

Date: October 2019

To: District Administrators, CESA Administrators, CCDEB Administrators, Directors of Special Education and Pupil Services, and Other Interested Parties

From: Barbara Van Haren, PhD, Assistant State Superintendent, Division for Learning Support

Subject: Supported Decision-Making Agreements

All students need to acquire the skills to make well-informed decisions as part of self-advocacy. Training in self-advocacy should begin early in life and continue throughout a student's education. Understanding everyone needs support from time to time in making decisions is part of self-advocacy. Throughout our lives, all of us consult friends, colleagues, family, neighbors, and professionals when making all sorts of life choices. We confer and consult with others, and then we decide on our own. Supported decision-making agreements assist a person to gather information relevant to a decision they are making, understand their options when making choices, and communicate their own decisions to others. (Wisconsin BPDD, Supported Decision-Making in Wisconsin)

Supported decision-making agreements were established under 2017 Wisconsin Act 345 enacted on April 16, 2018. Supported decision-making agreements permit an adult student, at least 18 years of age, with a functional impairment (defined below) to enter into a written agreement with a supporter(s) of their choosing to help them gather information, understand their options, and communicate their decisions to others.

Section 115.807(4), Wis. Statutes, which was created through 2017 Wisconsin Act 345, requires local education agencies (LEAs) to provide students and their parents with information on supported decision-making under Chapter 52 of the Wisconsin Statutes, other alternatives to guardianship, and strategies to remain engaged in the student's secondary education. This memorandum answers questions related to supported decision-making agreements to assist LEAs in providing this information to students and their families.

Supported decision-making agreements are an alternative to guardianship, and provide an additional option for individuals and families seeking assistance with life decisions.

1. What is supported decision-making?

"Supported decision-making" is a process of supporting and accommodating an adult with a functional impairment to enable the adult to make life decisions, including decisions related to where the adult wants to live, the services, supports, and medical care the adult wants to receive, whom the adult wants to live with, and where the adult wants to work, without impeding the self-determination of the adult. (Wis. Stats. §52.01[6])

Supported decision-making agreements in a school setting include supporting the adult student to understand and participate in their IEP team meetings and decisions, including the development of the student's Postsecondary Transition Plan (PTP).

2. Who can use supported decision-making?

An adult with a “functional impairment” can identify a supporter to assist them with decision-making. “Functional impairment,” as defined in Chapter 52 of the Wisconsin Statutes, means a physical, developmental, or mental condition that substantially limits one or more of an individual’s major life activities, including the capacity for independent living, self-direction, self-care, mobility, communication, or learning. (Wis. Stats. §52.01[2])

Students with a functional impairment include students with degenerative diseases, physical disabilities, intellectual/developmental disabilities, and/or mental health conditions that substantially limit one or more of an individual’s major life activities. (The Arc Wisconsin, April 2018, Retrieved June 24, 2019, from <https://arcwi.org/2018/04/13/supported-decision-making/>)

The statute does not require the existence of a functional impairment to be determined or certified by a health care professional.

3. Who can be a supporter?

A “supporter” is an adult who is willing to enter into an agreement with an adult with a functional impairment to provide supported decision-making. (Wis. Stats. §52.01[8]) A supporter is voluntarily selected by the adult student and may be a relative, friend, or a person with expertise in an area. The supporter ensures information shared as part of the agreement is kept privileged and confidential. A supporter is immune from civil liability if they perform the duties of a supporter in good faith, in conformance with the supported decision-making agreement. (Wis. Stats. §52.01[8])

The adult student voluntarily chooses their supporter. For the purposes of educational decisions, the adult student may choose a parent or adult family member, a friend (at least 18 years of age), teacher, service provider, administrator, other school personnel, or a person with expertise in a particular area.

4. What is the supported decision-making agreement?

An adult student with a functional impairment and their supporter voluntarily enter into a written supported decision-making agreement by signing and dating the agreement in the presence of at least two adult witnesses or a notary public. (Wis. Stats. §52.18[1]) The agreement may be terminated at any time by the adult student or the supporter. (Wis. Stats. §52.14[1])

A signed agreement outlines the types of decisions and records with which the adult student has authorized the supporter to give assistance. The Department of Health Services has created a supported decision-making form to document the agreement. In the agreement, the adult student

identifies everyday life decisions with which they seek assistance, such as obtaining food, clothing, and shelter; managing financial affairs; applying for public benefits; taking care of their physical or mental health; and assistance with seeking vocational rehabilitation services and other vocational supports. They also identify types of information that they would like assistance accessing or obtaining, such as medical, psychological, financial, educational, and treatment. In addition, the adult student may identify other everyday life decisions and information with which they need assistance. In the agreement, the adult student also identifies if they need help understanding their options, help with communicating their decisions, and help with accessing personal records under Health Insurance Portability and Accountability Act of 1996 (HIPPA) and Family Educational Rights and Private Act of 1974 (FERPA). A supporter is allowed to access records that require a release if the adult student has signed a release allowing the supporter to see the information.

An adult student may identify in the supported decision-making agreement that they need assistance making educational decisions such as, but not limited to, decisions about educational assessments and evaluations, programming, educational placements, and postsecondary transitions. They may need assistance accessing education records such as their IEP, transition plan, functional behavioral assessment, behavior intervention plan, and high school transcripts.

5. What may a supporter do?

If an adult student with a functional impairment decides voluntarily, without coercion, to enter into a supported decision-making agreement, the supporter is authorized to provide assistance in accessing or obtaining information relevant to the decision and helping the adult student understand that information. The supporter may assist the adult student in understanding the options, responsibilities, and consequences of the adult student's life decisions without making those decisions on behalf of the student, and in communicating the student's life decisions to appropriate persons. The supporter is not a surrogate decision maker and does not have the authority to sign legal documents on behalf of the adult student. With supported decision-making, the adult student always makes the final decision. A supportive decision-making agreement also does not prevent the adult student from acting independently of the agreement. (Wis. Stats. §52.10)

A supporter may assist the adult student with educational decisions such as understanding educational assessments, information presented during IEP team meetings, communicating information about themselves during IEP team meetings, setting IEP goals and postsecondary transition goals, and determining educational placements, as well as other decisions specified by the adult student within their support decision-making agreement. The supporter may not provide consent on behalf of the adult student but may help the adult student communicate their educational decisions to appropriate persons.

6. How much personal information can a supporter access?

The supporter may assist in accessing and obtaining information that is relevant to an adult student's given life decision, including medical, psychological, financial, educational, or treatment

records. A supporter may assist with accessing or obtaining any information on education records under FERPA if the adult student has signed a release allowing the supporter to access the information.

An adult student with a functional impairment continues to have unrestricted access to personal information without the assistance of a supporter.

If the adult student has indicated access to education records on the supported decision-making agreement, a supporter may have access to the education records needed to assist the adult student in making the educational decision. This may include such records as evaluation results, IEPs, transcripts, and correspondence from the LEA to the adult student. LEA staff should request to see a copy of the supported decision-making agreement to verify roles and access to information.

7. What obligation does a local educational agency (LEA) have regarding a supported decision-making agreement?

Professionals who receive a supported decision-making agreement are required to rely on that agreement as a legal expression of the person's wishes. A copy of the supported decision-making agreement should be retained with the student's education records. The LEA must allow a supporter identified in a supported decision-making agreement to access the student's pertinent education records and assist the student with educational decisions. Any LEA that discloses personal information about an adult student with a functional impairment to an authorized supporter is immune from any action alleging that it improperly or unlawfully disclosed personal information to the supporter unless the LEA has actual knowledge that the supported decision-making agreement has been revoked. (Wis. Stats. §52.30[5])

If the LEA believes the adult student is being abused, neglected, or financially exploited by the supporter, the LEA may report the allegation under the elder abuse reporting system or adult-at-risk agency. (Wis. Stats. §52.32[1])

LEAs should ensure LEA representatives and other appropriate staff are informed of signed and dated supported decision-making agreements. The supporter must be allowed to participate in IEP team meetings with the adult student, or on behalf of the student, and have access to education records and information needed to assist the student in making informed educational decisions. This may include such information as evaluation results, IEPs, transcripts, and correspondence from the LEA to the adult student.

The LEA should work with the adult student to identify who should be invited to attend their upcoming IEP team meeting. The adult student always has a right to invite persons of their choosing. When the student has a supported decision-making agreement on file with the LEA, the LEA should determine with the adult student if the supporter is to be included and how the student wants to inform the supporter of the upcoming meeting. The adult student may choose to personally invite the supporter or may request the LEA include the supporter in the notice of the IEP team meeting.

8. How should supported decision-making agreements be included when the student reaches the age of 18?

When a student with a disability, other than a student with a disability who has been adjudicated incompetent, reaches the age of 18, the LEA must notify the adult student and their parents of the transfer of rights. In addition, the LEA must provide the adult student and their parents with information on supported decision-making agreements, other alternatives to guardianship, and strategies to remain engaged in the adult student's secondary education (Wis. Stats. §115.807[4]).

Information on supported decision-making should be provided any time guardianship and alternatives are discussed, including during any and all discussions about transfer of rights at age of majority.

9. What are the terms of the agreement?

An LEA that receives a supported decision-making agreement shall rely on the agreement, except if the LEA has reason to believe that the adult student is being abused, neglected, unduly influenced, or financially exploited by the supporter. (Wis. Stats. §52.30 (1)) An adult student may revoke the supported decision-making at any time, and unless the supported decision-making agreement provides a different method for the supporter's resignation, a supporter may resign by giving notice to the adult student. A supported decision-making agreement may also be terminated if county adult protective services substantiate an allegation of neglect or abuse by the supporter, the supporter is found criminally liable for neglect or abuse, or there is a restraining order against the supporter. (Wis. Stats. §52.14) If an LEA discloses pupil record information to the supporter pursuant to a supported decision-making agreement authorizing such release, the LEA is immune from any action alleging that it improperly or unlawfully disclosed such information, unless the school district had actual knowledge that the adult student had revoked such authorization. (See Wis. Stats. §52.30(5))

Once the LEA receives an adult student's supported decision-making agreement, the LEA should act in accordance with the agreement, unless the LEA is notified that the agreement has been terminated. If an adult student revokes the supported decision-making agreement, the student should notify the LEA that the agreement has been revoked, and they would be encouraged to do so in writing.

More information about the supported decision-making agreement is available at:

- The Arc Wisconsin at <https://arcwi.org/2018/04/13/supported-decision-making/>
- Wisconsin Board for People with Developmental Disabilities at <https://wi-bpdd.org/index.php/SupportedDecision-Making/>
- Disability Rights Wisconsin at <http://www.disabilityrightswi.org/resources/supported-decision-making/>
- National Resource Center for Supported Decision-Making at <http://www.supporteddecisionmaking.org/>