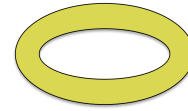


Guardianship: Is it Necessary?

2014 Texas Transition Task Force

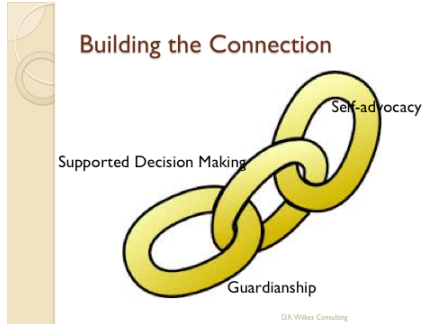
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Self-advocates

- Exercise their rights as citizens by communicating for and representing themselves
- Have a voice in decision-making in all areas of their daily lives and in public policy
- Participate in development of Individual Education Plan
- Set individual goals with plan of action and monitor plan



Defining Guardianship:

- —Incapacity determines guardianship of the person
 - Lacking the mental capacity to make good decisions and manage one's life
 - Varying degrees of capacity determined by the court based on written medical or psychological reports
- —Guardianship of the estate
 - Stocks, bonds, real estate, money in the bank
 - Does not include SSI or other federal benefits

Rights and Powers of Guardianship:

- Operate motor vehicle
- Where to work
- Vote
- Where to live
- Deal with government benefits
- Enlist in military
- Enter contracts
- Handle fund to specific amount of money
- Giving or withholding medical, psychiatric & dental treatment
- File lawsuits
- Defend claims and lawsuits
- Execute a Will or Power of Attorney
- Make gifts of property
- Consent to disclose personal information

Findings to determine Guardianship:

1. Court rules the person fully or partially incapacitated
2. Person's rights based on incapacity are terminated
3. Court determines a guardian should have authority over the person
4. Determines if the person wanting to be appointed guardian is qualified
5. Guardian is appointed
6. Yearly updates providing court information of what has occurred in the preceding year

Process Concerns:

- Less restrictive alternatives were explored
- School staff who provide information are lacking knowledge
- Conflict of guardianship and self-determination

Alternatives:

- Provide stakeholders with more information to make informed choices
- Consider autonomy as central factor (*"The person acts (a) according to his or her own preferences, interests, and/or abilities (b) independently, free from undue external influence or interference."* (Wehmeyer & Field 2007))
- Recognize interdependence to support autonomy
- Protective Payee or Representative
- Power of Attorney

Supported Decision Making:

- Guardianship Reform & Supported Decision Making in Texas
 - Change term “Ward” to “person”
 - Bill of Rights for Wards and Proposed Wards
 - Right to live, work and play in most integrated settings, visit people of their choose
 - Appear before the court to express their preferences or concerns
 - Right to petition the court and due process
 - Supported Decision-Making Agreement
 - Establish and informal alternative where person could choose people to help make and communicate decisions
 - Alternatives to Guardianship
 - Direct court to determine whether alternatives could meet the needs of person
 - Duties of Guardians
 - Calls of guardians to visit an institutionalized person every month and respond to calls, emails or letters from that person
 - Limits of Guardianship with Services and Supports
 - Guardianship and Decisions about Residence
 - Individuals under guardianship should, if possible, be able to make decisions about where to live
- National Guardianship Network Standard
 - Incorporation of supported decision-making components into existing system
 - Guardians engage in person centered planning to *“discover, understand and clearly describe the unique characteristics of the individual with the aim of ensuring that an individual is supported in a web of relationships, is valued for his or her contributions to the community and has control over his or her own life.”*

Person Centered Transition Assessment

- Use skills from Person Centered Thinking to improve transitional outcomes
- Teaches and encourages self-advocacy and decision making
- Assesses the student’s abilities, resources and needs
- Ascertain student and parent goal(s) so that school staff can support/facilitate the identified goals for work, living, playing and self-advocacy

Supported Decision Making

- Needs met by arranging extra help with activities such as paying bills, in-home support, job coach
- –Guidance from family, friends and others
- –The Jenny Hatch Project
- –<http://www.jennyhatchjusticeproject.org>
- –“Supported decision making and providing powers of attorney are the options we should look to first – rather than reflexively choosing guardianship and stripping a person of every civil liberty.”
[American Civil Liberties Union](#)