



Age of Majority: The Transfer of Rights, self-determination and Alternatives

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Age of Majority: The Transfer of Rights

Why Is Age of Majority Important?

- As students move into high school, one of the topics that school districts will discuss with students and parents is a student's right to make their own decisions. This includes a discussion of types of decision-making support including guardianship and alternatives to guardianship, like supported decision making.

Age of Majority

- At age 18, a student is considered an adult and all rights are transferred to that student and legally they are able to make their own choices. This includes making choices about their education.
- This discussion typically takes place in an ARD meeting and occurs during transition planning.
- **Note:** The transfer of rights occurs **regardless** of a child's disability label and/or support needs.

Decision Making Support Needs

Families and student's should discuss what supports the adult student will need, currently and in the future.

Additionally, as of September 1, 2018, Special Education Transition Planning for students must address:

- the use and availability of appropriate opportunities to assist the student in developing decision-making skills, and
- supports and services that foster the student's independence and self-determination, including a *supported decision-making agreement*.



Notice of Transfer of Parental Rights

A school district must inform parents and students 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)).



NOTICE OF TRANSFER OF RIGHTS

MODEL FORM
WITH INFORMATION
AND RESOURCES

Texas Education Agency

Support

Disability
RIGHTS
TEXAS

Self-Determination, Decision-Making Support and Alternatives to Guardianship

SELF-DETERMINATION

What is Self-Determination?

Self determination is believing you can control your own destiny.

Self-determination is a combination of attitudes and abilities that lead people to set goals for themselves, and to take the initiative to reach these goals.



[Image Description: a small heart with the word yourself under.]

RIGHTS = CHOICES

- Choices = Self-Determination
 - 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

What is Self-Determination?

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[Image Description: a small heart with the word yourself under.]

Consequences & Dignity of Risk

- Practicing self-determination also means one experiences the consequences of making choices.
- Sometimes the consequences or risk of failure is worth the potential for success!



[Image Description: A drawing of person using a wheelchair wearing a helmet, with pillows strapped around their torso and legs being pushed by someone. The words "Dignity of Risk" written around them.]

Benefits of Self-Determination



People with greater self determination are:

Healthier

More independent

More well-adjusted

Better able to recognize and resist abuse

[Image Description: A girl with down syndrome squatting on a yoga mat with her hands together.]

Important Things to Remember

- Texas law presumes that adults have decision-making capacity – this applies to everyone, including people with disabilities.
- Decision-making is a learned skill – people with disabilities need opportunity, experience and support to learn to make well-informed decisions.
- There are legal ways to assist people with decision-making that do not restrict, limit, or remove their rights.



Guardianship

GUARDIANSHIP

Guardianship is a legal process to determine if a person is “incapacitated.”

- A court decides if, due to a physical or mental condition, an individual is substantially unable to:
 - manage their financial affairs,
 - care for their physical health, or
 - provide food, clothing, or shelter for themselves.
- Under a guardianship, someone is appointed to make decisions on behalf of the incapacitated person, referred to as the “ward.”



What Does Guardianship Do?

Removes the person’s freedom of choice, self-determination and independence.

Removes some or all of a person’s decision-making rights.

Gives decision-making power to someone else, known as the guardian.



[Image Description: Image that reads Guardianship not required.]

Guardianship and the Court



[Image Description: A drawing of a judge.]

Requires a court order to establish and **ongoing** court oversight.

Expensive – attorney fees, court costs, annual bond.

May be difficult to terminate or modify.

Annual accounting and reports on the condition of the ward.

Types of Guardianship

- Full or Limited
 - Guardian of the person
 - Guardian of the estate
- Guardian of the person and estate
- Temporary guardianship



[Image Description: The words All or Nothing with a circle and a line across the words.]

Guardianship

The Process

Guardianship Process

1. Find an attorney
*There are not many no cost or low cost options
2. Attorney files an application for guardianship with the county Court
3. A doctor must evaluate and certify that the individual is incapacitated
4. An attorney ad litem will be appointed to represent the interests of proposed ward
5. A guardian ad litem may also be appointed to advocate for the best interest of the person with a disability.
6. Court holds a guardianship hearing
7. Guardian is or is not appointed



Guardian of the Person & the Court



- Files an annual report.
- The court has to approve the report and the guardianship has to be extended.
- The Guardianship papers last for 1 year and 4 months and must be reissued each year.
- There are lower costs associated with re-approval of guardianship of the person

[Image Description: a flyer that says Guardian of the person: live, marry, drive, doctor, friends, work.]



Texas Guardianship Reform



Person Centered Thinking

What is Person Centered Thinking?

- A deliberate method to **see the whole person**, and not focus on “fixing what is wrong”
- A way to convey the core belief that **all people have gifts to share**
- Results in **focusing on the person** who needs support
- A way to **discover, describe and assist the desired life of the person** who is supported

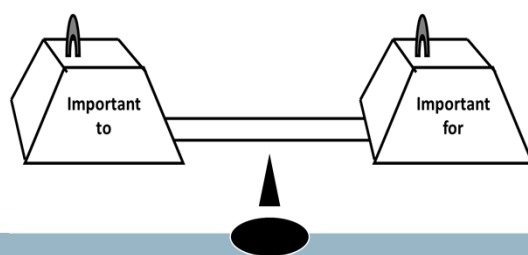


Core Concept

Important to

and

Important for



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Reforming Guardianship in Texas

The 84th Legislature passed several bills protecting the rights of persons with disabilities in the guardianship system:

1. HB 39 – Alternatives to Guardianship;
2. SB 1881 – Supported Decision-Making Agreement Act;
and
3. SB 1882 – Bill of Rights of Wards.

Disability
RIGHTS
TEXAS

Guardianship and the Law

The Texas legislature mandated that courts consider **alternatives to guardianships** and **supports and services** before a guardianship is created.



[Image Description: a chalk board with the words "Alternatives to Guardianship" and small notes under that read Supported Decision-Making, Representative Payee, Power of Attorney, Trusts and Savings Accounts and Person Centered Planning.]

Supporting Daily and Major Life Decisions



[Image De Guardians guardianship]

▪Key Principles of Guardianship Reform

- Texas law mandates that courts review whether alternatives to guardianships and supports and services have been considered or tried before granting a guardianship.
- Alternatives include legal options that do not require going to court.
- Supports and services include governmental and private options that satisfy the underlying concerns about an adult's ability to manage financial affairs and care for him or herself, including having food, clothing, and shelter.



Other Significant Changes

- Texas became the first state in the nation to codify **supported decision-making** in statute as an alternative to guardianship.
- Texas codified a **Bill of Rights of Wards**.



ALTERNATIVES TO GUARDIANSHIP



Alternatives to Guardianship

- Legal documents that give another person the authority to make decisions on your behalf. They do not involve a court. Consultation with an attorney is recommended. Model forms widely available. Usually executed before a notary public.
 - [General Power of Attorney](#)
 - Limited or Special Power of Attorney, e.g., educational decisions
 - [Durable Power of Attorney](#)
 - Medical Power of Attorney
 - Declaration for Mental Health Treatment



Alternatives to Guardianship

- Arrangements to manage financial affairs involving another person or organization that takes responsibility on behalf of you.
 - [Representative Payee](#)
 - A representative payee is a person or an organization that receives Social Security or SSI benefits for anyone who can't manage his or her benefits. A payee must keep records of expenses and report when requested by SSA.
 - [Special Needs Trust](#)
 - [ABLE Account](#)



SUPPORTS AND SERVICES



Supports and Services

- Supports and services are formal and informal resources and assistance that enable an individual to meet needs for food, clothing, or shelter; care for physical and mental health; manage financial affairs; and make decisions regarding living arrangement, voting, driving, and marriage.
 - Personal community of supportive and trusted individuals, friends, and family members
 - Medicaid Waivers
 - Case Management Services
 - Person Centered Planning



Supports and Services

- Free or Reduced Price Meals, Foods and Prescription Delivery
- Special or Adapted Public Transportation
- Daily Call or Home Visit Services
- Utility Company Third Party Notifications
- Assistive Technology
- Money Management
 - Direct Deposit
 - Reloadable Card
 - Joint Account



THE SUPPORTED DECISION-MAKING AGREEMENT ACT



Supported Decision-Making

Key Principles

- Based on the principles of Person Centered Planning, [supported decision-making](#) is when an adult gets support from a trusted friend, family member, or professional to help him or her have information and understand situations, choices, and options **so he or she can make his or her own decisions.**
- Decision-making autonomy should not be dependent on the quality of any decision made by the adult.
- Texas was the first state to officially recognize and codify supported decision-making into law as a formal alternative to guardianship.



Supported Decision-Making

- Supported Decision-Making – Who Is It For?
 - Must be an adult, 18 years of age or older.
 - Must have a physical or mental impairment that substantially limits one or more major life activity.
 - Must have sufficient capacity to agree to the supporter assisting him or her in making particular decision.



Supported Decision-Making

- Supported Decision-Making – Who Can Be the Supporter?
 - Must be picked by the adult seeking support.
 - Must be another adult.
 - Should be knowledgeable about the adult seeking support, and trusted by the adult seeking support. Typically, a parent or sibling or a trusted friend.



How Can Supported Decision-Making Help People with Disabilities?

- Understand the options, responsibilities, and consequences of their decisions.
- Obtain and understand information relevant to their decisions.
- Communicate their decisions to the appropriate people.

Supported Decision-Making

- Supported Decision-Making – What Is The Supported Decision-Making Agreement?
 - [Supported Decision-Making Agreement](#) is written documentation recognized under Texas law. Model form widely available.
 - Original or copy may be relied upon by professionals and organizations.
 - Agreement must be signed.
 - Must be signed in presence of two witnesses (14 years old minimum) or a notary public.
 - Agreement may have an end date.

Supported Decision-Making

- Supported Decision-Making – How Is It Different From a Guardianship?
 - Voluntary. The adult seeking support decides by himself or herself to try and use supported decision-making.
 - Control. The adult seeking support maintains total control and power to make decisions. The supporter is an advisor, not the decision-maker.
 - Adaptable. The adult seeking support may add supporters or change supporters as he or she deems necessary.



Transition Planning

Texas Transition Planning

Both federal and state law address transition planning. Texas transition requirements go above and beyond provisions in the Individuals with Disabilities Education Act (IDEA). Ensuring compliance with all transition elements will lead to appropriate and effective IEPs.

In 2017, the Texas Legislature passed transition planning improvements. [Senate Bill \(SB\) 748](#) focused on:

- Developing the independent living and self-determination skills of students with disabilities.
- Creating new model notices about alternatives to guardianship.
- Updating the content of Texas Transition and Employment Guide.



THANK YOU

Disability Rights Texas

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About Disability Rights Texas

- Part of the national Protection and Advocacy (P&A) System
- Established in 1977 through federal law
- Nonprofit legal firm
- Protect and advocate for the rights of Texans with disabilities ensuring their equal participation in society
- Serve Texans of all ages with a wide variety of disabilities



DRTx Services Offered

- Provide direct legal assistance to people with disabilities whose rights are threatened or violated
- Protect rights of individuals and groups of people with disabilities through courts and justice system
- Inform policy makers about how issues impact people with disabilities
- Educate people with disabilities and family members about their rights
- Make referrals to programs and services



DRTx Areas of Focus

- Alternatives to Guardianship
- Community Integration
- Disaster Preparedness and Recovery
- Early Childhood Intervention
- Education (K-12, college)
- Employment
- Healthcare
- Housing
- Institutional Rights and Civil Liberties
- Transportation
- Voting



Apply for DRTx Services

- Statewide Intake Lines:
 - 1-800-252-9108
 - 1-866-362-2851 (Sign Language Video Phone)
 - 512-271-9391 (Purple 2 Video Phone)
- Online Intake: [DRTx Request for Assistance](#)
- Self-advocacy resources, information about our services: [DRTx website](#)



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