Capacity to Make Educational Decisions

In the context of probate conservatorship proceedings, the issue of capacity to make educational decisions arises mostly with respect to young adults who have intellectual and developmental disabilities. The impetus for parents filing a petition for conservatorship may be based partly on their desire to continue making educational decisions for their child after he or she turns 18.

Parents have the legal right to make educational decisions for their children while they are minors. But once someone turns 18 and becomes an adult, the sole authority for educational decisions rests with the student.

Some educational decisions pertain to which school is attended or focus on which classes will be taken. Other educational decisions are financial or contractual in nature. For the latter, the issue is capacity to manage financial affairs and the criteria for evaluating such is governed by those standards. For the former, which do not necessarily involve money, a different set of criteria for determining capacity should apply.

As with all legal issues of capacity, there is a presumption that the adult student has the capacity to make educational decisions. (Probate Code Section 810) That presumption must be overcome by evidence to the contrary. [References are to the Probate Code unless otherwise specified.)

As with many other areas of decision-making, there are constitutional considerations that come into play. The Lanterman Act declares that individuals with developmental disabilities have the same constitutional rights as everyone else. (Welfare and Institutions Code Section 4502) Access to a public education is a constitutional right. (*Steffes v. California Interscholastic Federation* (1986) 176 Cal.App.3d 739, 746)

The Lanterman Act affirms that individuals with developmental disabilities have "the right to make choices in their own lives" and that public or private agencies receiving state funds shall respect those choices. (Welfare and Institutions Code Section 4502.1) Most schools with special education programs receive state funds.

If a petitioner files for a limited conservatorship, the respondent retains the right to make his or her own educational decisions unless there is an order transferring that decision-making authority from the respondent to a conservator. Retention of educational rights is the default result unless there is a request and order to the contrary. (Section 2351.5)

If a petitioner attempts to bypass the protections in limited conservatorship proceedings by filing for a general conservatorship, the default result under current law is that the right to make educational decisions is removed and the authority transferred to a conservator. This capacity-disaffirming loophole in the law should be eliminated. The rights retained by default in limited conservatorship proceedings should apply to general conservatorship proceedings when the respondent has a developmental disability.

If a petitioner affirmatively seeks to have educational decision-making power taken from a

respondent and transferred to a conservator, a professional capacity assessment should be done. The right to make educational decisions is too important to be adjudicated on the basis of lay opinions. The law should require an interdisciplinary team from a regional center, through an Individual Program Plan (IPP) process, to evaluate the ability of the proposed conservatee to make educational decisions. Currently, the law does not require such an IPP review. However, the attorney for the proposed conservatee can demand one. If the proposed conservatee does not have an attorney, because the petitioner initiated a general conservatorship proceeding and the judge has not appointed an attorney, the law should be amended to require such an evaluation process to occur anyway.

The evaluation of capacity to make educational decisions should include an assessment of available supports and services that would enhance the ability of the proposed conservatee to make responsible educational choices. Statutes prohibiting disability discrimination require an exploration of reasonable accommodations to enhance meaningful participation in all government services, including educational services. (Government Code Section 11135; Civil Code Section 51; Welfare and Institutions Code Section 4502.1)

As for proposed conservatees without developmental disabilities, such as seniors and other adults with cognitive disabilities, many of the same considerations should apply. There is a presumption of capacity to make educational decisions. There is a constitutional right to access to a public education. There is also a legal requirement to provide accommodations during a capacity assessment process as well as to provide accommodations to enhance an individual's capacity to make educational decisions. This requirement is part of the Americans with Disabilities Act and state laws that implement the ADA in California. These laws apply to superior courts conducting conservatorship proceedings.

For many seniors, the right to make educational decisions may be of little concern. For others, however, it may be something they care about. When it becomes apparent to their attorney or to a judge or court investigator that educational decision-making is something of value to a proposed conservatee, an assessment should be provided so this right is retained if possible.

Furthermore, just as in the area of medical decision-making, even if a person lacks the capacity to make significant medical decisions, that should not mean that capacity to select a surrogate decision-maker is lacking. This issue was explored in the section on "Capacity to Name a Health Care Proxy."

Before a court takes away the right of someone to make educational decisions, there should be an evaluation of whether that person has the capacity to name an "educational choice proxy" to make those decisions. The mental capacity to name a proxy for these decisions would allow a proposed conservatee a degree of dignity and autonomy and would eliminate the prospect of stripping them entirely of the right to direct their education. It is better that they have a say in who makes such decisions than having no say at all.

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