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Supported Decision Making Information and Guidance for Educators

Background

Supported Decision Making (SDM) is an alternative to guardianship that empowers individuals with disabilities to make decisions when they reach the age of majority. In a SDM arrangement, the person with the disability utilizes people that they trust to help with complex decisions about their education, employment, housing situation, medical care or other topics. In other words, the decider (the person with the disability) chooses who they want to help them make decisions around each of the areas listed. The arrangement is entirely driven by the adult student. It is their choice for whom they would like to help them make decisions. It could be a friend, relative, sibling, coach, or teacher. On the supporter side, it is an entirely voluntary role to participate in an SDM arrangement. For the people that become a part of this arrangement, it is their choice to agree or not agree to be supporters.

SDM can be used separately from, or in conjunction with other alternatives to guardianship including an education power of attorney, special types of bank account, and/or case management.

The VT Special Education Advisory panel (SEAP) has identified that a statewide unmet need is educator knowledge about supported decision making as an alternative to guardianship. The SEAP has advised the VT AOE to create guidance for educators on this topic so that they can better inform students and parents of this option.

Purpose

This document describes Supported Decision Making (SDM), what it is and what educators should know. This document will serve as guidance to educate and inform school staff (i.e., special education directors, high school special educators, 504 coordinators, school counselors, and Educational Support Team members) about an alternative to guardianship called Supported Decision Making so that they can inform families about this option. The information in this memo contains critical information for special educators to share with students and parents so that they can make informed decisions on whether to pursue guardianship or to build a supported decision making arrangement.

If the student and family are planning to pursue this, it is critical to have an aligned IEP postsecondary transition plan that includes annual IEP transition goals that are designed to build skills for making decisions.



Legal Implications

A completed and signed supported decision making agreement may be considered documentation of a legal reasonable accommodation, recognized (and enforceable) under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act and the Vermont Fair Housing and Public Accommodations Act.

The SDM describes how the person that the SDM is for (the Decider) will be reasonably accommodated in many settings and in interacting with schools, hospitals, and other places, by being able to have their supporter(s) help them in the way the SDM plan describes.

If an entity like a school or hospital will not allow the Decider to have their supporters operate as described in the SDM plan, that could be a form of discrimination and might be considered the same as any other refusal to grant an accommodation to a person with a disability. It also has the same limits around accommodations:

- The accommodation must be reasonable. Generally, allowing someone to help consider and share decisions is considered reasonable.
- It cannot be a fundamental alteration of the program/service. It would be a rare situation that having someone's support in making and expressing a decision would be a fundamental alteration.
- It cannot be an undue financial burden. Allowing someone to have Supporters generally does not cost money, and therefore is not generally considered to be an undue financial burden.

An SDM agreement or arrangement is voluntary. The support provider generally would not have a risk of liability if they were to decide against providing the support documented in the agreement.

An SDM arrangement is similar to Power of Attorney (POA), but it is not a POA. A power of attorney creates a principal-agent relationship. The principal is the Decider, and the agent is the one who acts for the Decider. (These documents can be durable so that when a Decider cannot make their decisions, the agent can still act for them.)

A Principal needs a level of capacity to make a valid power of attorney. This is called "contractual capacity." A Decider can make an SDM plan without this level of capacity.

A POA and SDM are also similar in that Supporters/Agents cannot do things they have been told not to do. And, like Supporters, an Agent is not required to act, except under specific circumstances.

Postsecondary Transition

Throughout their education careers, students should be actively involved in the decision making process. Students should be involved at a young age so they are aware of their

support network and their ability to make decisions on their own or request support from someone they trust. As an element of postsecondary transition, students should be taught to make educational and other decisions on their own. Formal discussion of supported decision making and other alternatives to guardianship should begin no later than the 9th grade.

No later than the 9th grade as transition planning begins, teachers and parents should encourage students to be active participants in making decisions about their education. Parents and students can begin to learn and work together towards increased decision making responsibility for students as they approach adulthood. While parents should still plan on providing support at the level the student asks for, the goal is to encourage parents to take less responsibility and for students to take more responsibility for their education and other life decisions.

Frequently Asked Questions

What can educators do to support this process before the age of majority?

As an educator or administrator your role is to encourage the student and their family to consider supported decision making and other alternatives to guardianship. It is an educator's responsibility to prepare students to make the best decisions possible. The following activities can empower and teach students to make decisions about their future:

- Learn and practice self-advocacy skills;
- Learn what self-determination is and support the student in working toward it;
- Engage students in problem solving activities that encourage them to think critically about their decisions;
- Offer opportunities to students via transition services in the IEP to learn key information about important decisions such as: where to live, what services to access, career choices, medical care, legal rights and processes and financial management;
- Have an annual IEP transition goal about developing decision making skills;
- Explain the Transfer of Rights and the Individual Education Program (IEP) process to the student;
- Encourage students to take on key roles in their IEP meeting and the creation of their summary of performance to demonstrate an active awareness of their strengths and needs as well as necessary accommodations;
- Support students to develop effective strategies to communicate and negotiate preferences and choices; and
- Counsel students on ways to make their own decisions and show them the costs and benefits to each of the options before them.

What is the role of the adult student in the Supported Decision Making (SDM) process?

When the student turns 18 they have the right to make their own education and other decisions unless that right is taken away by an order of guardianship. Similarly, students who are 18 and over, including students with disabilities, have the right to determine the people who make up their education support network. The student's role is to identify these individuals and seek their guidance regarding education matters, as needed.

How is the supported decision making process different from guardianship?

Supported decision making can be used as an alternative to guardianship. In guardianship, a guardian is appointed by the court to make decisions on behalf of the student. By contrast, in SDM, the student retains the authority to make their own decisions. In supported decision making students seek assistance from adults they trust to help them in making key decisions in their lives; however, the student makes the final decision.

In a SDM arrangement the student retains the right to make key life choices - where to live, where to work, what further education to get, what medical care to receive, and so on. When a student is placed under guardianship, they lose the rights to make these fundamental decisions.

What if the parents and the adult student disagree on pursuing SDM?

If parents pursue guardianship even if the adult student doesn't want it, the student is entitled to an attorney through the probate court. Ultimately, it will be up to the probate judge, after they hear from the parent(s) and the student, and other witnesses. The student can be referred to Vermont Legal Aid (VLA) and they will most likely take the case (for free). Special educators/other school staff can refer students to the [VLA partners web page](#) who want to talk to a lawyer for free. Oftentimes holding a meeting with the student and parents to provide education on the SDM process can ease parents concerns and lead to trying it out if the adult student is advocating to participate in the SDM process

What documents are needed to begin a supported decision making process?

- [Sample SDM template](#)
- More information on [Supported Decision Making](#) via the Vermont Supported Decision Making website.