

How and Why the Educational Power of Attorney Was Created

By Nancy Alar and Attorney Barbara S. Hughes

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The Educational Power of Attorney (EPOA) is a legal instrument similar to the financial and medical powers of attorney. The EPOA is intended for use in educational institutions by an “agent” or “attorney-in-fact” chosen by a legally competent young adult with disabilities that create challenges or even roadblocks for the young adult in handling the myriad tasks involved in the education setting. Prior to the age of legal majority (age 18 in most states), the parents as “natural guardians” of the child have the authority to handle bureaucratic tasks and advocacy for the child. This authority is lost at the age of majority. With the education power of attorney tool, the agent is authorized to handle tasks in the education setting that are **not** essential to the young adult’s learning process in course work and other learning activities. This enables the young adult to focus on his or her course work and other learning activities, potentially lowering stresses that can interfere with the pursuit of learning that **will** be essential in maximizing the young adult’s future success. The initial version of the EPOA was developed in 1997 by a team: the family of Matthew Ward (a student with autism) working with Attorney Barbara S. Hughes, now of Hill, Glowacki, Jaeger & Hughes, LLP in Madison, Wisconsin. Attorney Hughes also sought the input of legal counsel for a local school district as the instrument evolved.

As Matthew reached age 18, it was obvious that he was mentally and legally competent and would not be a candidate for legal guardianship, but it was equally clear that he would need continued parental involvement with his medical care decision making, his financial affairs, and his teachers, counselors and others in the school setting. A tool like the familiar health care and financial durable powers of attorney did not exist for education.

Exactly what is a power of attorney? It is a written instrument that an individual signs for the purpose of delegating to another person the authority to handle specifically or generally described acts on behalf of the grantor of the power. Some types of acts are non-delegable, while others are delegable. For example, in the education setting, learning itself is a non-delegable act, but appearing at IEP meetings and registering for classes are delegable acts. Most importantly, a power of attorney does not take any power away from the grantor of the power of attorney, so it is non-threatening.

The story of the evolution of the Education Power of Attorney and its use during Matt’s young adulthood education years will help others understand the value of this tool for other young adults who are legally and academically competent but who face unusual administrative challenges. We encourage others to consider using it.

Matt has good academic skills, especially in the area of mathematics. His favorite subjects are math and science. He has also demonstrated ability to participate in, learn from and pass classes as diverse as Actuarial Science, Psychology and Spanish.

In spite of his obvious academic competence, Matt was totally at a loss in dealing with most of the “administrative” tasks surrounding education. Planning out a course of study, understanding degree requirements, applying for financial aid, etc. were basically beyond him. He could participate in decision making in these areas and understand the decisions, but couldn’t lead the process.

Matt also had trouble dealing with any “irrelevant” details about the education environment. For example, he never knew when spring break was or how/when/why to contact his academic advisor. Ironically, things that are easy for most students (like contacting an advisor) are hard for Matt; while things that many students find difficult (like advanced calculus) are easy for Matt.

Matt does not have a guardian. When Matt turned 18, it was obvious that he should pursue a post-secondary degree. In fact, two of his high school math teachers contacted the family to “strongly recommend” that he be

given the opportunity to pursue a BS in math. But Matt needed assistance dealing with the administrative tasks associated with education.

Along with these issues, Matt is very suggestible. He is eager to please those in authority. This often translates into saying what others want to hear if he can figure out what that is. All of these problems have lessened as Matt has gotten older, but all are still issues.

Even in high school, his parents were concerned that they would be excluded from Matt's IEP meetings and that the high school might not support Matt's use of Youth Options to attend UW classes. Matt's parents were also concerned that the school might encourage Matt to graduate from High school before he was 21, which was not in his best interest. Privacy laws also threw a lot of paper roadblocks in the way of those helping Matt once he was an adult. Finally, most colleges follow a philosophy of separating college students from parental administrative support to foster independence. This was unrealistic in Matt's case. He needed an educational case manager.

Matt wanted to go on to college and was very willing and eager to "outsource" having to deal with the administrative side of education. The logical person to become Matt's educational case manager was his mother, Nancy Alar. Attorney Hughes worked with Matt and Nancy to develop the EPOA so that Matt could delegate his educational planning process to his parents. Once completed and signed by Matt, the EPOA provided the legal authority for Matt's mother to act on his behalf with all the schools and colleges he ultimately attended, as well as the legal authority for those schools and colleges to give information to Nancy and to accept direction from her on Matt's behalf in appropriate education-related matters. The EPOA was accepted at Monona Grove High School, MATC Madison and UW Madison. With the EPOA, the schools could legally include Nancy in all of Matt's educational planning activities and communications without fear of privacy law violations.

The EPOA worked so well for Matt and other high functioning young adults with an autism spectrum disorder that in 2005 Hughes together with a Cleveland special education attorney, Judith Saltzman of Hickman and Lowder, LPA, published a national law review article describing the legal underpinnings of an education power of attorney, along with publishing the EPOA itself. They have introduced the EPOA and relevant law to special needs attorneys at the national level with a session at the fall 2008 meetings of the Special Needs Alliance. EP (Exceptional Parent) Magazine published an article by Hughes in its May 2008 issue. While not yet specifically authorized by statute in Wisconsin and most other states, various forms of this new legal instrument are now accepted in many school settings in other states. In 2007 Illinois enacted "delegation of educational rights" legislation, including a state form for this purpose. It is our hope that eventually Wisconsin and other states will enact an education power of attorney or delegation of educational rights law, to place the EPOA in the mainstream along with the more common financial and medical powers of attorney.

Matt graduated from Monona Grove High School in May 1999 with a 3.23 GPA. He graduated from the college transfer program at MATC Madison in May 2002 with a 3.46 GPA. He graduated from the UW Madison with a BS in Mathematics in May of 2005 with a 3.34 GPA. He has been living by himself in an apartment in downtown Madison since 2003. He manages his own finances and other affairs with minimum assistance.

The EPOA made Matt's college degree possible. This document may also be useful for others that have the unique situation of academic competence coupled with unusual administrative challenges.

The foregoing does not constitute legal advice.

Sample Form Educational Power of Attorney

The accompanying education power of attorney is intended for use in educational institutions by an agent or attorney-in-fact chosen by a legally competent young adult with disabilities that create challenges or even roadblocks for the young adult in handling the myriad tasks involved in the education setting. Prior to the age of legal majority (age 18 in most states), the parents as natural guardians of the child have the authority to handle bureaucratic tasks and advocacy for the child. This authority is lost at the age of majority. With the education power of attorney tool, the agent is authorized to handle tasks in the education setting that are not essential to the young adult's learning process in course work and other learning activities. This enables the young adult to focus on his or her course work and other learning activities, potentially lowering stresses that can interfere with the pursuit of learning that will be essential in maximizing the young adult's future success.

SPECIAL DURABLE POWER OF ATTORNEY FOR MATTERS CONCERNING EDUCATION

[The following document is substantially similar to one prepared by Attorney Barbara S. Hughes of Hill, Glowacki, Jaeger & Hughes, LLP, Madison, Wisconsin, with input from school district legal counsel for use in several specific cases for clients in the Monona Grove School District. The original instrument has been accepted by the local vocational/technical school and the University of Wisconsin in at least one case. This document is shared subject to the express understanding that it must be reviewed by legal counsel and adapted as appropriate in other cases.]

This document is intended for informational purposes only, and does not constitute legal advice. Barbara S. Hughes and the Hill, Glowacki, Jaeger & Hughes, LLP law firm expressly disclaim all responsibility for all consequences of use of this material.]

I, _____, hereby designate my _____ **relationship** _____, _____ **name** _____, as my Agent to handle the control and management of my education on my behalf.

I designate my _____ **relationship** _____, _____ **name** _____, as my alternate Agent to handle the control and management of my education on my behalf if my Agent is ever unable or unwilling to serve. An alternate Agent shall have the same powers under this instrument as the initial Agent.

My Agent is authorized in my Agent's sole and absolute discretion, with respect to the control and management of my education, to do every act and thing whatsoever necessary, proper or convenient to be done as fully as I might or could do for myself. By the granting of this Special Durable Power of Attorney for Matters Concerning Education, I intend to give my Agent the broadest possible powers to represent my interests in all aspects of any dealings or decisions involving my education.

The following powers are specifically included, but the listing of such specific powers shall not restrict the exercise of the broad and general powers granted:

1. To provide opportunities for me to engage in any public and/or private educational programs.
2. To make decisions for me concerning my education.
3. To provide opportunities for me to engage in any recreational activities having an educational purpose.

4. To investigate and arrange for opportunities for me to engage in educational activities that provide occupational training.
5. To enroll me in any educational programs.
6. To authorize any services for me that are designed to provide me with educational benefit and/or access to a free, appropriate public education in public school as provided for in the Individuals with Disabilities Education Act.
7. To negotiate and approve on my behalf reasonable accommodations in education services as required under Section 504 of the Rehabilitation Act of 1973.
8. To have access to my school records and other personal education information. The scope of this power shall also extend to confidential records and information, whether prepared by school personnel or by third parties, including but not limited to medical services providers, psychological services providers, assistive technology providers, speech, physical and occupational services providers, social work providers, and any provider of durable medical equipment. *[Attorney Hughes recommends having the client execute an attorney-drafted HIPAA release to facilitate coping with stringent health care records privacy requirements, potentially allowing re-release of health care records to carefully circumscribed recipients, including the client's attorney. This must coordinate with the client's health care power of attorney document, since the health care agent is usually the "personal representative" for HIPAA purposes.]*
9. To attend and participate in all school meetings and conferences pertaining to me.

REVOCATION OF POWER OF ATTORNEY

I may revoke this Special Durable Power of Attorney for Matters Concerning Education by a writing signed and dated by me.

RELEASE OF THIRD PARTIES

In the absence of actual notice that I have revoked this instrument, no person, school district or its personnel, organization, corporation, or other entity who deals with my Agent shall incur any liability to me, my estate, my heirs, or my assigns for permitting or facilitating my Agent in the exercise of the authority granted under this instrument. I hereby release all such persons, organizations, corporations or other entities from any liability arising from their reliance on this instrument.

PHOTOCOPIES

I authorize that photocopies of this instrument may be made, and that these photocopies shall have the same force and effect as the original.

EFFECTIVE DATE

This instrument shall become effective immediately, and it shall not be affected by my subsequent disability or incapacity.

Signed on _____, 20____.

[TYPED NAME OF CLIENT]

STATE OF WISCONSIN)
 : ss.
COUNTY OF _____)

Personally came before me this ____ day of _____, 20__ the above named _____, to me known to be the person who signed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin
My Commission is permanent.

We certify that the foregoing instrument was on the date set forth above signed by _____ in the presence of us; and that at [his/her] request and in [his/her] presence, and in the presence of each other, we subscribed our names as attesting witnesses thereto.

_____ of _____

_____ of _____

ATTORNEY'S CERTIFICATION

I am a lawyer authorized to practice law in Wisconsin. I have advised my client concerning his or her rights in connection with this Special Durable Power of Attorney for Matters Concerning Education.

[ATTORNEY'S TYPED NAME]

This document was drafted by:

- Attorney name
- Bar number
- Firm name
- Firm address
- Firm phone