

ALTERNATIVES TO GUARDIANSHIP

As students move into high school, one of the topics that school districts will discuss with parents is guardianship. This discussion typically takes place in an ARD meeting and occurs during transition planning. A school district must inform the parents and the student of the “transfer of parental rights” concerning the ARD process. This notice should occur twice:

- At least one year before a student reaches age 18, the student’s IEP must include a statement that rights granted a parent, other than the right to receive notice required under IDEA, will transfer to student upon reaching age 18 unless someone has been granted guardianship of the student (TAC § 89.1049 (a)), and
- At the time the student reaches age 18, the school district must notify, in writing, the adult student and parent of the transfer of rights to the student (TAC § 89.1049 (c)). This notice is **separate** and distinct from the IEP statement noted above.

What this means is that at age 18, a student is considered an adult and all rights are transferred to that student. When a student reaches the age of majority (18), they are regarded as being able to make their own choices. This would include making choices about their education. Since an IEP is a like a contract, it can be enforced in a court. Therefore, an 18 year old student would be responsible for signing and agreeing to the IEP. Parents and students with disabilities must look at all options before deciding if the student is responsible enough for the task.

Note! The transfer of rights occurs **regardless** of your child’s disability label and/or level of need, unless you have made other legal arrangements.

Before making a decision, families should discuss what supports the student will need now, and in the future. A good way to get started with this may be through the [person centered planning](#) process. It is important that families complete this process BEFORE a student’s senior year.

Guardianship is a legal process designed to protect people at risk of abuse, neglect, and exploitation. It removes rights and privileges from a person determined to be “incapacitated” under State law. The process involves the court system and an attorney. Guardianship may be full (whereby all rights and privileges are removed) or may be partial (where some rights are assigned to the person with a disability – like the right to vote, marry, or choose where they live).

[Alternatives To Guardianship](#)

For some students with disabilities, guardianship may be the only option. Yet, it is important for parents to know that guardianship is not the ONLY option which will allow them to actively participate in the ARD process after their child turns 18. In addition to guardianship, there are the following options:

- Power of Attorney
- Durable Power of Attorney
- Durable Power of Attorney over Health Care
- Directive to Physician
- Management of Community Property
- Money Management
- [Social Security Representative Payment program](#)
- Trusts

- [Consent to Authorize Advocacy](#)
- [Supported Decision Making](#)

It is important to note that if an alternative is chosen, the student should have an understanding of what the alternative implies; and the parents need to understand that if the adult student states “I don’t want you here” at some point, this could signify a revocation a Power of Attorney situation. Parents should consult an attorney before deciding on any option. Each family (including the student) will need to decide what is best for their child.

For more information on Guardianship and options:

[Supported Decision Making](#) - This is the website of the Jenny Hatch Justice Project, an integrated, multi-faceted resource and outreach center dedicated to advancing people with disabilities' right to make their own choices and determine their own path and direction in life through supported decision making and other alternatives to guardianship.

[Consent to Authorize Advocacy](#) (pdf) – A sample form to use to with schools or other adult agencies to authorize parents participation at ARD meetings; from The Univ. of Montana Rural Institute.

[Consent to Authorize Advocacy](#) (pdf) – Here is another example of a simplified form to use with the school district. It was “notarized” to make it official, but not necessary.

[Texas Guardianship Association](#)

Disability Rights resource – [Guardianship for Texans with Disabilities](#)

[The Arc of Texas](#)

The Arc of Houston, Information Packet on Guardianship
<http://www.aogh.org/Resources.html>

[The Legal Framework for the Child Centered Process](#)

[National Secondary Transition Technical Assistance Center](#) – Webcast in support of “Supported Decision Making” and other information on Age of Majority issues.

[Advance Directives](#) (Texas Department of Aging and Disability Services) – This resource explains the different legal documents that allow individuals to convey their decisions about end-of-life care ahead of time. Options to consider for adults with disabilities may include the Medical Power of Attorney and the Declaration for Mental Health Treatment.

Texas Council for Developmental Disabilities – [Guardianship Alternatives](#)

Other Articles Worth Reading:

The [Center for Self Determination](#) has a number of articles on Guardianship:

- Eliminating the Pervasiveness of Guardianship by Dohn Hoyle
- Re-Thinking Guardianship and Promoting Self Determination by Tom Nerney

- Guardianship and the Disability Rights Movement by Diane Coleman and Tom Nerney

Guardianship is not Self-Determination

http://ruralinstitute.umt.edu/transition/handouts/GuardianshipisnotSD_Kathy_harris.pdf

Kathy Harris, TASH Connection September-October, 2005

The Trust as an Alternative to Guardianship

<http://ruralinstitute.umt.edu/transition/handouts/TrustasAlternatoGuardWelber.pdf>

Joel S. Welber, TASH Connections September-October, 2005

Re-Thinking Guardianship

<http://ruralinstitute.umt.edu/transition/Handouts/RethinkingGuardianship.HoyleAndHarris.doc>

Don Hoyle and Kathleen Harris, 2001

Self-determination, Autonomy and Alternatives for Guardianship

<http://ruralinstitute.umt.edu/transition/handouts/Self-Determination.Herr.pdf>

Stanley S. Herr, Professor of Law, 2001

Challenging Incompetence

<http://ruralinstitute.umt.edu/transition/Handouts/ChallengingIncompetence.Nerney.pdf>

Thomas Nerney, 2000