

GUARDIANSHIP TOOLKIT

SUPPORT FOR DECISION-MAKING



Age of Majority: A parent serves as the natural guardian for their child until the child reaches the age of 18. At that point the young adult acquires the full legal rights of any adult citizen. This rule includes all people, *with or without* disabilities. This is called the *age of majority*.

All public schools in North Dakota are required to inform students who receives special education or related services and their parent or legal guardian about the age of majority at least a year prior to the date when that student reaches the age of 18.

Once a student reaches the age of 18, the school and other service organization will ask the person with a disability to begin making any legal decisions. This includes making decisions about special education services and the IEP. They will need to seek permission from the young adult to continue sharing information with a parent no matter how significant the person's support needs might be.

Telling parents about the age of majority is **NOT** an attempt on the part of a school to exclude parents from the process. ND schools encourage parents to participate but they cannot break confidentiality to do that. So they typically seek the student's permission to continue parent involvement. Schools and parents share a role in educating young adults with disabilities to act in a self-determined way, to be aware of their rights, to be able to advocate for themselves and to learn strategies for decision-making to the extent possible.



Why Now? Many parents wonder why a state can decide that they (the parents) are perfectly capable of making decisions for their child one day and not the next. **What has changed?** The reason for the transfer of rights at age 18 has nothing to do with the parent's or the individual's ability to make good decisions. What changes or transfers is the person's legal right to make those decisions for themselves. When they are 17 they did not have that right. Now that they are 18, they do, even if they are not fully prepared to exercise them.

Many young people with disabilities **do** have the ability to make their own decisions. The state assumes that *all* young people do unless someone petitions a district court to consider a special case.

Support to Make Decisions: Most adults get support to make important decisions. Support can be needed to help you:

- Understand information
- Consider all the risks
- Make a legal decision
- Give permission
- Understand consequences
- Manage money

Support for decision-making can be provided by different people in a variety of forms.

Partners	Forms
<ul style="list-style-type: none">• Friend• Lawyer• Relative• Employer• Banker• Accountant• Provider	<ul style="list-style-type: none">• Conversation or guidance• Power of Attorney• Living Will• Representative Payee• Guardianship• Service Plans• Will or Estate Plan

Think of support as part of a continuum of services. Support can be informal or formal. Different kinds of support can be non-restrictive or restrictive.



Guardianship is one type of support. Decisions about guardianship are made based on the unique needs of each person. Guardianship is one of the most restrictive kinds of support for decision-making. Most young people with disabilities can be supported in decision-making without a guardian. If individuals need a guardian, it is typically only for some kinds of decisions.



Being Prepared to Manage Affairs: Young people with disabilities may not be prepared to manage their affairs and make decisions when they reach the age of 18 unless steps are taken before that to provide them with the knowledge, skills and supports to do so. Adults frequently seek support with decision-making and rely on trusted family and friends to help them manage their affairs.

Training, technology, opportunities, mentoring, special legal protections and habit are all resources that can be used by parents and educators to help prepare young people with disabilities for managing their affairs. In fact, independent living is one of the important reasons spelled out in IDEA for providing a free and appropriate education to students with disabilities.



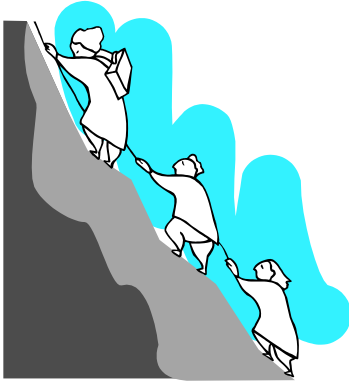
Support for Decision-Making:

A legal guardian (full or partial) is necessary when a person with a disability needs a restrictive level of support to make legal and daily living decisions to successfully manage their affairs. To avoid the need for a guardian, an IEP team or family must consider different kinds of decisions that are involved in managing

everyday affairs and other possible supports that will be adequate.

Guidance: Some young people with disabilities are comfortable seeking guidance from a family member or a friend for important decisions. They are unlikely to shut that person out of their lives. They demonstrate the ability to delay rewards and follow social and community rules in managing their affairs. They need mentoring but not a guardian. They can provide informed consent if information is presented in a way that is understandable and makes sense. The court will seek to determine if this is the case. A court would not appoint a guardian if that is true even though a parent might want to become a guardian “just in case.” A parent can reassure themselves that the needed support will be available by helping the young person with a disability to obtain any/all of the following supports.

Education: Families and schools can provide a student with a disability with information in different formats that highlight important decisions, risks, considerations and choices. This can include, sharing information through a website or writing out a simple explanation with clip art or line drawings, creating a social story or even video-taping the person making a good decision and showing them what will happen. Other educational options might be to help a student to: include:



your child.

1. Set a specific goal in the IEP on learning decision-making skills or using support for decision-making.
2. Take a class in self-determination or marriage or parenting through the high school or a local independent living center or a church or a parent information network.
3. Review an on-line resource on decision-making with your child.
4. Provide opportunities to make simple decisions at home and at school and then gradually increasing the complexity of what the person is asked to handle (See appendix for examples).
5. Watch video materials that demonstrates what happens after a decision is made. Teach students to think about and predict the consequences of different decisions.
6. Tell stories about important life decisions and ask the young person to decide and explain what they would do.
7. Use a life-skills curriculum in high school to support and prepare individuals for managing their affairs.

Even if the person does eventually need a guardian, these kinds of educational opportunities can help prepare an individual to participate with a guardian in the decision making process.

Financial

Power of Attorney: You could give someone authority to make decisions for you through a Power of Attorney. This is a legal document giving a trusted friend or relative the power to handle your private, business, legal affairs or health care power of attorney, now called a Health Care Directive.

Co-Signers on Bank Accounts: As the owner of the account you can have a trusted individual/relative assist you with paying bills. That trusted individual is not seen or treated as an equal owner of the asset/account.

Representative Payee. Someone can be appointed by the Social Security Administration to manage your payments and make sure they are spent to take care of your physical, employment and health needs.



Direct Deposit and Automatic Bill Payment: Your paycheck can be deposited directly into your bank account. Bills can be set up to be paid automatically online. Gift cards can be used to handle discretionary spending.

Money Management Services: You can ask a provider or family member to teach you about money management and to help you to keep track of bills and income.

A Legal Trust: You or your parents can make a legal arrangement to transfer money or property to a trustee who manages the property for your benefit.

Independent Living

Home health care: You can pay an individual to come to your home and assist you to bathe, clothe, and remind you to take your medication or otherwise care for yourself properly. Contact the nearest county social service agency to learn about options. Or you can accept support from a family member or provider.

Meals on Wheels: Meals on wheels is a non-profit organization in our community that delivers hot and well-balanced meals to individuals who find it difficult to cook for themselves. If you are not eating properly, this may be a good option.

Smart Home Technology: Some agencies can help to install video monitors or sensors that will send a signal or call to get help to you. Other technologies can give you push-button control over your lights, heat, locks, etc. Apps may be available for a table that helps with security, planning, organizing, control and provides "What to do if" information.

Adult Service Providers: Some agencies specialize in supporting adults with developmental disabilities. These agencies offer a number of group living arrangements and can hire staff to meet you at your home or apartment to help with aspects of independent living that are difficult for you.

Health Care:

Health Care Directive: You can create a document that names someone you trust to make health care decisions for you when you are unable to do so. You can think about different situations that might come up and decide what you want to do. Even if you will need some

degree of help with decision-making you can anticipate situations and tell others how you feel to help them make decisions in ways that are consistent with your values.

North Dakota Informed Healthcare Consent Law. Check with a lawyer.

If an alternative to a guardianship is not possible, the court must use the least restrictive form of intervention. Additionally, the guardian must involve you, the ward, in all decision making if you are able to communicate your wishes.

What is Guardianship?



A guardian is a person, appointed by the court, to support another individual with decision-making. A guardian has the legal authority (and the duty) to care for the personal and property interests of another person by making important decisions.

A legal guardian generally has the right to make legal decisions on behalf of the individual. The level of support needed may be:

- Partial
- Full

- Temporary
- Permanent



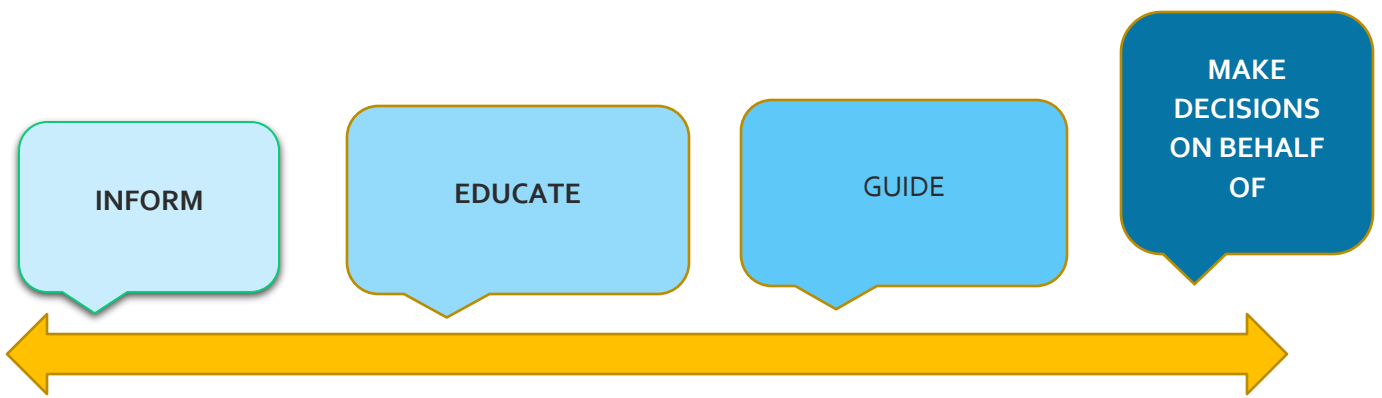
Guardianship sets up a **court-appointed relationship** in which one person (called the guardian) is now allowed to make decisions for another person (called the ward).



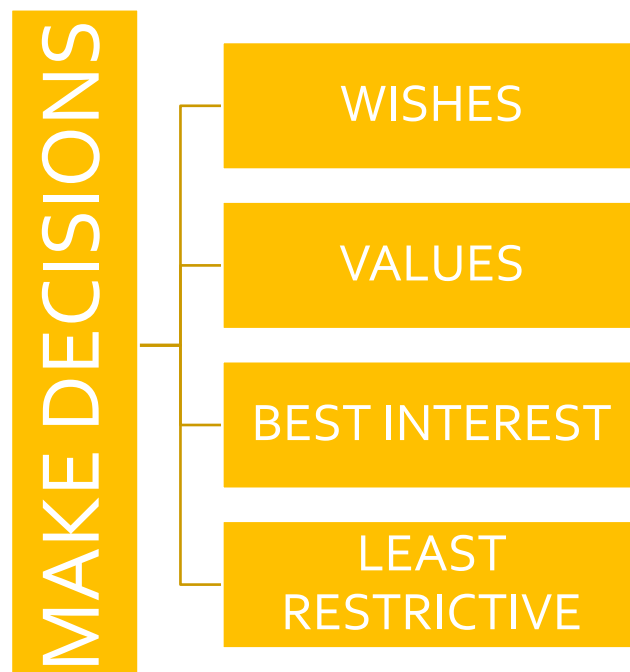
What Does a Guardian Do?

The guardian makes decisions that protect the person’s well-being. This may include decisions about:

- where they live
- if they can vote or marry
- their health care
- getting appropriate food
- education
- safety
- legal status
- social activity



The guardian must consider the wishes of the person, as well as their previously established values when making these decisions. This means the guardian should make decisions that are consistent with what the individual might do if they were fully informed and able to give consent.



The guardian is responsible to assure that the person's affairs are managed so that they live in the most appropriate, least restrictive environment possible, with appropriate food, clothing, shelter, social opportunities, safety and medical care.



When Does Someone Need a Guardian?

Three conditions must be met before a guardian can be appointed:

1. An appropriate court of law has determined
2. After a full review of all relevant facts and circumstances
3. That the individual **needs** a guardian (partial or full) to protect their interests

Guardians are sometimes appointed for people with disabilities but **the disability by itself is not sufficient cause to say a person needs a guardian**. To meet the test of *needing* a guardian, the person must be someone with:

- A physical, intellectual or mental health condition that prevents them from taking care of their own basic affairs (emergency, short term, on-going) and interests;
- Who as a result of the condition are at risk for substantial harm without a guardian to help with decision-making; and
- Who has no person already legally authorized to assume responsibility for them.

It may be necessary for a court to appoint an emergency guardian, who can act on someone's behalf during a crisis (such as immediately following a car accident) until they regain their ability to make informed decisions. The legal term for someone who has a guardian refers to the person as a **ward or a ward of the court**.



Supervision: The court **supervises** the guardian's choices on behalf of the ward. The guardian is required to submit an annual report to the court. In the report, they answer questions about the person's well-being, affairs and decisions they have made on their behalf. The report enables the court to make sure that the person is in fact benefiting from the guardianship. The court also has the right to visit the individual or conduct investigations.

What Kinds of Guardianship Does ND Have? ND has two types of guardianships, a **full guardianship** and a **limited guardianship**.

Under a **full guardianship**, the guardian is given the authority to make all decisions for someone including:

1. Deciding where they live (i.e. home, apartment);
2. Authorizing medical treatment;
3. Handling legal matters;
4. Handling financial matters; and
5. Handling educational and vocational matters.

Before establishing a **full guardianship**, courts in North Dakota are **required** to consider a **limited guardianship**.

Under a **limited guardianship** the guardian is given the authority to make **only those decisions which the individual cannot make**. For instance, a limited guardian may be given the authority to arrange for medical treatment but not decide where someone will live or if they can vote.

Who Can Be A Guardian?

ND law states that any "competent person" or "suitable institution, agency, or non-profit group home" may be appointed guardian of an incapacitated person. These people are given priority (preferred) by the courts. They are listed in order of priority:

1. A person named in a durable power of attorney;
2. A spouse;
3. An adult child;
4. A parent;
5. A relative with whom the person has been residing for the past six months;
6. Volunteer agency;
7. Any appropriate government agency;
8. Someone chosen by whoever has been caring for or paying benefits for you.

How Does Someone Get to Be a Guardian?

A parent or family member can petition the court (fill out a special application) and ask to be appointed as a guardian. Most parents need the services of a lawyer to present their petition to the court and file the appropriate papers. The person with a disability and their closest relatives must be notified in writing about any such petition.

If the person with a disability does not want this to happen, they or another member of the family can challenge the action. Individual rights include:

- The right to a hearing. The right to consult an attorney and have the attorney present during the hearing.
- The right to bring witnesses to testify for you (tell or show the court how you will manage).
- The right to have your own doctor testify. Your attorney can ask questions of the witnesses against you.

Responsibility: Being a guardian is a lot of responsibility. Sometimes parents feel a need for support. The courts have recognized this factor. Families often identify two or more people who are willing to be listed as guardian and who plan to work together to meet the responsibilities. Considerations should include:

- 1) Is this a person who knows the individual well?
- 2) Is this a person with whom the person is easily able to communicate?
- 3) Is this a person that the individual trusts?
- 4) Have the two people agreed on a way to divide up responsibilities?
- 5) Are the people involved able to identify the values and needs of the person who may need a guardian?

Can a Guardianship Be Ended? A guardianship can be ended if:

1. A guardian dies; or
2. Someone requests the court to re-determine the need for a guardianship or
3. Someone requests the court to change the person who has been the guardian.

The court will hold a new hearing and consider new evidence. If the court finds that the person's abilities have changed, the court can limit or terminate the guardianship.



What Process Do I Follow in Obtaining a Guardian: The process is straightforward. You hire a lawyer to complete a formal petition, present it to the court and to advocate your case in a formal hearing. The lawyer helps families to prepare resources that support the need for the guardian and to present those resources at a hearing to determine guardianship. For example, you may decide to secure a letter from a physician or psychologist that indicates why support for decision-making is necessary. You yourself may be asked to testify at the hearing as may the person with a disability.

Once the court receives your petition, the person with a disability and immediate family members are notified in writing. Next the court will arrange for one or more people to independently evaluate the individual's need for a guardian. They are:

Guardian ad litem, Visitor, And Physician or Psychologist: The guardian ad litem is an attorney (lawyer) appointed by the court to represent the best interests of the proposed ward. The guardian ad litem does not represent the family or the individual but answers to the court. The court realizes that a person with a disability can be vulnerable or easily exploited. The guardian ad litem finds out how aware of the possible guardianship the individual may be and whether they are in agreement.

A **visitor** (sometimes called a **friend of the court**) can be a licensed social worker or other human service professional who is appointed by the court to make an impartial inquiry into a situation regarding the need of an appointment of a guardian.

A **physician or psychologist is a licensed person** who is appointed by the court to examine the proposed ward. Each of these appointed persons must make a report to the court regarding the proposed ward. The court may decide to accept a recent report from a personal physician for the individual.