition to any state-level provisions beyond the federal floor. Thus, in Table 4 we considered states, such as Connecticut, whose regulations exceeded federal requirements, to have incomplete guidance if they failed to accurately convey those additional provisions. By contrast, we considered Massachusetts' guidance accurate and complete because at least one of the SEA guidance documents located addresses three of the IDEA's four transfer-of-rights requirements and lacks a special rule, although it only describes rights delegation as a guardianship alternative to avoid transfer, despite state regulations providing for both delegation and shared decision-making.²⁰⁶ Also, otherwise thorough descriptions of transfer-of-rights rules by SEAs that failed to mention three of the four basic IDEA requirements, special rules, or prescribed guardianship alternatives were not considered accurate and complete,²⁰⁷ nor were citations to federal provisions that failed to explain them.²⁰⁸ Last, we considered whether each jurisdiction's guidance referred to alternatives to guardianship other than

206. FED'N FOR CHILDREN WITH SPECIAL NEEDS & MASS. DEP'T ELEMENTARY & SECONDARY EDUC., PARENT'S GUIDE TO SPECIAL EDUCATION 30, https://fcsn.org/parents_guide/pgenglish.pdf (last visited June 15, 2021). Other guidance describes shared decision-making, but not delegation. See MASS. DEP'T ELEMENTARY & SECONDARY EDUC., ADMINISTRATIVE ADVISORY SPED 2011-1: AGE OF MAJORITY (Sept. 20, 2010).

207. Indeed, a limitation of our formalistic approach is that several states' noteworthy informational resources failed to satisfy these criteria. For example, the District of Columbia's detailed requirements for what LEA representatives must discuss with parents and students in the context of transfer-of-rights notifications did not cure its failure to mention its special rule for appointing educational representatives. See *Transfer of Rights*, D.C. PUB. SCH., <https://dcps.dc.gov/page/transfer-rights> (last visited May 30, 2021). Similarly, Virginia's detailed resource fails to mention incarcerated students or parents' post-transfer right to notice notwithstanding its robust discussion of its special rule and various guardianship alternatives. See VA. DEP'T OF EDUC., TRANSFER OF RIGHTS FOR STUDENTS WITH DISABILITIES UPON REACHING THE AGE OF MAJORITY IN VIRGINIA (2015). See also DEL. DEP'T OF EDUC.'S EXCEPTIONAL CHILD. RES., DELAWARE PROCEDURAL SAFEGUARDS: PARENT AND CHILD RIGHTS IN SPECIAL EDUCATION (2019); ILL. STATE BD. OF EDUC., EDUCATIONAL RIGHTS AND RESPONSIBILITIES: UNDERSTANDING SPECIAL EDUCATION IN ILLINOIS (2009); S.C. OFF. OF SPECIAL EDUC. SERVS., SPECIAL EDUCATION PROCESS GUIDE FOR SOUTH CAROLINA (2013).

208. E.g., MONT. OFF. OF PUB. INSTRUCTION, IDEA SPECIAL EDUCATION PART B PROCEDURAL SAFEGUARDS NOTICE 1 (2017) ("When a student with disabilities reaches the age of 18, parental rights under IDEA will transfer to the student in accordance with 34 CFR 300.520 and 34 CFR 300.320(c).").

procedures adopted pursuant to section 615(m)(2) of the IDEA, regardless of whether these were mentioned in statute or regulation. In doing so, we found that while most jurisdictions' guidance on special education addressed transfer of rights, few accurately and completely restated state and federal law, while still fewer discussed alternative paths for navigating rights transfers other than guardianship, even when these alternatives were expressly mentioned in that jurisdiction's transfer-of-rights statute or regulation (denoted by "No*").

Table 4. SEA Transfer-of-Rights Guidance in Transfer Jurisdictions

Question	Yes	No
Does the SEA have publicly available guidance on transfer of rights?	AL, AK, AZ, AR, BIE, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, LA, ME, MA, MI, MN, MS, MO, MT, NH, NJ, NM, NC, ND, OH, OK, OR, PR, RI, SC, SD, TX, UT, VA, WA, WV, WI (43 of 50)	CA, DOD, KY, NV, TN, VT, WY (7 of 50)
Does the guidance describe guardianship as the only means to avoid transfer of rights?	AZ, ²⁰⁹ AR, CO, CT, FL, LA, MI, MS, NJ, NM, ND, OK, OR, RI, UT, WV (16 of 43)	AL, AK, BIE, DE, DC, GA, HI, ID, IL, IN, IA, KS, ME, MA, MN, MO, MT, NH, NC, OH, PR, SC, SD, TX, VA, WA, WI (27 of 43)
Does the guidance accurately and	AK, AZ, BIE, GA, HI, ID, IN, KS, MA, MI, MT, NJ,	AL, AR, CO, CT, DE, DC, FL, IL, IA,

209. Although the Arizona Department of Education's *Secure Care Special Education Policies and Procedures* (2013) manual does not mention alternatives to guardianship, its 2019 *Prepare Your Child for the Future* brochure describes delegation of rights. See ARIZ. DEP'T OF EDUC., PREPARE YOUR CHILD FOR THE FUTURE: TRANSFER OF RIGHTS AT AGE OF MAJORITY (2019), <https://www.azed.gov/sites/default/files/specialeducation/files/2020/05/Transfer-of-Rights-Brochure-2019.pdf>.

Question	Yes	No
completely restate federal and state law?	NC, PR, OK, OR, TX, UT, WV (19 of 43)	LA, ME, MN, MO, MS, NH, NM, ND, OH, RI, SC, SD, VA, WA, WI (24 of 43)
Does the guidance describe alternatives to guardianship?	AZ, DC, GA, HI, ID, IL, IN, MA, NC, SC, SD, TX, VA (13 of 43)	AL, AK, AR, BIE, CO, CT*, DE*, FL, IA, KS, LA, ME, MI, MN, MS, MO, MT, NH, NJ, NM*, ND, OH, OK, OR, PR, RI, UT, WA*, WV, WI* (30 of 43)

While some scholars have criticized agency guidance for promoting guardianship, not all may have fully accounted for the nuances evident in some informational materials. Indeed it may be risky to assume that mere mentions of guardianship, such as prompts to consider guardianship,²¹⁰ directly translate into school personnel recommending guardianship by default as part of the transition planning process.²¹¹ For example, while the Illinois State Board of Education's 2009 *Educational Rights and Responsibilities: Understanding Special Education in Illinois* does mention the word "guardianship," it does so only in

210. See, e.g., NYC DEP'T OF EDUC., FAMILY GUIDE TO TRANSITION PLANNING: PREPARING STUDENTS WITH IEPs FOR LIFE AFTER HIGH SCHOOL 23, <https://www.schools.nyc.gov/docs/default-source/default-document-library/family-guide-to-transition-planning> (last visited May 24, 2021).

211. For example, it is unclear to us that an SEA brochure that describes guardianship as "an expensive and lengthy process" while also describing Delegation of Right to Make Educational Decisions as an alternative means to avoid rights transfers has the effect of encouraging or discouraging parents from seeking guardianship. See, e.g., ARIZ. DEP'T OF EDUC., *supra* note 209. See also Rood, Kanter & Causton, *supra* note 52, at 322 (referencing New York State's Education Department's guidelines and resources that "instruct families and caregivers to both consider and possibly seek out guardianship for students nearing the age of majority" (internal citation omitted)).

passing and provides a paragraph of information on delegation of rights as an alternative.²¹²

Indeed, there are several notable examples of SEA guidance that both accurately and completely restate applicable state and federal laws, and also provide detailed information about alternative approaches to parental rights transfers. For example, the North Carolina State Board of Education and Department of Public Instruction's 2018 *Policies Governing Services for Students with Disabilities* clearly states that parental rights generally transfer to students when they turn eighteen, that parental rights also transfer to incarcerated students upon incarceration, and that parents have a right to notice post-transfer with regard to non-incarcerated students.²¹³ Further, these policies clarify that parental rights do not transfer at age eighteen only if the student "is declared legally incompetent or legally incapacitated by a court of competent jurisdiction," "designates, in writing, by power of attorney or similar legal document, another competent adult to be the student's agent to receive notices and to participate in meetings and all other procedures related to the student's educational program," or "is certified . . . as unable to provide informed consent."²¹⁴ This guidance appears to improve upon the same agency's earlier 2016 guidance that likely overstated its transfer-of-rights statute and policy.²¹⁵ The fact that North Carolina's more recent

212. ILL. STATE BD. OF EDUC., EDUCATIONAL RIGHTS AND RESPONSIBILITIES: UNDERSTANDING SPECIAL EDUCATION IN ILLINOIS 70 (2009), http://www.northwestcoop.com/resources/educational_rights_responsibilities.pdf; accord ILL. STATE BD. OF EDUC., EDUCATIONAL RIGHTS AND RESPONSIBILITIES: UNDERSTANDING SPECIAL EDUCATION IN ILLINOIS 73 (2020), <https://www.isbe.net/Documents/Parent-Guide-Special-Ed-Aug20.pdf>.

213. See N.C. STATE BD. OF EDUC. & DEP'T OF PUB. INSTRUCTION, POLICIES GOVERNING SERVICES FOR STUDENTS WITH DISABILITIES 100, <https://ec.ncpublicschools.gov/conferences-profdev/march-institute/2018-march-institute-handouts/policy-updates-legal-trends/amendedmarch2018policy.pdf> (Mar. 2018).

214. *Id.*

215. See N.C. STATE BD. OF EDUC., PARENT RIGHTS & RESPONSIBILITIES IN SPECIAL EDUCATION: NOTICE OF PROCEDURAL SAFEGUARDS 4 (2016), <https://ec.ncpublicschools.gov/parent-resources/ecparenthandbook.pdf> ("Age 18 is the age of majority in the State of North Carolina and the right to make educational decisions and procedural safeguards transfer to the student at this time. Unless a guardian has been appointed to represent the student, the student represents him or herself.").

guidance is both more informative and more accurate than its previous guidance document demonstrates the capacity of SEAs to make meaningful improvements over time—in contrast with states such as Connecticut, whose guidance appears not to have kept step with regulatory developments.²¹⁶

Moreover, SEAs in the District of Columbia, Hawaii, South Carolina, Texas, and Virginia provide thorough guidance to parents and school personnel that match their regulations' detail.²¹⁷ For example, Hawaii's 2020 *Procedural Safeguards Notice* clearly describes its statutory transfer-of-rights provisions as providing "the adult student with three (3) educational decision-making options" to prevent transfers: execution of power of attorney for special education, appointment of an educational representative, or appointment of a guardian.²¹⁸ Additionally, Hawaii's State Special Education Section's 2009 Q&A sheet describes in detail these three options available under Hawaiian law, including the powers of an

216. Connecticut failed to update its 2007 guidance to include alternatives to the transfer of rights expressly recognized in its 2013 regulations. See CONN. STATE DEP'T OF EDUC., A PARENT'S GUIDE TO SPECIAL EDUCATION IN CONNECTICUT 13 (2007), <https://web.archive.org/web/20210414031537/https://portal.ct.gov/SDE/Special-Education/Special-Education-Resources-for-Families>. Its current guidance also neglects to mention these alternatives. CONN. STATE DEP'T OF EDUC. BUREAU OF SPECIAL EDUC. (2021), *supra* note 82, at 30; CONN. DEP'T OF EDUC., PROCEDURAL SAFEGUARDS NOTICE REQUIRED UNDER IDEA PART B 4 (2021), <https://portal.ct.gov/-/media/SDE/Special-Education/Prosaf.pdf?la=en> ("When a child turns 18 years old, the child has all rights the parent used to have. A child will not get these rights if the court has said the child is not able to decide in a way that is good for the child. The school district shall give any notice required by the law to both the child and the parent even though the child would now have the rights that the parent used to have. When the rights pass from the parent to the child, the school district must notify the child and the parent of the transfer of rights.").

217. See D.C. PUBLIC SCHOOLS, TRANSFER OF RIGHTS (2021), <https://dcps.dc.gov/page/transfer-rights>; HAW. DEP'T OF EDUC., PROCEDURAL SAFEGUARDS NOTICE FOR PARENTS AND STUDENTS UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT AND HAWAII LAW AND REGULATIONS 39 (2020), <https://www.hawaiipublicschools.org/DOE%20Forms/Special%20Education/Procedural%20Safeguards/ProceduralSafeguards.pdf>; S.C. OFF. OF SPECIAL EDUC. SERVS., SPECIAL EDUCATION PROCESS GUIDE FOR SOUTH CAROLINA (2013), TEX. EDUC. AGENCY, NOTICE OF PROCEDURAL SAFEGUARDS 11 (2021), http://framework.esc18.net/Documents/Pro_Safeguards_ENG.pdf; VA. DEP'T OF EDUC., TRANSFER OF RIGHTS FOR STUDENTS WITH DISABILITIES UPON REACHING THE AGE OF MAJORITY IN VIRGINIA 4–6 (2015), https://www.doe.virginia.gov/special_ed/regulations/state/transfer_rights_students_disabilities.pdf.

218. HAW. DEP'T OF EDUC., *supra* note 217, at 39.

agent appointed through a power of attorney, the differences between a general power of attorney and a power of attorney for special education, and how a student may be determined to lack “decisional capacity.”²¹⁹ Likewise, Virginia’s 2015 *Transfer of Rights for Students with Disabilities upon Reaching the Age of Majority in Virginia* resource affirms parents’ important role in educational decision-making while also contextualizing transfer of rights within the broader process of attaining rights through adulthood.²²⁰ It also clearly enumerates four ways for a parent to be appointed to make educational decision on behalf of an adult student: guardianship; court order admitting the student to a training, treatment, or habilitation facility; appointment as educational representative through Virginia’s special rule; or power of attorney.²²¹

Also, some agencies in states with less progressive transfer-of-rights rules appear to compensate for regulatory deficits with more robust guidance. For example, the Kansas State Department of Education’s *Kansas Special Education Handbook* imposes on schools an affirmative duty “to provide information and resources to the student and parents early in the IEP process to assist them in understanding the implications of the transfer of these rights under special education law.”²²² Similarly, despite a minimalist transfer-of-rights regulation, the Georgia Department of Education’s undated *Special Education Rules Implementation Manual* encourages school districts to “inform parents of other options or about where to get more information about guardianships, powers of attorney, and any other options” that may prevent parental rights from

219. Haw. Special Educ. Section, *Transfer of Rights for an Adult Student with a Disability Enrolled in a Public School: Questions and Answers*, AUTISM SOC’Y OF HAW. (Jan. 2009), <https://autismsocietyofhawaii.org/wp-content/uploads/2015/06/TransferofRightsQA.pdf>.

220. VA. DEP’T OF EDUC., *TRANSFER OF RIGHTS FOR STUDENTS WITH DISABILITIES UPON REACHING THE AGE OF MAJORITY IN VIRGINIA 4* (2015), https://www.doe.virginia.gov/special_ed/regulations/state/transfer_rights_students_disabilities.pdf.

221. *Id.* at 4–6.

222. KAN. STATE DEP’T OF EDUC., *KANSAS SPECIAL EDUCATION PROCESS HANDBOOK 85* (2021), <https://www.ksde.org/Portals/0/SES/PH/PH-complete.pdf?ver=2021-01-14-162139-073> (internal citations omitted).

transferring, despite the absence of any reference to guardianship alternatives in the state's regulation.²²³

However, our review of guidance documents from forty-three transfer jurisdictions indicates that many resources appear to suggest that guardianship is the only way to prevent parental rights transfers, withhold information about alternatives to guardianship that are expressly recognized by states' transfer-of-rights rules, or encourage parents to seek legal information from educators. In this way, SEAs seem to entrench the false dichotomy surrounding parental rights transfers that induces more parents to pursue guardianship than those who might do so otherwise, while simultaneously failing to fully inform them of alternatives, and holding out educators as resources for legal matters that are likely outside their expertise.

2. *False guardianship-or-transfer dichotomy*

While many transfer jurisdictions' SEA guidance merely state that parental rights will generally transfer to students upon reaching adulthood, several SEAs describe guardianship as the only means to prevent parental rights from transferring to students at adulthood. New Jersey's SEA guidance for parents is emblematic: "When your child reaches age 18, all rights under special education law will transfer to your child unless a court has appointed a legal guardian for your child."²²⁴ Other

223. GA. DEP'T OF EDUC., ONLINE IEP SYSTEM, <https://sped.gadoe.org/iephelpweb/Graduation.html> (scroll to "F") (last visited May 24, 2021).

224. N.J. DEP'T OF EDUC., PARENTAL RIGHTS IN SPECIAL EDUCATION 12 (2016), <https://www.state.nj.us/education/specialed/form/prise/prise.pdf>. See also FLA. DEP'T OF EDUC., A PARENT'S INTRODUCTION TO EXCEPTIONAL STUDENT EDUCATION IN FLORIDA 35 (2012), <http://www.fldoe.org/core/fileparse.php/7674/urlt/0064540-eseparent.pdf> ("In Florida, this *transfer of rights* happens when the student turns 18, unless the student has been declared incompetent under state law or has a guardian advocate who has been appointed to make educational decisions."); IOWA DEP'T OF EDUC., PROCEDURAL SAFEGUARDS MANUAL FOR PARENTS 32 (2018), <https://educateiowa.gov/sites/files/ed/documents/ProceduralSafeguardsManual-March2019.pdf> ("A parent's rights under IDEA will transfer to your child at the child's age of majority. . . . An exception to age of majority at 18 is a child with a disability who has

SEAs issue similarly black-and-white guidance to school personnel.²²⁵ Even other SEAs have issued similar guidance despite their states' transfer-of-rights rules expressly recognizing alternatives to guardianship. For example, Louisiana's parents handbook mirrors the federal regulations' language explicitly excepting students for whom guardians have been appointed from parental rights transfers,²²⁶ while failing to mention the state's special rule allowing parents to request their LEA to appoint them as educational representatives for an adult student if they believe "that the student lacks the ability to provide informed consent with respect to his or her educational program."²²⁷ Similarly, even though Alaska passed a statute recognizing supported decision-making agreements in 2018,²²⁸ the Department of Education and Early Development's 2020 guidance for special educators ignores these as an alternative for navigating rights transfers. Instead, it provides: "[r]equirements for parent participation under federal and Alaska law do not hold for students at or above the age of majority The *only exception*

legally been determined to be incompetent under Iowa law."); OR. DEP'T OF EDUC., PROCEDURAL SAFEGUARDS NOTICE: PARENT RIGHTS FOR SPECIAL EDUCATION K-21, at 12 (2019-20), <https://www.ncesd.k12.or.us/site/handlers/filedownload.ashx?moduleinstanceid=2301&dataid=3239&FileName=IDEA%20Safeguards.pdf> ("At age 18, a person is no longer under the legal guardianship of their parent or other adult unless a court has established adult guardianship.").

225. See, e.g., OKLA. STATE DEP'T OF EDUC., OKLAHOMA'S SECONDARY TRANSITION HANDBOOK 33 (2014), <https://sde.ok.gov/sites/ok.gov.sde/files/Secondary%20Transition%20Handbook%202014.pdf> ("Unless parents have gone to court to obtain an order to remove students' rights, educational rights transfer to the students when they turn 18 years old."); W. VA. DEP'T OF EDUC., REGULATIONS FOR THE EDUCATION OF STUDENTS WITH EXCEPTIONALITIES 103 (2017), https://wvde.state.wv.us/osp/Policy2419_2017.pdf ("Special education rights will transfer from the parent to the adult student when the student turns eighteen years of age unless a court has appointed a legal guardian to represent the educational interests of the student.").

226. LA. DEP'T OF EDUC., LOUISIANA'S EDUCATIONAL RIGHTS OF CHILDREN WITH DISABILITIES: SPECIAL EDUCATION PROCESSES + PROCEDURAL SAFEGUARDS 11 (2020), <https://www.louisiana-believes.com/docs/default-source/academics/louisiana's-educational-rights-of-children-with-disabilities.pdf?sfvrsn=12> ("When a student with a disability reaches the age of majority, which is age eighteen in Louisiana (except for a student with a disability who has been determined, under applicable state laws, to lack the capacity to make educational decisions)").

227. LA. ADMIN. CODE tit. 28, § 520(B) (2021).

228. See 2018 Alaska Sess. Laws ch. 108 § 1.

is if a court of competent jurisdiction otherwise determines.”²²⁹ By not only failing to mention available alternatives to guardianship but also suggesting that guardianship is the *only* way to avoid parental rights transfers, these SEAs’ guidance misleadingly cast transfer of rights as an either-or choice.

The false dichotomy pervades SEA guidance even where the resource does provide information that subsequently undermines the dichotomy. For example, the Georgia Department of Education informs its school personnel: “At age 18, students become their own educational decision makers, unless a court decides they are not able to make these decisions. . . . Districts may also inform parents of other options or about where to get more information about guardianships, powers of attorney, and any other options.”²³⁰ Thus, even where SEA guidance does hint at guardianship alternatives (albeit permissively), it frames transfer of rights as a binary situation. Surprisingly, given the state’s relatively progressive transfer-of-rights rules, South Carolina’s guidance for school personnel perpetuates the false dichotomy. It misinforms educators by ignoring the state’s special rule preventing rights from transferring to certain adult students²³¹ by declaring: “[t]he *only* situation in which all rights do not automatically transfer to the student at age 18 is when a court has judged the student to be unable to fulfill his or her responsibilities.”²³² But shortly thereafter, the guidance continues:

229. ALASKA DEP’T OF EDUC. & EARLY DEV., GUIDANCE FOR SPECIAL EDUCATION PERSONNEL: SELECTED REGULATIONS AND INFORMATION REGARDING ALASKA SPECIAL EDUCATION 56 (2020), https://education.alaska.gov/Media/Default/static/covid/AK_SPED_Handbook.pdf (citing ALASKA ADMIN. CODE tit. 4 § 52.620 (2021)) (emphasis added).

230. GA. DEP’T OF EDUC., SPECIAL EDUCATION RULES IMPLEMENTATION MANUAL 16, <https://www.gadoe.org/Curriculum-Instruction-and-Assessment/Special-Education-Services/Pages/Implementation-Manual.aspx> (last visited July 2, 2021).

231. S.C. CODE ANN. § 59-33-340 (setting out an exception for students who are “identified as incapable of communicating, with or without reasonable accommodations, his wishes, interests, or preferences with respect to his educational program”).

232. OFF. OF EXCEPTIONAL CHILD., SPECIAL EDUCATION PROCESS GUIDE FOR SOUTH CAROLINA 16 <https://4.files.edl.io/6d26/07/02/20/171341-02a5f34c-6c76-4f10-94ed-7df67d950a18.pdf> (emphasis added) (2013).

Once rights have been transferred to the student, he or she may be able to execute a power of attorney under S.C. Code Ann. § 62-5-501 (Supp. 2010). This regulation allows a person who is not affected by a disability to execute a power of attorney to grant another party the right to act as the agent or attorney-in-fact for the person.²³³

Thus, even though South Carolina's SEA guidance ultimately describes alternatives to guardianship, it does so only after introducing the topic using a narrow (and inaccurate) frame. The prevalence of this limited frame in jurisdictions with more progressive transfer-of-rights rules only underscores its pervasiveness.

3. Hiding alternatives to guardianship

Moreover, SEA guidance is riddled with inaccuracies about their own jurisdictions' transfer-of-rights rules. For example, New Mexico's Public Education Department repeats the common fallacy that federal law and regulations dictate transfer, while also failing to mention power of attorney as an alternative to guardianship, despite its express recognition in the state's transfer-of-rights regulation:

In New Mexico, children become legal adults at age 18. Under the IDEA, they are then entitled to make their own educational decisions and protect their own rights unless the courts have declared them incompetent and appointed guardians for them. Unless this is completed before the child's 18th birthday, the child will automatically have all rights and responsibilities of adulthood when he or she reaches the age of 18, which includes making educational decisions. The district will inform the parent of the laws and options

233. *Id.*

regarding transfer of rights beginning at each annual Individual Education Program (IEP) review for a child who is 14 or older.²³⁴

As in the Louisiana, South Carolina, and New Mexico guidance mentioned above, the SEA guidance in several other transfer jurisdictions fail to mention available alternatives to guardianship despite express references in their states' transfer-of-rights rules. For example, the Arizona Department of Education's 2013 *Secure Care Special Education Policies and Procedures* clearly states that parental rights transfer to students without guardians when they turn eighteen years old,²³⁵ and that parents have a post-transfer right to notice, but it fails to mention what Arizona's section 15-773(B) expressly provides: that an adult student may "execute a delegation of right to make educational decisions," thereby avoiding transfer.²³⁶ Similarly, the Department's *Indicator 13 Transition Services: Transfer of Rights at Age of Majority* fact sheet fails to mention alternatives to guardianship that may prevent parental rights from transferring.²³⁷ However, we did locate a separate Arizona Department of Education brochure that describes delegation of rights.²³⁸

By contrast, the Arizona Center for Disability Law's 2007 guide *Understanding Your Child's Educational Rights* does describe the "Delegation of Right to Make Educational

234. N.M. PUB. EDUC. DEP'T, PARENT AND CHILD RIGHTS IN SPECIAL EDUCATION PROCEDURAL SAFEGUARDS NOTICE 2-3 (2014). In comparison, the regulation provides that upon reaching the age of majority, the only way a person may be deemed incompetent is by a "guardianship proceeding under the probate code" which is not a decision that public agencies or IEP teams have the ability to make. See N.M. CODE R. § 6.31.2.13(K)(1) (LexisNexis 2021).

235. ARIZ. DEP'T OF EDUC., SECURE CARE SPECIAL EDUCATION POLICIES AND PROCEDURES (2013).

236. ARIZ. REV. STAT. ANN. § 15-773(B) (2021).

237. *Indicator 13 Transition Services: Transfer of Rights at Age of Majority*, ARIZ. DEP'T OF EDUC., <https://www.azed.gov/specialeducation/transition/indicator-13> (last visited Aug. 1, 2021).

238. ARIZ. DEP'T OF EDUC., *Prepare Your Child for the Future* (2019), <https://www.azed.gov/sites/default/files/specialeducation/files/2020/05/Transfer-of-Rights-Brochure-2019.pdf> (last visited June 14, 2021).

Decisions” alternative.²³⁹ Similarly, the Delaware Department of Education’s Exceptional Children Resources workgroup’s 2019 *Notice of Procedural Safeguards* overstates its transfer-of-rights regulation; it claims that “all” parental rights transfer to students when they turn eighteen unless either a court has appointed a guardian for the student or the IEP team has determined that the student lacks the capacity to make informed educational decisions.²⁴⁰ In doing so, this notice ignores 14-926 Delaware Administrative Code section 20.1.2, which expressly allows adult students to execute a power of attorney or appoint an educational representative.²⁴¹ Further, this notice fails to mention how supported decision-making agreements may be used to navigate transfer-of-rights concerns following Delaware’s enactment of a statute in 2016 formally recognizing these agreements.²⁴² Poignantly, the Connecticut State Department of Education’s 2021 *A Parent’s Guide to Special Education in Connecticut* not only fails to mention the two alternatives to guardianship afforded parents and students by Connecticut’s regulations but also suggests that guardianship is the only way to avoid transfer.²⁴³ Although Connecticut’s transfer-of-rights regulations were amended in 2013, the

239. ARIZ. CTR. FOR DISABILITY L., UNDERSTANDING YOUR CHILD’S EDUCATIONAL RIGHTS: SERVING STUDENTS WITH SPECIAL NEEDS UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT AND SECTION 504 OF THE REHABILITATION OF 1973, at 37 (2007), <https://www.azdisabilitylaw.org/wp-content/uploads/2015/04/SE2-Guide-English-New-Logo.pdf> (describing the “Delegation of Right to Make Educational Decisions” as the ability of children with disabilities to transfer decision making authority to another person upon their eighteenth birthday, which could be the best course of action for students who would rather someone else make educational decisions on their behalf).

240. DEL. DEP’T OF EDUC., DELAWARE PROCEDURAL SAFEGUARDS: PARENT AND CHILD RIGHTS IN SPECIAL EDUCATION 14 (2019), <https://www.doe.k12.de.us/cms/lib/DE01922744/Centricity/Domain/78/July%202019%20Delaware%20Procedural%20Safeguards%20Parent%20and%20Child%20Rights%20in%20Special%20Education.pdf>. Although Delaware’s regulation does not recognize parents’ post-transfer right to notice, the IDEA does. Compare DEL. CODE ANN. tit. 14 § 3132(b) (2021) with 34 C.F.R. § 300.520(a)(1)(i).

241. 14-900-926 DEL. CODE REGS. § 20.1.2 (LexisNexis 2021).

242. See DEL. CODE ANN. tit. 16, § 9405A (2016).

243. CONN. STATE DEP’T OF EDUC. BUREAU OF SPECIAL EDUC. (2021), *supra* note 82, at 30 (“When your child reaches age 18 (age of majority), or is declared an emancipated minor, all rights under special education law will transfer to your child unless a court has appointed a legal guardian for your child.”).

Connecticut State Department of Education did not update its 2007 guide²⁴⁴ for parents until 2021. By failing to accurately and completely explain state transfer-of-rights rules, SEAs do educators, parents, and students a grave disservice and likely diminish the impact that these more progressive statutes and regulations might have in shaping decisions about how to navigate transfer of rights.

4. Casting educators as informational resources

Lastly, several SEAs' guidance encourages school personnel to counsel parents on their transfer-of rights-options. While both parents and students could likely benefit from the experience of educators who have been down this road before, SEAs should do so cautiously. Consider the Colorado State Department of Education's 2015 *Important Transition Ages and Milestones* fact sheet.²⁴⁵ For students turning eighteen years old, the Colorado State Department of Education suggests to parents that guardianship "should be considered" if their child's disability "causes him/her to be unable to manage his/her own life."²⁴⁶ Although the fact sheet notes that guardianship "can be restrictive" and further describes limited guardianship as an alternative to full guardianship,²⁴⁷ it is uncertain whether the Department exceeds its mandate. Specifically, it describes limited guardianship as a possibility for transferring authority "for specific matters such as money management or medical decisions."²⁴⁸ It also thrusts educators into the role of facilitators for parents pursuing guardianship.²⁴⁹ While these guidelines may be well-intentioned, parental rights

244. See generally CONN. STATE DEP'T OF EDUC. BUREAU OF SPECIAL EDUC. (2007), *supra* note 216.

245. See generally COLO. DEP'T OF EDUC., IMPORTANT TRANSITION AGES AND MILESTONES (2015), https://www.cde.state.co.us/cdesped/ta_agemilestones.

246. *Id.* at 1.

247. *Id.* at 1–2.

248. *Id.* at 2.

249. *Id.* ("Special education service providers or agency personnel may be able to assist parents with this process.").

under the IDEA transfer to students in Colorado only when they turn twenty-one years old.²⁵⁰ Although it might be understandable for parents to present educators with questions about guardianship within the context of required transfer-of-rights notices, it is unclear why an SEA would appear to encourage parents to seek advice about guardianship, a legal matter, from educators when parents would not receive mandated transfer-of-rights notices until their children turn twenty years old.

Indeed, some research into transfer-of-rights discussions among school personnel and parents suggest that many educators may not be well-suited to dispense legal information.²⁵¹ While affirmatively obligating schools to present information about alternatives to guardianship when transfer-of-rights or guardianship issues arise may be an effective way to counteract prevalent assumptions that guardianship is “the thing to do,” well-intentioned SEA guidance that positions educators as informational resources for parents may backfire if the educators are not well-informed. For example, the Kansas State Department of Education avers: “[i]t is important for the school to provide information and resources to the student and parents early in the IEP process to assist them in understanding the implications of the transfer of these rights under special education law.”²⁵²

Similarly, the Idaho State Department of Education’s 2020 *Special Education Manual* is one of the few that describes the state’s special rule for appointing educational representatives for students determined by the IEP team to be “unable to provide informed consent with respect to his or her educational program,” but it is also one of the few that expressly expects that “[e]ducators, who work with young adults with disabilities, and parents of individuals with disabilities, shall understand the issues regarding special education rights,

250. *Id.*

251. *See, e.g.,* Payne-Christiansen & Sitlington, *supra* note 24, at 15.

252. KAN. STATE DEP’T OF EDUC., *supra* note 222, at 85 (internal citation omitted).

guardianship, conservatorship, and power of attorney.”²⁵³ Further, it instructs “[e]ducators who are working with students who will be turning 18 years of age should assist families in contacting the appropriate agency for assistance”²⁵⁴ to seek guardianship, without similarly instructing them to advise parents of alternatives to guardianship, in contrast to other SEAs’ guidance.²⁵⁵

IV. RECOMMENDATIONS

Recently, certain researchers and practitioners have recommended amending the IDEA to require schools to provide information on alternatives to guardianship.²⁵⁶ While such an amendment might indeed contribute to reducing guardianship petitions affecting transition-age youth, even setting aside the complex politics that have influenced each IDEA reauthorization legislation, it may run into the federalism concerns that prompted Congress to defer to states’ traditional powers to regulate matters relating to competency in 1997.²⁵⁷ Moreover, federal legislative and regulatory changes will inevitably be filtered through state legislatures and educational agencies, which have, as our survey indicates, diverged in practice from federal requirements. Thus, as elegantly simple as amending the IDEA may appear, effectuating a significant normative and cultural shift will likely require multisectoral changes. Specifically, we describe below a series of actions that public and private actors can take in order to reduce whatever confusion the IDEA transfer-of-rights provisions have

253. IDAHO STATE DEP’T OF EDUC., TRANSFER OF SPECIAL EDUCATION RIGHTS 1 (2020).

254. *Id.* at 2–3.

255. *Id.* For similar examples, see D.C. CODE § 38-2571.04(c) (2021); 105 ILL. COMP. STAT. ANN. 5/14-6.10(b) (LexisNexis 2021); TEX. EDUC. CODE ANN. § 29.017(c)(1)(B) (West 2021); WISC. STAT. § 115.807(4) (2021); TEX. EDUC. AGENCY, *supra* note 217, at 11 (stating that school districts must provide parents with information about guardianship and alternatives to guardianship on or before their child turns seventeen years old).

256. Raley et al., *supra* note 26, at 6.

257. See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, 71 Fed. Reg. 46,713, 46,713 (Aug. 14, 2006) (to be codified at 34 C.F.R. pt. 300).

generated among educators, parents, students, and others. Because these steps do not necessitate federal legislative activity, our hope is that they may be more immediately actionable.

A. Updating Regulations and SEA Guidance

First, SEAs and legislative or regulatory bodies can modify transfer-of-rights rules for clarity and completeness, to establish special rules for appointing educational representatives for certain adult students, and to both recognize and innovate alternative paths for navigating rights transfers other than guardianship. SEAs can also update and improve their transfer-of-rights guidance for both parents and students by describing rights transfers as learning opportunities and transparently presenting the pros and cons of transfers, expressly discussing alternatives to guardianship for avoiding parental rights transfers, and providing sample forms that parents and students may immediately adopt without legal assistance.

There seems little reason for many states' failures to adopt laws and regulations that at minimum clearly state whether rights transfer to adult students, and for these rules to describe the transfer of rights with respect to incarcerated students, affirm parents' post-transfer right to notice, and obligate schools to provide advance notice of transfers.²⁵⁸ Further, although federal law is permissive with regard to adopting procedures for appointing educational representatives for adult students not subject to guardianship orders but perceived as unable to give informed consent, it is unclear why so many states have declined to do so. Lastly, there seems to be little reason for states to fail to expressly mention alternatives to guardianship for avoiding or preventing parental rights transfers. Such deficiencies, far from technical, could have long-lasting expressive effects on teachers', parents', and students'

²⁵⁸ Also, non-transfer jurisdictions should consider clearly stating their non-transfer policies in statutes or regulations.

own expectations, which are a powerful driver of post-school outcomes.

For transfer jurisdictions reconsidering their rules, Virginia's are among the most complete, though not necessarily the most progressive. Virginia's regulations exclude adult students "declared legally incompetent or legally incapacitated by a court,"²⁵⁹ apply the transfer rules to incarcerated students (but only those aged eighteen or older),²⁶⁰ recognize parents' post-transfer right to notice,²⁶¹ and require LEAs to inform students and parents of the parental IDEA rights that may transfer.²⁶² Also, Virginia has a detailed procedure for appointing educational representatives²⁶³ and affirms adult students' right to use a "power of attorney or similar legal document" to avoid transfers.²⁶⁴ Further, Virginia clarifies that both LEAs and adult students may continue to involve parents in educational decisions (provided the student consents) post transfer, provided the student consents.²⁶⁵

Although Virginia and others' jurisdictions offer a serviceable rule-making floor, transfer jurisdictions should also consider incorporating the following promising features:

- specifically recognizing educational powers of attorney;²⁶⁶
- creating easy-to-use statutory or regulatory forms;²⁶⁷

259. 8 VA. ADMIN. CODE § 20-81-180(C)(1) (2021).

260. *Id.* at 180(A).

261. *Id.* at 180(B)(3).

262. *Id.* at 180(B)(2).

263. *Id.* at 180(C)(3).

264. *Id.* at 180(C)(2).

265. *See id.* at 180(B)(4)–(5).

266. *See, e.g.,* HAW. REV. STAT. ANN. § 302A-491(b) (LexisNexis 2021).

267. *See, e.g.,* ARIZ. REV. STAT. ANN. § 15-773(D) (2021); 105 ILL. COMP. STAT. ANN. 5/14-6.10(c)(2)(e) (LexisNexis 2021).

- allowing students to convey decision-making arrangements using accessible or alternative means;²⁶⁸
- mandating plans for educational decision-making from an early age;²⁶⁹
- allowing students and parents to “share” decision-making authority;²⁷⁰
- limiting educational representative appointments to one year;²⁷¹
- guaranteeing assistance for students who wish to contest educational representative appointments;²⁷²
- ensuring that capacity to consent evaluations take into account reasonable accommodations;²⁷³
- obligating LEAs to inform students and parents of various options for navigating rights transfers;²⁷⁴
- directing LEAs to provide students and parents with forms for executing alternatives to guardianship;²⁷⁵

268. *See, e.g.*, ARIZ. REV. STAT. ANN. § 15-773(E) (2021).

269. *See, e.g.*, S.C. CODE ANN. § 59-33-360 (2021) (“starting at age thirteen”).

270. *See, e.g.*, 603 MASS. CODE REGS. 28.07(5)(b) (LexisNexis 2021) (“The student, upon reaching 18 years of age and in the absence of any court actions to the contrary, may choose to share decision-making with his or her parent (or other willing adult), including allowing the parent to co-sign the IEP.”).

271. *See, e.g.*, CONN. AGENCIES REGS. §10-76d-12(g)(3) (2021); WASH. ADMIN. CODE § 392-172A-05135(5)(c) (2021).

272. *See, e.g.*, D.C. Code Mun. Regs. tit. 5, § 3035.14(a) (LexisNexis 2021).

273. *See, e.g.*, S.C. CODE ANN. § 59-33-340 (2021).

274. *See, e.g.*, D.C. CODE § 38-2571.04(c) (2021); TEX. EDUC. CODE ANN. § 29.017(c)(1)(B) (West 2021); 19 TEX. ADMIN. CODE § 89.1049(a), (c) (2021); WISC. STAT. § 115.807(4) (2019).

275. *See, e.g.*, 105 ILL. COMP. STAT. ANN. 5/14-6.10(b) (LexisNexis 2021).

- systematizing transfer-of-rights notices;²⁷⁶ and
- affirming the importance of parents' and other supporters' post-transfer role in adult students' educational decision-making.²⁷⁷

We would also encourage transfer jurisdictions to innovate novel features. For example, transfer-of-rights rules might state unequivocally that guardianship is not the only means for avoiding transfers, to stamp out confusion sown by Section 615(m).²⁷⁸ Additionally, transfer jurisdictions might require that plain language versions of transfer-of-rights rules and students' options be provided, to increase the likelihood that the IDEA's notice requirements are meaningful.²⁷⁹ Further, transfer jurisdictions, either in their transfer-of-rights rules or elsewhere, might specifically provide that parents may bring claims on behalf of adult students even if rights have transferred. All transfer jurisdictions that have either passed supported decision-making statutes or have recognized this guardianship alternative in their transfer-of-rights rules should also consider clarifying parents' standing when students choose this option. Alternatively, transfer jurisdictions might consider affirmatively obligating hearing officers to allow parents to cure standing defects in their complaints. Transfer jurisdictions might even consider creating simple adult student consent forms and embed those in model due process complaint forms, to avoid expending precious dispute resolution resources on procedural arcana. As noted above, parents, especially those of

276. See, e.g., TEX. EDUC. CODE ANN. § 29.017(c-3) (West 2021).

277. See, e.g., D.C. Code Mun. Regs. tit. 5, § E3034.2 (LexisNexis 2021); FLA. ADMIN. CODE ANN. r. 6A-6.03311(8)(a); 105 ILL. COMP. STAT. ANN. 5/14-6.10(a) (LexisNexis 2021); S.C. CODE ANN. § 59-33-320 (2021).

278. See *supra* Part I (explaining IDEA's lack of clarity regarding decision-making authority).

279. Cf. D.C. Code Mun. Regs. tit. 5, § E3035.13 (LexisNexis 2021) (requiring the SEA to notify students of educational representative appointments "in the manner of communication with which the student is most comfortable").

limited means, who allow rights to transfer may be punished by motions to dismiss otherwise meritorious claims.

While amending statutes or regulations may be cumbersome, updating or issuing new guidance for teachers, parents, and students should be relatively easy. First, SEAs should consider issuing formal advisories for school superintendents on their jurisdiction's transfer-of-rights rules, federal requirements, and good practices, in addition to making these publicly and prominently available in electronic resource libraries.²⁸⁰ Additionally, to improve existing handbooks and procedural safeguards notices, SEAs might consider partnering with federally-funded protection and advocacy organizations to develop special education guidance that accurately and completely restate federal and state law, while also offering accurate information about non-codified alternatives, such as tailored powers of attorney that may be developed with the assistance of legal professionals. Although this was not the focus of our review of SEA guidance, by and large, we found that these organizations' guidance were more likely to provide information about alternatives to guardianship in relation to transfer of rights than that of SEAs.²⁸¹ Moreover, beyond

280. See, e.g., MD. STATE DEP'T OF EDUC., RESOURCE INFORMATION ON THE TRANSFER OF RIGHTS AT THE AGE OF MAJORITY (2002); Memorandum from Marcia Mitnacht, Mass. State Dir. of Special Educ., on Age of Majority (Sept. 20, 2010), https://www.doe.mass.edu/sped/advisories/11_1.html; Memorandum from James P. Delorenzo on Individuals with Disabilities Education Act (IDEA) Part B Final Supplemental Regulations Issued December 1, 2008 and Effective December 31, 2008—Non-Regulatory Guidance (May 2009), <http://www.p12.nysed.gov/specialed/idea/nonregulatory409memo.pdf>; PA. DEP'T EDUC., *supra* note 107; Memorandum from John R. Payne, Dir. S.C. Off. of Special Educ. Servs. on Adult Students with Disabilities Educ. Rights Consent Act to Dist. Superintendents (Aug. 31, 2016), <https://ed.sc.gov/newsroom/school-district-memoranda-archive/adult-students-with-disabilities-educational-rights-consent-act/adult-students-with-disabilities-educational-rights-consent-act-memo/>.

281. See, e.g., CMTY. ALLIANCE FOR SPECIAL EDUC. & PROT. & ADVOC., INC., SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES 10–35 (9th ed. 2003), https://www.caseadvocacy.org/SERRHandbook_Ch1.pdf; ARIZ. CTR. FOR DISABILITY L., A SELF-ADVOCACY GUIDE FOR PARENTS OF CHILDREN WITH SPECIAL NEEDS 37 (2007), <https://www.azdisabilitylaw.org/wp-content/uploads/2015/04/SE2-Guide-English-New-Logo.pdf>; Mark Stroh, *Transferring Special Education Rights from Parents to Students*, DISABILITY RTS WASH. (Dec. 7, 2017 3:30 PM), <https://www.disabilityrightswa.org/publications/transferring-special-education-rights-parents-students>; PROT. & ADVOC. FOR PEOPLE WITH DISABILITIES, INC., FACT SHEET: ADULT STUDENTS WITH

embedding guidance in lengthy handbooks or procedural safeguard notices that not all educators or parents might review, SEAs should consider developing simpler informational resources, such as fact sheets or brochures specifically on the transfer of rights.²⁸² Even fewer have information that appear specifically tailored to students.²⁸³

B. Increasing Federal Oversight

While much can be done at the state level to improve Section 615(m) implementation, the ED may also play a role. First, it might collect more information from states about their transfer-of-rights rules. Implementing a formal survey of states' rules might lead to critical self-reflection and provide a top-down impetus for updating regulations or guidance. Even if the NCD has overstated the "school-to-guardianship" pipeline, the ED has an obvious interest in understanding the extent to which states' transfer-of-rights rules contribute to these concerns, especially in light of Congressional intent that Section 615(m) not induce guardianship filings.²⁸⁴ Indeed, the ED's transition guide cautions that "[a] student need not be placed under guardianship in order for his or her family to remain involved in educational decisions," and urges students and parents "to consider information about less restrictive alternatives," including powers of attorney or supported decision-making

DISABILITIES EDUCATIONAL RIGHTS CONSENT ACT (CONSENT ACT) 2-4 (2016), <https://www.pandasc.org/wp-content/uploads/2016/07/Adult-Students-with-Disabilities-Educational-Rights-Consent-Act-6-16.pdf>.

282. See, e.g., *Transfer of Rights*, D.C. PUB. SCHS., <https://dcps.dc.gov/page/transfer-rights> (last visited May 24, 2021); AUTISM SOC'Y OF HAW., *supra* note 219; IDAHO DEP'T OF EDUC., SPECIAL EDUCATION MANUAL 2018 (2018), <https://www.sde.idaho.gov/sped/files/shared/Idaho-Special-Education-Manual-2018-Final.pdf>; IOWA DEP'T OF EDUC., AGE OF MAJORITY—STUDENT VERSION (2015), https://aea8transition.files.wordpress.com/2012/10/ageofmajorityguidance_student_final_oct2015.pdf; W. VA. DEP'T OF EDUC., AGE OF MAJORITY: TRANSFER OF RIGHTS FOR EXCEPTIONAL STUDENTS, <https://wvde.state.wv.us/osp/compliance/documents/ageofmajority.pdf> (last visited May 24, 2021).

283. See, e.g., IOWA DEP'T OF EDUC., *supra* note 282; W. VA. DEP'T OF EDUC., *supra* note 282.

284. See Individuals with Disabilities Education Act of 1997 § 615(m), 20 U.S.C.S. § 1415(m).

arrangements.²⁸⁵ The ED should consider assessing the extent to which states' rules and guidance meet these expectations.

More proactively, the ED can also ensure that parent training and information (PTI) centers are fulfilling their statutory obligations to educate parents and students about alternatives to guardianship as a condition of future funding. While the IDEA does not require states to transfer parental rights, it does require "each parent training and information center that receive assistance under this section" to "assist parents *and* students with disabilities to understand their rights and responsibilities under this chapter, including those under section 1415(m) of this title upon the student's reaching the age of majority"²⁸⁶ Although the role of PTI centers in disseminating complete and accurate information about alternatives to guardianship to both parents and students fell outside the scope of our review, those informational resources that we did come across often repeated the same fallacies apparent in the literature on transfer of rights as well as SEAs' guidance. Importantly, PTI centers' information about transfer of rights almost exclusively appear to target parents, despite their clear statutory obligation to educate students, too. Indeed, the South Dakota Parent Connection was the only PTI center we identified that has developed transfer-of-rights informational resources targeting students.²⁸⁷ Thus, the ED should remind PTI centers of their statutory obligations to educate *both* students *and* parents about guardianship alternatives and hold them accountable for doing so.

285. U.S. DEP'T OF EDUC., A TRANSITION GUIDE TO POSTSECONDARY EDUCATION AND EMPLOYMENT FOR STUDENTS AND YOUTH WITH DISABILITIES 38 (2020), <https://sites.ed.gov/idea/files/postsecondary-transition-guide-august-2020.pdf>.

286. 20 U.S.C. § 1471(b)(7) (emphasis added). Although Section 682(c)(2) authorized PTI centers to "assist students with disabilities to understand their rights and responsibilities under Section 615(m) on reaching the age of majority" as an optional activity, its subsequent codification converted this to a *required* activity, while adding "parents" to "students with disabilities" as the target audience for transfer-of-rights education activities.

287. *See, e.g.*, S.D. PARENT CONNECTION, TRANSFER OF RIGHTS FOR STUDENTS WITH DISABILITIES (2020), https://www.sdparent.org/media/library2/fluid-mod-page/92/documents/Guardianship%20Infographic_Students.pdf.

C. Seeking Procedural Accommodations

Despite well-known justifications for the standing doctrine, many of the above-mentioned courts appeared unwilling to use customary solutions to standing defects established in federal court practice and procedure. District courts routinely grant petitioners leave to amend complaints “when justice so requires.”²⁸⁸ Often, when a parent who lacks standing brings suit on an adult child’s behalf, especially for a parent proceeding pro se, there is an obvious petitioner in fact whose name can be substituted for that of the parent. Indeed, several courts have allowed parents to substitute their adult children as named plaintiffs in order for their suit to proceed.²⁸⁹ So, too, has the Washington, D.C. district court allowed a parent to substitute her child as plaintiff in a suit, thereby permitting the parent’s claims to proceed despite the transfer of parental rights.²⁹⁰ Moreover, New Mexico’s district court has allowed a suit, filed before a student’s eighteenth birthday, to proceed despite parental rights transferring, merely noting this formality in a footnote while adjudicating the merits of the mother’s claims.²⁹¹ Hopefully, practitioners will become more aware of these precedents and use them to decisive effect.

Courts should also consider using the next friend doctrine, as done in a lawsuit seeking to enjoin the Texas SEA to establish a

288. FED. R. CIV. P. 15(a)(2).

289. See *Covey v. Lexington Pub. Sch.*, No CIV-09-11661-M, 2010 U.S. Dist. LEXIS 129215, at *7 (W.D. Okla. Dec. 7, 2010) (removing parents as named plaintiffs and proceeding under students’ names); *Nordlund v. Issaquah Sch. Dist.* No 411, No C07-547JLR, 2008 U.S. Dist. LEXIS 133963, at *24–25 (W.D. Wash. Mar. 19, 2008) (removing parents as named plaintiffs and proceeding suit under student’s name); *In re Student with a Disability*, Wisc. State Educ. Agency No LEA-13-013, 62 IDELR 249, 113 LRP 46807 (June 10, 2013) (noting that the parents’ previous complaint was dismissed due to lack of standing, and the current complaint was refiled by the student).

290. *Brooks v. District of Columbia*, 841 F. Supp. 2d 253, 260–61 (D.D.C. 2012). See also *Presely v. Friendship Pub. Charter Sch.*, No 12-0131, 2013 U.S. Dist. LEXIS 31974, at *17 (D.D.C. Feb. 7, 2013) (granting student plaintiff sua sponte leave to file a motion to substitute herself as the sole plaintiff prior to the issuance of an order on the pending motions).

291. *Garcia v. Bd. of Educ.*, 436 F. Supp. 2d 1181, 1182 n.1 (D.N.M. 2007). The minor student, Myisha Garcia, turned eighteen during the pendency of this case, which shifted legal standing under the IDEA from Myisha’s mother. *Id.*

procedure for appointing educational representatives pursuant to Section 615(m)(2).²⁹² There, a school objected to and a hearing officer denied an eighteen-year-old student's request that his father be appointed next friend under the state's civil procedure rules.²⁹³ Because procedures under Section 615(m)(2) generally require that adult students be found unable to provide informed consent as defined by the IDEA,²⁹⁴ conceivably some of those students may appear to lack the requisite capacity to execute a power of attorney, as the plaintiffs argued.²⁹⁵ Such adult students would appear to have limited options for vindicating their substantive IDEA rights other than through a court-appointed guardian. The district court denied the SEA's motion to dismiss, finding that the SEA both had the authority to adopt a special rule under Section 615(m)(2) and also could be liable for substantive IDEA violations that flowed from its failure to do so. Although other hearing officers may also have declined to designate parents of adult children as next friends,²⁹⁶ the *J.A. v. Texas Education Agency* plaintiffs marshal compelling equitable arguments for adjudicators to use next friend doctrine to cure standing defects resulting from states' regulatory lapses.²⁹⁷

Last, where possible, courts should simply consider reaching the merits rather than pretextually relying on school districts' objections to standing to dismiss complaints.²⁹⁸ More generally, courts and hearing officers should be equitable in considering standing objections. As documented above, gaps in state

292. *J.A. v. Tex. Educ. Agency*, No 1:19-CV-921-RP, 2020 U.S. Dist. LEXIS 108362, at *11 (W.D. Tex. June 21, 2020).

293. *Id.* at *4-5.

294. See discussion *supra* Section III.A.3; 20 U.S.C. § 1415(m)(2).

295. *J.A.*, 2020 U.S. Dist. LEXIS 108362, at *5-6.

296. See *McArthur v. Killeen Indep. Sch. Dist.*, No 6:16-cv-145-RP-JCM, 2017 U.S. Dist. LEXIS 224421, at *10 (W.D. Tex. Feb. 22, 2017) (declining to hold that court's appointment of plaintiff as next friend "cured" failure to be so appointed for due process complaint), *withdrawn*, 2017 U.S. Dist. LEXIS 224420 (Feb. 22, 2017).

297. See *J.A.*, 2020 U.S. Dist. LEXIS 108362, at *11-16.

298. See *K.F. v. Houston Indep. Sch. Dist.*, No H-11-3848, 2013 U.S. Dist. LEXIS 193921, *11-12 (S.D. Tex. Feb. 26, 2013) (opting to rule on the merits of Plaintiff's claims despite the IDEA's "plain language" because the Houston school district failed to cite persuasive precedent).

transfer-of-rights rules and guidance put many parents at a disadvantage when weighing the pros and cons of allowing rights to transfer. Furthermore, there is little equity in externalizing to parents the costs of the failure of most transfer jurisdictions to codify a special rule or alternatives to guardianship that might avoid transfer.²⁹⁹ By contrast, permitting school districts to weaponize standing defects to sidestep substantive disputes would dangerously undermine the IDEA's protections for adult students.

CONCLUSION

Section 615(m) appears in many cases to have exacerbated rather than relieved confusion among parents, students, and educators about the transfer of rights. Moreover, instead of serving as a transitional learning opportunity, many states' transfer-of-rights rules and practices may encourage parents to pursue guardianship, while certain judges, state review officers, and hearing officers may punish parents for foregoing guardianship by dismissing IDEA complaints on standing grounds. While some transfer jurisdictions have adopted model rules and guidance that others should follow, most have not. Thus, in order to convert transfer of rights from a source of anxiety and confusion, states, the ED, and special education adjudicators should consider the aforementioned measures to facilitate a course correction.

Although measures—such as dispensing with standing objections more equitably—may happen immediately, we realize that modifying state transfer-of-rights rules and guidance as well as increasing federal oversight may require time. Here, civil society mobilization is paramount. In addition to mobilizing state and federal policymakers, disseminating

299. See Dep't of Educ., State of Hawaii, 102 LRP 3747 (Mar. 15, 2000) (denying a school district's motion to dismiss a parent's due process complaint with regard to her adult son for lack of standing because Hawaii's failure to adopt a special procedure pursuant to Section 615(m)(2) estopped the school district from asserting the mother lacked standing, since she would have been appointed educational representative had Hawaii done so).

more information about alternatives to guardianship to key stakeholders will help to supplement laws, guidance, and practices that fail to do so. Protection and advocacy organizations, given their legal expertise, can become pivotal sources of information about alternatives to guardianship. Special education attorneys may recommend creative prophylaxis to parents, such as advocating to incorporate decision-making-related goals directly into their children's IEPs far ahead of prospective rights transfers.³⁰⁰ Nascent projects such as the Center for Youth Voice, Youth Choice, funded by the Administration for Community Living, can play a critical role in fomenting awareness.³⁰¹

Last, individual educators on the frontlines of transfer-of-rights discussions can begin adopting good practices in this area, even where policymakers and administrators may lag behind. In 2001, the CEC exhorted SEAs and LEAs to uphold their ethical duty to "support and enhance students' capacity to provide informed consent and assume their rights and responsibilities by developing programs that provide opportunities to enhance student self-determination and to learn and practice skills crucial to the attainment [of] adult status."³⁰² In this vein, the CEC singled out several promising practices, such as developing full color age of majority information sheets collaboratively with students, rendering notices of students' rights and responsibilities in an illustrated comic-book-style publication, and delivering transfer-of-rights notifications for students in the form of birthday cards. Educators should consider adopting these and other creative strategies to defuse otherwise anxiety-provoking discussions

300. See Claudia Ines Pringles, *Throwing a Life Saver Without Going Overboard: Considering Alternatives to Guardianship*, 37 VT. BAR J. 21, 21–22 (2011).

301. See *New Grant About Guardianship Alternatives*, INST. FOR CMTY. INCLUSION (Nov. 12, 2020), https://beta.communityinclusion.org/news/2020-11-12_new-grant-about-guardianship-alternatives. Funded by the Administration on Community Living, this five-year project led by the Institute of Community Inclusion at the University of Massachusetts-Boston aims to catalyze systems-level change in various states that will lead to reduced resort to guardianship and increased use of alternatives by youth with IDD. For more information, see *id.*

302. Lindsey et al., *supra* note 15, at 6.

prompted by transfer-of-rights rules and convert them into student empowerment opportunities to prepare them for a lifetime of decision-making.

APPENDIX A: TABLE OF STATE TRANSFER-OF-RIGHTS STATUTES
AND REGULATIONS

Jurisdiction	Citation
AL	ALA. ADMIN. CODE r. 290-8-9.08 (2020)
AK	ALASKA ADMIN. CODE tit. 4, §§ 52.140(f), 620 (2021)
AZ	ARIZ. REV. STAT. ANN. § 15-773 (2021)
AR	005-18-008 ARK. CODE R. § 8.08.3 (LexisNexis 2021) 5-18-009 ARK. CODE R. §§ 07.1.2, 9.0.7.1 (LexisNexis 2021)
BIE	None located
CA	CAL. EDUC. CODE §§ 56041.5, 56345(g) (Deering 2021)
CO	COLO. CODE REGS. §§ 301-8, 2220-R-4.03(6)(e), 6.02(9) (2021)
CT	CONN. AGENCIES REGS. §§ 10-76d-11, 12 (2021)
DE	14-926 DEL. ADMIN. CODE § 20 (2021)
DOD	32 C.F.R. §§ 57.6(b)(iv)(8)(B), (19)(H)(v) (2021)
DC	D.C. CODE § 38-2571.04 (2021) D.C. Code Mun. Regs. tit. 5, §§ 3034.1, 3035 (2021)
FL	FLA. ADMIN. CODE ANN. R. 6A-6.03028(3)(h)(10), 6.03311(8) (2021)
GA	GA. COMP. R. & REGS. 160-4-7.06(3) (2021)
HI	HAW. REV. STAT. ANN. § 302A-491 et seq. (LexisNexis 2021) HAW. CODE R. § 8-89-2 (LexisNexis 2021)
ID	IDAHO CODE § 33-2002(4) (2021) IDAHO ADMIN. CODE r. 08.02.03.109.01.a (2021)
IL	105 ILL. COMP. STAT. ANN. 5/14-6.10(b), 6.10(c)(1) (LexisNexis 2021) ILL. ADMIN CODE tit. 23, § 226.690 (LexisNexis 2021)
IN	511 IND. ADMIN. CODE 7-43-5, 6 (2021)
IA	IOWA CODE § 256B.6(3) (2021) IOWA ADMIN. CODE r. 281-41.250, 41.320(3) (2021)
KS	KAN. STAT. ANN. § 72-3431 (2020) KAN. ADMIN. REGS. § 91-40-18 (2020)
KY	707 KY. ADMIN. REGS. 1:320.5(14), 340.6(11) (2021)
LA	LA. ADMIN. CODE tit. 28, §§ 320(C), 520(A) (2021)
ME	05-071-101 ME. CODE R. §§ VI(2)(C)(1)(e)(3)(cc) app. 1 (LexisNexis 2020)
MD	MD. CODE ANN., EDUC. § 8-412.1 (2021)

MA	603 MASS. CODE REGS. 28.07(5) (2021)
MI	MICH. ADMIN. CODE r. 340.1701b(d)(viii) (2021)
MN	MINN. R. 3525.2810(1)(A) (2021)
MS	07-000-034 Miss. CODE R. §§ 300.320(c), 300.520 (LexisNexis 2021)
MO	MO. CODE REGS. ANN. tit. 5, § 20-300.110 (2021)
MT	MONT. ADMIN. R. 10.16.3502 (2021)
NE	None located
NV	NEV. REV. STAT. ANN. §§ 388.457, 459 (2021) NEV. ADMIN. CODE §§ 388.195, 197 (2020)
NH	N.H. CODE ADMIN. R. ANN. EDUC. 1109.01, 1120.01 (2021)
NJ	N.J. ADMIN. CODE §§ 6A:14-2.3(m), 3.7(e)(14) (2021)
NM	N.M. CODE R. § 6.31.2.13(K) (LexisNexis 2021)
NY	None located
NC	N.C. GEN. STAT. § 115C-109.2(a) (2021)
ND	None located
OH	OHIO ADMIN. CODE 3301-51-05(D) (2021)
OK	None located
OR	OR. ADMIN. R. 581-015-2190(6)(b), 2330, & 2325 (2021)
PA	None located
PR	None located
RI	200-20 R.I. CODE R. §§ 6.74.(A), 6.8.1(U)(1) (LexisNexis 2021)
SC	S.C. CODE ANN. §§ 59-33-330, 340 (2021) S.C. CODE ANN. REGS. 43-243(III)(F) (2021)
SD	S.D. ADMIN. R. 24:05:27:01.03(09), 24:05:30:16.01 (2021)
TN	TENN. COMP. R. & REGS. 0520-01-09-.21 (2021)
TX	TEX. EDUC. CODE ANN. § 29.017 (West 2021) 19 TEX. ADMIN. CODE § 89.1049 (2021)
UT	UTAH CODE ANN. § R277-750-2 (2021)
VT	22-06 VT. CODE R. §§ 2363.7(a)(4), 2365.1.12 (2021)
VA	8 VA. ADMIN. CODE § 20-81-180 (2021)
WA	WASH. ADMIN. CODE §§ 392-172A-03090(1)(1), 05135 (2021)
WV	W. VA. CODE R. § 126-16-5 (2021)
WI	WISC. STAT. §§ 115.787(2)(g)(3), 807 (2021); WISC. STAT. § 115.787(2)(g)(3) (2021)
WY	206-07 WYO. CODE R. § 6(g) (LexisNexis 2021)

APPENDIX B: TABLE OF SEA TRANSFER-OF-RIGHTS GUIDANCE

Jurisdiction	Source
AL	ALA. STATE DEP'T OF EDUC., PREPARING FOR LIFE TRANSITION PLANNING GUIDE (2015)
AK	ALASKA DEP'T OF EDUC. & EARLY DEV., GUIDANCE FOR SPECIAL EDUCATION PERSONNEL (2020)
AZ	ARIZ. DEP'T OF EDUC., SECURE CARE SPECIAL EDUCATION POLICIES AND PROCEDURES (2013) ARIZ. DEP'T OF EDUC., <i>Prepare Your Child for the Future</i> (2019)
AR	ARK. DIV. OF ELEMENTARY & SECONDARY EDUC., SPECIAL EDUCATION PROCESS GUIDE (2020)
BIE	BUREAU OF INDIAN EDUC. DIV. OF PERFORMANCE & ACCOUNTABILITY, SPECIAL EDUCATION PRACTICES AND PROCESSES 53 (2012)
CA	No guidance located
CO	EXCEPTIONAL STUDENT SERVS. UNIT, COLO. DEP'T OF EDUC., IMPORTANT TRANSITION AGES AND MILESTONES (2015)
CT	CONN. STATE DEP'T OF EDUC., A PARENT'S GUIDE TO SPECIAL EDUCATION IN CONNECTICUT (2021)
DE	DEL. DEP'T OF EDUC.'S EXCEPTION CHILD. RES., DELAWARE PROCEDURAL SAFEGUARDS: PARENT AND CHILD RIGHTS IN SPECIAL EDUCATION (2019)
DOD	Not applicable
DC	<i>Transfer of Rights</i> , D.C PUB. SCH., https://dcps.dc.gov/page/transfer-rights (last visited May 30, 2021)
FL	FLA. DEP'T OF EDUC., A PARENT'S INTRODUCTION TO EXCEPTIONAL STUDENT EDUCATION IN FLORIDA (2012)
GA	GA. DEP'T OF EDUC., SPECIAL EDUCATION RULES IMPLEMENTATION MANUAL: INDIVIDUALIZED EDUCATION PROGRAM (2020).
HI	HAW. STATE SPECIAL EDUC. SECTION, PROCEDURAL SAFEGUARDS NOTICE (2019) HAW. STATE SPECIAL EDUC. SECTION, TRANSFER OF RIGHTS FOR AN ADULT STUDENT WITH A DISABILITY ENROLLED IN A PUBLIC SCHOOL: QUESTIONS AND ANSWERS (2009).

ID	IDAHO DEP'T OF EDUC., TRANSFER OF SPECIAL EDUCATION RIGHTS (2020)
IL	ILL. STATE BD. OF EDUC., EDUCATIONAL RIGHTS AND RESPONSIBILITIES: UNDERSTANDING SPECIAL EDUCATION IN ILLINOIS (2009)
IN	IND. DEP'T OF EDUC., NOTICE OF PROCEDURAL SAFEGUARDS (2019); IND. DEP'T OF EDUC., NAVIGATING THE COURSE: FINDING YOUR WAY THROUGH INDIANA'S SPECIAL EDUCATION RULES (2019)
IA	IOWA DEP'T OF EDUC., PROCEDURAL SAFEGUARDS MANUAL FOR PARENTS (2018).
KS	KAN. STATE DEP'T OF EDUC., KANSAS SPECIAL EDUCATION HANDBOOK (2021)
KY	KY. DEP'T OF EDUC., SPECIAL EDUCATION PROCEDURES MANUAL (2000)
LA	LA. DEP'T OF EDUC., LOUISIANA'S EDUCATIONAL RIGHTS OF CHILDREN WITH DISABILITIES: SPECIAL EDUCATION PROCESSES & PROCEDURAL SAFEGUARDS (2020)
ME	ME. DEP'T OF EDUC., SPECIAL EDUCATION REQUIRED FORMS PROCEDURAL MANUAL (2018)
MD	MD. STATE DEP'T OF EDUC., PARENTAL RIGHTS: MARYLAND PROCEDURAL SAFEGUARDS NOTICE (revised 2019)
MA	MASS. DEP'T OF ELEMENTARY & SECONDARY EDUC., ADMIN. ADVISORY SPED 2011-1: AGE OF MAJORITY (2010) FED'N FOR CHILDREN WITH SPECIAL NEEDS & MASS. DEP'T ELEMENTARY & SECONDARY EDUC., PARENT'S GUIDE TO SPECIAL EDUCATION, https://fcsn.org/parents_guide/pgenglish.pdf (last visited June 15, 2021)
MI	MICH. DEP'T OF EDUC., PROCEDURAL SAFEGUARDS NOTICE (2018)
MN	MINN. DEP'T OF EDUC., PART B NOTICE OF PROCEDURAL SAFEGUARDS: PARENTAL RIGHTS FOR PUBLIC SCHOOL SPECIAL EDUCATION STUDENTS (2014)
MS	MISS. DEP'T OF EDUC., OFF. OF SPECIAL EDUC., PROCEDURES FOR STATE BOARD POLICY 74.19: VOLUME III: PROCEDURAL SAFEGUARDS DISPUTE RESOLUTION CONFIDENTIALITY (2015)
MO	DIV. OF SPECIAL EDUC., MO. DEP'T OF ELEMENTARY AND SECONDARY EDUC., PARENT'S GUIDE TO SPECIAL

	EDUCATION IN MISSOURI (2008); MO. DEP'T ELEMENTARY AND SECONDARY EDUC., STATE PLAN FOR SPECIAL EDUCATION: REGULATION V - PROCEDURAL SAFEGUARDS/DISCIPLINE (2020).
MT	MONT. OFF. OF PUB. INSTRUCTION, IDEA SPECIAL EDUCATION PART B PROCEDURAL SAFEGUARDS NOTICE (2017)
NE	NEB. DEP'T OF EDUC., <i>Graduation Considerations for Students with Disabilities: A Decision-Making Framework for IEP Teams</i> (2004)
NV	No guidance located
NH	BUREAU OF SPECIAL EDUC., N.H. STATE DEP'T OF EDUC., SPECIAL EDUCATION PROCEDURAL SAFEGUARDS HANDBOOK (2018)
NJ	N.J. DEP'T OF EDUC., PARENTAL RIGHTS IN SPECIAL EDUCATION (rev. 2016)
NM	N.M. PUB. EDUC. DEP'T, POLICIES AND PROCEDURES FOR THE PROVISION OF SPECIAL EDUCATION SERVICES FOR STUDENTS WITH DISABILITIES AND GIFTED STUDENTS; DEPARTMENT'S 2010 GRADUATION OPTIONS FOR STUDENTS WITH DISABILITIES: TECHNICAL ASSISTANCE MANUAL (2014)
NY	N.Y. STATE EDUC. DEP'T, PROCEDURAL SAFEGUARDS NOTICE: RIGHTS OF PARENTS OF CHILDREN WITH DISABILITIES, AGES 3-21 (2017)
NC	N.C. STATE BD. OF EDUC. AND DEP'T OF PUB. INSTRUCTION, POLICIES GOVERNING SERVICES FOR STUDENTS WITH DISABILITIES (2018)
ND	N.D. DEP'T OF PUB. INSTRUCTION, <i>Parental Rights for Public School Students Receiving Special Education Services: Notice of Procedural Safeguard</i> (2020)
OH	OHIO DEP'T OF EDUC., WHOSE IDEA IS THIS?: A PARENT'S GUIDE TO THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2004 (IDEA) (2012)
OK	OKLA. STATE DEP'T OF EDUC., SPECIAL EDUCATION HANDBOOK (2017)
OR	OR. DEP'T OF EDUC., PROCEDURAL SAFEGUARDS NOTICE (2016-2017)
PA	PA. DEP'T OF EDUC., INDIVIDUALS WITH DISABILITIES EDUCATION ACT PART B: POLICIES AND PROCEDURES UNDER 34 CFR §§ 300.101 – 300.176 (2018)

PR	PUERTO RICO DEPARTAMENTO DE EDUCACIÓN, MANUAL DE EDUCACIÓN ESPECIAL (2020)
RI	R.I. DEP'T OF EDUC., PROCEDURAL SAFEGUARDS NOTICE MODEL FORM (revised June 21, 2019)
SC	S.C. OFF. OF SPECIAL EDUC. SERVICES, SPECIAL EDUCATION PROCESS GUIDE FOR SOUTH CAROLINA (2013)
SD	S.D. DEP'T OF EDUC., SOUTH DAKOTA PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS (2020)
TN	TENN. DEP'T OF EDUC., NOTICE OF PROCEDURAL SAFEGUARDS (2016)
TX	TEX. EDUC. AGENCY, NOTICE OF PROCEDURAL SAFEGUARDS (2017)
UT	UTAH STATE Bd. OF EDUC., SPECIAL EDUCATION RIGHTS OF PARENTS AND CHILDREN: PROCEDURAL SAFEGUARDS NOTICE (2016)
VT	VT. AGENCY OF EDUC., NOTICE OF PROCEDURAL SAFEGUARDS: RIGHTS OF PARENTS OF STUDENTS WITH DISABILITIES (2018)
VA	VA. DEP'T OF EDUC., TRANSFER OF RIGHTS FOR STUDENTS WITH DISABILITIES UPON REACHING THE AGE OF MAJORITY IN VIRGINIA (2015)
WA	WASH. OFF. OF SUPERINTENDENT OF PUB. INSTRUCTION, THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT: A REVIEW OF THE BASICS (2010)
WV	W. VA. DEP'T OF EDUC., REGULATIONS FOR THE EDUCATION OF STUDENTS WITH EXCEPTIONALITIES (2017)
WI	WIS. DEP'T OF PUB. INSTRUCTION, GUIDE TO SPECIAL EDUCATION FORMS (2019)
WY	WYO. DEP'T OF EDUC., NOTICE OF PROCEDURAL SAFEGUARDS INDIVIDUALS WITH DISABILITIES EDUCATION ACT (2015)

APPENDIX C: TABLE OF TRANSFER-OF-RIGHTS COURT AND
HEARING OFFICER DECISIONS

Jurisdiction	Caption
2nd Circuit	Mrs. C. v. Wheaton, 916 F.2d 69 (2d Cir. 1990)
5th Circuit	Reyes ex rel. E.M. v. Manor Indep. Sch. Dist., 850 F.3d 251 (5th Cir. 2017)
7th Circuit	Stanek v. St. Charles Cmty. Unit Sch. Dist., 783 F.3d 634 (7th Cir. 2015) T.G. v. Midland Sch. Dist. 7, 542 F. App'x. 523 (7th Cir. 2013) Loch v. Edwardsville Sch. Dist. No. 7, 327 F. App'x. 647 (7th Cir. 2009)
AL	No case law located
AK	No case law located
AZ	No case law located
AR	No case law located
BIE	No case law located
CA	Meares v. Rim of the World Unified Sch. Dist., No. EDCV 14-1156-JGB, 2015 U.S. Dist. LEXIS 107474 (C.D. Cal. Aug. 13, 2015) Santa Clara Unified Sch. Dist., Nos. 2015030117 & 2014120222, 115 LRP 44329 (Cal. State Educ. Agency Aug. 24, 2015) Rivera v. Fremont Union High Sch. Dist., No. 5:12-CV-05714-EJD, 2013 U.S. Dist. LEXIS 126043 (N.D. Cal. Aug. 30, 2013)
CO	No case law located
CT	Wong v. Bd. of Educ., 478 F. Supp. 3d 229 (D. Conn. 2020) Doe v. Westport Bd. of Educ., No. 3:18-CV-01683, 2020 U.S. Dist. LEXIS 29911 (D. Conn. Feb. 21, 2020) <i>In re</i> Reg'l Sch. Dist. No. 1, Conn. State Educ. Agency No. 07-285, 107 LRP 65449 (Oct. 22, 2007) Bruno v Greenwich Bd. of Educ., No. 3:02-CV-2192, 2006 US Dist. LEXIS 1885 (D. Conn. Jan. 6, 2006) <i>In re</i> Westport Bd. of Educ., Conn. State Educ. No. 19-0035, 102 LRP 20168 (Oct. 17, 2001)
DE	No case law located
DOD	No case law located

DC	<p>Shaw v. District of Columbia, No. 17-00738, 2019 U.S. Dist. 20526 (D.D.C. Feb. 8, 2019)</p> <p>Latynski-Rossiter v. District of Columbia, 928 F. Supp. 2d 57 (D.D.C. 2013)</p> <p>Presely v. Friendship Pub. Charter Sch., No. 12-0131, 2013 U.S. Dist. LEXIS 31974 (D.D.C. Feb. 7, 2013)</p> <p>Brooks v. District of Columbia, 841 F. Supp. 2d 253 (D.D.C. 2012)</p>
FL	<p>Castillo v. Sch. Bd. of Broward Cnty., No. CIV-DIMITROULEAS, 2015 U.S. Dist. LEXIS 186579 (S.D. Fla. 2015)</p> <p><i>In re</i> Miami-Dade Cnty. Sch. Dist., No. 04-0898E (Fla. Div. Admin. Hearings July 12, 2004)</p>
GA	No case law located
HI	<i>In re</i> Dep't of Educ., State of Hawaii, No. 00-71, 102 LRP 3747 (Hawaii State Educ. Agency Mar. 15, 2000)
ID	No case law located
IL	<p>Considine-Brechon v. Dixon Pub. Sch. Dist. #170, No. 16-C-50133, 70 IDELR 39 (N.D. Ill. June 8, 2017)</p> <p>Chicago Pub. Sch. Dist. #299, No. 2010-0112, 110 LRP 50962 (Ill. State Educ. Agency May 19, 2010)</p> <p>R.O.W.V.A. Cmty. Unit Sch. Dist., No. 2008-0560, 113 LRP 5316 (Ill. State Educ. Agency June 8, 2009)</p>
IN	<p>Sandlin v. Switz. Cnty. Sch. Corp., No. 4:08-cv-0047-DFH-WGH, 2009 U.S. Dist. LEXIS 72689 (S.D. Ind. Aug. 17, 2009)</p> <p>Weyrick v. New Albany-Floyd Cnty. Consol. Sch. Corp., No. 4:03-cv-0095-DFH-WGH, 2004 U.S. Dist. LEXIS 26435 (S.D. Ind. Dec. 23, 2004)</p>
IA	<p>Pratt v. Pleasant Valley Cmty. Sch. Dist., No. 313-cv-00097, 2015 U.S. Dist. LEXIS 193810 (S.D. Iowa Aug. 13, 2015);</p> <p>A.W. v. Cmty. Sch. Dist. & Keystone Area Educ. Agency, No. SE-418, 27 D.o.E App. Dec. 983 (Iowa Dep't of Educ. June 30, 2015)</p>
KS	Neville v. Dennis, No. 07-2202-CM-DJW, 2007 U.S. Dist. LEXIS 74231 (D. Kan. Oct. 3, 2007)
KY	No case law located
LA	<i>In re</i> Student with a Disability, No. 2015-6423-IDEA, 115 LRP 33576 (May 28, 2015)

ME	No case law located
MD	No case law located
MA	<i>In re</i> Montachusett Reg'l Vocational Tech. Sch., BSEA No. 19-07993, 25 MSER 57 (Mass. Bureau of Special Educ. Appeals Apr. 17, 2019) <i>In re</i> Lincoln-Sudbury Reg'l Sch. Dist., BSEA No. 11-2546, 16 MSER 424 (Mass. Bureau of Special Educ. Appeals Nov. 29, 2010) <i>In re</i> Milton Pub. Schs., BSEA No. 07-4642, 13 MSER 137 (Mass. Bureau of Special Educ. Appeals Apr. 30, 2007) <i>In re</i> Tewksbury Pub. Schs., BSEA No. 05-2963, 11 MSER 69 (Mass. Bureau of Special Educ. Appeals Apr. 26, 2005)
MI	No case law located
MN	St. Paul Indep. Sch. Dist. #625, No. 07-092C, 07 LRP 60685 (Minn. State Educ. Agency June 4, 2007)
MS	No case law located
MO	AND v. Santa Fe R-X School District, No. 12-1865 ED (Mo. Admin. Hearing Comm'n Aug. 29, 2013) Student v. Brookfield R-III School District (Mo. State Bd. of Educ. May 26, 2011)
MT	Anonymous, No. OSPI 2012-05, 2013 Mont. Off. Pub. Inst. LEXIS 1 (Jan. 25, 2013) (final report).
NE	No case law located
NV	No case law located
NH	No case law located
NJ	B.G. v. Ocean City Bd. of Educ., No. 13-5166, 2014 U.S. Dist. LEXIS 135768 (D.N.J. Sept. 26, 2014) B.A.W. v. E. Orange Bd. of Educ., No. 10-4039, 2010 U.S. Dist. LEXIS 90544 (D.N.J. Aug. 31, 2010) J.O. ex rel. D.O. v. New Milford Bd. of Educ., No. EDS1503-05 (N.J. Off. Of Admin. Law Feb. 28, 2005) L.H. o/b/o R.H. v. Florence Twp. Bd. of Educ., No. EDS 6558-02, Agency Dkt. No. 2003-6910, 2002 N.J. AGEN LEXIS 857 (Nov. 6, 2002)
NM	Garcia v. Bd. of Educ., No. 05-0062 WPJ/WPL, 2007 U.S. Dist. LEXIS 96703 (D.N.M. Jan. 10, 2007)
NY	Application of a Student with a Disability, Appeal No. 17-077 (N.Y. State Educ. Dep't Nov. 15, 2017) Application of a Student with a Disability, Appeal No. 11-121 (N.Y. State Educ. Dep't Dec. 5, 2011)

	Application of a Child with a Disability, Appeal No. 05-131, 46 IDELR 88, 106 LRP 16594 (N.Y. State Educ. Dep't Mar. 15, 2006)
NC	Charlotte-Mecklenburg Schs. Bd. of Educ., No. 18 EDC 03019, 119 LRP 20683 (N.C. State Educ. Agency Dec. 18, 2018)
ND	No case law located
OH	Gibson v. Forest Hill Sch. Dist. Bd. of Educ., No. 1:11-cv-329, 2013 U.S. Dist. LEXIS 81908 (S.D. Ohio June 11, 2013); Ravenna Sch. Bd. of Educ. v. Williams, No. 5:11CV1596, 2012 U.S. Dist. LEXIS 111817 (N.D. Ohio Aug. 9, 2012); Worthington City Sch. Dist., No. CP 0016-2012, 59 IDELR 29, 112 LRP 23481 (Ohio State Educ. Agency Mar. 30, 2012); Beachwood City Sch. Dist., 104 LRP 25307 (Ohio Dep't of Educ. Mar. 11, 2004)
OK	Covey v. Lexington Pub. Sch., No. CIV-09-1151-M, 2010 U.S. Dist. LEXIS 129215 (W.D. Okla. Dec. 7, 2010)
OR	Oman v. Portland Pub. Sch., No. CV05-558-HU, 2005 U.S. Dist. LEXIS 45612 (D. Or. Sept. 10, 2005)
PR	No case law located
PA	<i>In re</i> Cheltenham Twp. Sch. Dist., No. 19663-17-18, 118 LRP 1432 (Pa. State Educ. Agency Nov. 20, 2017); <i>In re</i> Neshaminy Twp. Sch. Dist., No. 19662-17-18, 118 LRP 1429 (Pa. State Educ. Agency Nov. 20, 2017); Dudley v. Lower Merion Sch. Dist., No. 10-2749, 2011 Dist. LEXIS 136931, (E.D. Pa. Nov. 29, 2011); Jonathan T. v. Lackawanna Trail Sch. Dist., No. 3:03-CV-522, 2004 U.S. Dist. LEXIS 2915 (M.D. Pa. Feb. 26, 2004)
RI	No case law located
SC	No case law located
SD	No case law located
TN	Harris v. Cleveland City Bd. of Educ., No. 1:17-cv-00121, 2018 U.S. Dist. LEXIS 33149 (E.D. Tenn. Mar. 1, 2018)
TX	J.A. v. Tex. Educ. Agency, No. 1:19-CV-921-RP, 2020 U.S. Dist. LEXIS 108362 (W.D. Tex. June 21, 2020) McArthur v. Killeen Indep. Sch. Dist., No. 3:16-CV-05314-RJB-DWC,

	<p>2017 U.S. Dist. LEXIS 22441 (W.D. Tex. Feb. 22, 2017), withdrawn, 2017 U.S. Dist. LEXIS 224420 (Feb. 22, 2017) Dallas Indep. Sch. Dist. v. Woody, 178 F. Supp. 3d 443 (N.D. Tex. Apr. 15, 2016) K.F. v. Houston Indep. Sch. Dist., No. H-11-3834, 2013 U.S. Dist. LEXIS 193921 (S.D. Tex. Feb. 26, 2013) Klein Indep. Sch. Dist. v. Hovem, 745 F. Supp. 2d 700 (S.D. Tex. 2010) Oliver v. Dallas Indep. Sch. Dist., No. 3:01-CV-2627-N, 2003 U.S. Dist. LEXIS 17117 (N.D. Tex. Sept. 29, 2003)</p>
UT	No case law located
VT	No case law located
VA	No case law located
WA	Nordlund v. Issaquah Sch. Dist. No. 411, No. C07-547JLR, 2008 U.S. Dist. LEXIS 133963 (W.D. Wash. Mar. 19, 2008)
WV	No case law located
WI	<p><i>In re</i> Student with a Disability, No. LEA-13-013, 62 IDELR 249, 113 LRP 46807 (Wis. State Educ. Agency June 10, 2013) <i>In re</i> Student with a Disability, No. LEA-13-006, 113 LRP 47193 (Wis. State Educ. Agency Apr. 3, 2013)</p>
WY	No case law located