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Delegation of Educational Rights Form Gives Parents Right to Sue

The Court of Appeals for the Seventh Circuit, the federal circuit that includes Illinois and two other states, issued an opinion, *Stanek v. St. Charles Community Unit School District #303*, on April 9, 2015, interpreting Illinois special education law regarding a parent's ability to file suit on behalf of their adult child under the Individuals with Disabilities Education Act ("IDEA").

The IDEA provides parents enforceable rights on behalf of their minor child. However, under both Illinois and federal law, those rights transfer to a disabled student when the student reaches age 18. At that time, the student can choose to delegate his or her rights to make educational decisions to a "Parent" representative by written consent through a *Delegation of Rights to Make Educational Decisions* form. (Copies of this form can be accessed on the ISBE website at

http://www.isbe.net/spec-ed/pdfs/nc_deleg_34-57k.pdf). In the Delegation of Rights form, the student gives consent for the Parent Representative to make all educational decisions on the student's behalf.

The *Stanek* case involved an 18 year old student with autism (who was 19 and attending college at the time his parents brought suit in federal court) who had completed a Delegation of Rights form to transfer his educational decision-making authority to his parents. Due to his disability, Stanek had an IEP with accommodations, including the provision of study guides as well as extended time on tests and homework. During his junior year, Stanek elected both Honors and AP level courses, but his grades began to decline when his teachers refused to provide the accommodations set forth in his IEP. Stanek's parents filed a due process complaint, which was subsequently dismissed because they had failed to follow the hearing officer's pre-hearing instructions. The parents then filed suit in federal district court, alleging violations of IDEA, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act. Specifically, the parents contended that the District denied Stanek a free appropriate public education, discriminated

against him on the basis of his disability, retaliated against him on the basis of his parents' advocacy, denied the parents the right to participate in his special education process, and retaliated against the parents for asserting their rights.

The lower court ruled in favor of the School District, dismissing all counts of the complaint. Among other reasons for dismissing the complaint, the court reasoned that, because Stanek had reached age 18, the parents' rights under the IDEA, specifically the right to file suit, transferred to him. According to the court, the right to make educational decisions, designated on the Delegation of Rights Form, only applied to decisions made while Stanek was a student at the high school, and did not include litigation.

On appeal, the Seventh Circuit Court held that Illinois law should not be interpreted so narrowly as to allow a parent only the right to make educational decisions. A parent to whom an adult child has transferred his or her educational decision making authority should also have the power to enforce their rights by litigation if necessary.

This is the first case to interpret and apply the Illinois

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Delegation of Rights form. School districts and cooperatives should be aware that a parent's authority to make educational decisions for their adult child pursuant to this ISBE form includes the ability to enforce those rights through litigation.

If you have any questions about the *Stanek* case, about delegation of rights, or about the required notice to parents and students about delegation, please contact one of our attorneys in either the Flossmoor (708.799.6766) or Oak Brook (630.928.1200) office.