



Key points:

- Look to full guardianship as last resort
- Suggest HIPAA release if parents want stake in child's medical care
- Invite local attorneys to discuss state policy on guardianship

Consider alternatives to guardianship for students with disabilities

In some states, students with disabilities under full guardianship do not have the legal right to drive a car, marry, or vote.

"The only other people whose right to vote is taken away are people who have been convicted," said Debbie Wilkes, educational consultant at [D.R. Wilkes Consulting](#) in Dallas.

Much like other mechanisms of special education, full guardianship is the most restrictive option on a wide spectrum and should be viewed as a last resort, she said. Thus, if parents are considering guardianship for their child, ensure they are aware of other alternatives to avoid taking a step backward.

"The minute [parents] do guardianship, you are really disaffirming the idea of self-determination," Wilkes said. "Some teachers don't realize that guardianship totally conflicts with IEP goals that we put in place to promote self-determination and self-advocacy skills."

Clear up misconceptions surrounding guardianship and share with parents these viable alternatives:

- **Know when guardianship is appropriate:** "I'm not going to say that guardianship should never be done -- I think there are times when [parents] should have guardianship," Wilkes said.

For example, guardianship may be appropriate for a student with an intellectual or developmental disability who has a low IQ and is unable to handle the day-to-day functions of life without assistance, said Tresi Weeks, special needs law attorney at [Weeks Law Firm PLLC](#) in Plano, Texas.

To meet the requirements for full guardianship, the student has to be considered incapacitated and unable to receive or evaluate any information or communicate decisions, Wilkes said. Furthermore, the student must be unable to meet essential requirements for physical health, safety, or self-care without protective intervention by another person. Keep in mind that even if a parent or family member assumes full guardianship, the student should still be helping to make decisions whenever possible, she said.

- **Dispel myths:** "I've found that many transition teams think that every student needs a guardian and that's not the case," Weeks said. The courts first look to see if there are less restrictive alternatives that would accomplish what is necessary to care for the child, she said.

Another common misconception is that guardianship lasts forever. However, Weeks said, a student may decide that he has the mental capacity to handle his own financial and health care decisions and seek to have his guardianship removed.

Finally, if a parent does not have guardianship, she can still access supports for her child through outside agencies, such as a college, Wilkes said. All the agency has to do is sign off the rights to share information, she said.

- **Identify alternatives:** Inform parents of these less restrictive alternatives to full guardianship for students with disabilities:

-- *Partial guardianship:* The parents control some -- but not all -- of their child's legal rights. "I've had several cases where the student is educated about the political system and they retain the right to vote. Some students retain the right to drive or the right to marry," Weeks said.

-- *Power of attorney:* The student gives parents or family members control over his finances (power of financial attorney) or medical decisions (power of medical attorney). The student *must* approve whomever will assume power of attorney -- if he is incapable of doing so, then partial or full guardianship may be appropriate for the student, Wilkes said. Families should also consider [durable power of attorney](#), which means that the power of attorney will stay in effect even if the student becomes incapacitated. Without

durable power of attorney, a person who wishes to make health care or financial decisions for the child will have to be appointed as a guardian through the courts if the child becomes incapacitated.

-- *Power of attorney with HIPAA release:* Many parents want to get guardianship when their child turns 18 because their child's protected health information is no longer available to them under HIPAA. However, instead of guardianship, suggest that parents consider a "power of medical attorney with HIPAA release," Weeks said. The HIPAA release grants medical providers permission to talk with parents so they can participate in the medical care of their child without taking away the child's rights, she said.

-- *Representative payee:* The parent or family member is the student's representative for social security and SSI benefits. When a parent applies for SSI for her child, she can self-identify as a representative payee, which gives her authority to handle the bank account that holds the child's government benefits, Weeks said.

-- *Special needs trust:* If the parents are going to provide money to their child upon their death or the student inherits money from a family member, parents can create a [special needs trust](#) for the student rather than appointing a guardian to handle the money, Weeks said. If the money is in a special needs trust and administered properly, it is not counted against students' eligibility for government benefits, she added.

-- *Supported decision-making:* This involves giving students the opportunity to make as many decisions as possible with the help and support of the parents, Weeks said. "Guardianship does not provide for that at all," she said. Supported decision-making is a growing international trend, but more efforts need to be made to incorporate it into schools and homes, Wilkes said. "I really think that should be done by including students in the development of the IEP and helping them lead their own IEP meeting to whatever level they are able to," she said. "I think it's also important that we help parents recognize that they should be helping the student make decisions at home."

- **Educate school staff:** Have a local attorney come in and speak to transition teams and parents about the guardianship process in their state as well as some of the alternatives to guardianship, Weeks said. Getting educated is the first step, she added. "The main message here is that the knee-jerk reaction should not be guardianship. There should be a thoughtful process of other alternatives that we can do first before we go to guardianship," she said.

See also:

- [Address health care needs in postsecondary transition efforts](#) (April 2)
- [Measure quality of transition services for students with significant disabilities](#) (March 3)
- [Consider supported decision-making as least restrictive alternative to guardianship](#) (June 24, 2014)

For more stories and guidance on this topic, see the [Postsecondary Transition Roundup](#).

Learn more about the pamphlet [Transition to College and Career: Experienced-Based Strategies to Improve Readiness of Students With Disabilities](#).

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