

# Moving Supported Decision-Making into Policy & Practice

## A Story from D.C. Schools

**Morgan K. Whitlatch, Esq.**  
*Legal Director, Quality Trust for Individuals  
with Disabilities*



## Now You Know What “Supported Decision-Making” Is . . .

Why use it in school?



## Better Life Outcomes

### ▶ Self-Determination

- ▶ Life control — People’s ability and opportunity to be “causal agents . . . Actors in their lives instead of being acted upon” (Wehmeyer, Palmer, Agran, Mithaug, & Martin, 2000, p. 440)

### ▶ People with greater self-determination are:

- ▶ More independent
- ▶ More integrated into their communities
- ▶ Healthier
- ▶ Better able to recognize and resist abuse

(Powers *et al.*, 2012; Shogren, Wehmeyer, Palmer, Rifenbark, & Little 2014; Wehmeyer & Shwartz, 1997 & 1998; Wehmeyer & Palmer, 2003; Khemka, Hickson & Reynolds 2005; Wehmeyer, Kelchner, & Reynolds 1996)



## More evidence

### ▶ When denied self-determination, people can:

- ▶ “[F]eel helpless, hopeless, and self-critical” (Deci, 1975, p. 208).
- ▶ Experience “low self-esteem, passivity, and feelings of inadequacy and incompetency,” decreasing their ability to function (Winick 1995, p. 21).

### ▶ Decreased Life Outcomes

- ▶ Overbroad or undue guardianship can cause a “significant negative impact on . . . physical and mental health, longevity, ability to function, and reports of subjective well-being” (Wright, 2010, p. 354)



## More evidence

- ▶ Students who have self-determination skills are **more likely to successfully make the transition to adulthood**, including improved education, employment, and independent living outcomes (Wehmeyer & Schwartz, 1997)
- ▶ Promoting self-determination is a **“best practice”** in special education (Wehmeyer & Hughes, 1998).
- ▶ Schools should focus on improving students’ ability to set goals, solve problems, make decisions and advocate for themselves and, just as importantly, to give students the opportunity to exercise these skills (Wehmeyer & Gragoudas, 2004).



## Ryan's Story



“Ryan is a whole person. We want him to be whole. **The decision process is part of being whole . . .** If I try to force Ryan to do something, I am destroying his selfness and being whole. **He is a whole person and he is making decisions and I encourage him.”**

– Herbert King

For more on Ryan's story, visit <http://www.supporteddecisionmaking.org/impact-stories/ryan-king>

## And Yet....

- ▶ Guardianship is the default option for students with intellectual disabilities (Payne-Christiansen & Sitlington, 2008).
- ▶ School personnel are the most frequent source of recommendations that parents seek guardianship (Jameson, et al, 2015).
- ▶ QT gets a lot of calls from parents who say that the school told them to get guardianship!



## The Landscape

- ▶ In D.C.:
  - Almost 70% of the people with intellectual and developmental disabilities served by the Department on Disability Services have a guardian or substitute decision-maker they did not appoint.
- ▶ In the U.S.:
  - According to the CQL database, only one-half or fewer of the over 8,100 people reviewed were exercising choices about home, work, goals or services in a way that was meaningful to them.



## D.C. “Transfer of Rights” in Special Education

- ▶ Students in special education can remain in school until they turn 22.
- ▶ When students turn 18, the special education rights that their parents held automatically transfer to them, unless the students are under court-ordered guardianship.



## D.C. Landscape in School — 2010

- ▶ “If parents express concern regarding the ability of their student to assume rights, [school personnel] shall refer parents to the Probate Division of the DC Superior Court and the DC Department on Disability Services for information regarding obtaining guardianship for their child.”

D.C. Public Schools Transfer of Rights Guidelines,  
at p. 4 (2010) (subsequently superseded)



## Effort to Reform Policy & Practice

- ▶ Advocate outreach to the Office of the State Superintendent of Education (OSSE)
  - “Call to Action” letter and then a meeting, which included OSSE and DCPS representatives
- ▶ Advocate outreach to D.C. Public Schools (DCPS)
  - Letters, meetings, and commentary
  - Results included revised Transfer of Rights Guidelines that recognize Supported Decision-Making (8/2013), DCPS “Supported Decision-Making Form,” and introduction of SDM beginning in pre-K.

For more on this story, see  
[http://www.supporteddecisionmaking.org/  
impact-stories/supporting-decision-making-  
students-disabilities-dc](http://www.supporteddecisionmaking.org/impact-stories/supporting-decision-making-students-disabilities-dc)

## D.C. Special Education Student Rights Act of 2014

- ▶ Recognizes **Supported Decision-Making** in special education
  - ▶ “[S]tudent[s] who ha[ve] reached 18 years of age may receive support from another competent and willing adult to aid them in their decision-making” (Sec. 104(b)(1) & (2) (March 2015))
- ▶ Recognizes other alternatives to guardianship, including **Educational Powers of Attorney**.



## OSSE Regulations to Implement Act

- ▶ Under Act, final OSSE regulations implementing the **reform of “transfer of rights” process** due to be published by 7/1/2016.
- ▶ As a result of advocate commentary, Second Notice of Proposed Rulemaking, published on 5/13/16 recognizes and defines **“Supported Decision-Making”** for adult students in special education.
  - Regulations will apply not only to DCPS, but also D.C. public charter schools.



## What Next?

- ▶ Continued **training** for students with disabilities, parents, educators, and administrators.
- ▶ Continued **outreach** through plain language informational flyers.
- ▶ Continued individualized **advocacy** for students to ensure implementation.



## Ask Questions – Now or Later

### **Morgan K. Whitlatch**

Legal Director, Quality Trust for Individuals with Disabilities  
Project Director, National Resource Center for Supported  
Decision-Making

[mwhitlatch@dcqualitytrust.org](mailto:mwhitlatch@dcqualitytrust.org)

202-459-4004

### **Quality Trust for Individuals with Disabilities**

[www.DCQualityTrust.org](http://www.DCQualityTrust.org)

### **National Resource Center for Supported Decision-Making**

[www.SupportedDecisionMaking.org](http://www.SupportedDecisionMaking.org)

