

**Adult Student Rights, Information on Guardianship, and Alternatives-TEA Model Forms**

**Notice of Transfer of Rights to Students with Disabilities Who Reach Age of Majority Model Form**

**This form is provided to you to inform you of the rights your student will obtain when they turn 18.**

**This information should not be used to take your student's rights away.**

When a student who is eligible for special education in Texas turns age 18, all rights given to his or her parent under federal and state special education law transfer to the student. This transfer of rights means that the student may access his or her education records, make his or her own educational decisions, and sign consent for evaluations and placement, just like any other student the age of 18. While the student's parent(s) will continue to receive notices of the student's admission, review, and dismissal committee (ARDC) meetings, his or her parent(s) may attend the meeting with the student's permission.

In some situations, a student may need additional support in making educational and life decisions. In that case, there are options that a student and his or her parent(s) may explore. The options range from guardianship to Supported Decision Making Agreements., Guardianship can be very restrictive regarding the student's ability to make decisions and will take away all of your child's rights to make their own decisions. Supported-decision making agreements are another option, which is very flexible about allowing the student to make his or her educational and life decisions, while still maintaining your involvement in their educational decisions.

This notice includes information about options and supports that are available to adult students and their parents. If you have additional questions, please speak with the staff at your school or contact the organizations listed in the following resources.

By signing below, you acknowledge that you have received this notice and that you have been informed that on \_\_\_\_\_, parental rights, as described above, transfer to the adult student.  
(Date Student Turns Age 18)

Student's Signature: \_\_\_\_\_

Parent's Signature:  
\_\_\_\_\_

School Representative's  
Signature: \_\_\_\_\_

Current Date:  
\_\_\_\_\_

# Information Regarding Guardianship

A guardian is someone appointed by a court who is responsible for the personal affairs of an incapacitated person, called a ‘ward,’ and making decisions for that ward. Guardianship may be awarded to make only limited decisions, such as educational decisions only, or medical decisions only, or it may be a full guardianship covering all personal affairs. A judge determines whether you have a physical or mental condition that prevents you from making decisions or taking care of yourself. Guardianship limits your freedom of choice, self-determination, decision-making, and independence. Guardianship can be an expensive process and very hard to reverse. A guardian may be appointed at any time once you turn 18. The guardian may be your parent(s) or someone else. Guardians have reporting and training responsibilities especially when there is an estate. Over time, the individual who serves as your guardian may be changed with the approval of the court. If your ability to care for yourself and make decisions later improve, the guardianship might even be ended and removed. Even while you have a guardian, you can keep the right to make some of your own decisions.

A guardian has the following rights, duties, and authorities.

- the right to make educational decisions
- the right to have physical possession of you and to determine where you live;
- the duty to provide care, supervision, and protection, and to provide you with clothing, food, medical care, and shelter;
- the authority to consent to medical, psychiatric, and surgical treatment for you (this does not include
- the authority to commit you to an inpatient psychiatric facility);
- the authority to oversee a financial trust for you; and
- the authority to sign documents necessary or appropriate to facilitate your employment.

When managing your estate, a guardian also has the following authorities:

- to possess and manage your property;
- to collect all debts, rentals, or claims that are due to you;
- to enforce all obligations in favor of you; to bring and defend suits by or against you; and
- to access your digital access.

A judge may also agree to limited guardianship where you make some decisions. Limited guardianship may include financial or medical decision-making, but still allow you to vote, get married and decide where you live. Your guardian would make healthcare and financial decisions for you

# Resources Regarding Guardianship

## **Autism Speaks**

<https://www.autismspeaks.org/family-services/tool-kits/transition-tool-kit/legal-matters>

## **Catholic Charities**

<http://www.sabirthdoulas.org/guardianship/guardianship.html>

## **Child Welfare Information Gateway**

<https://www.childwelfare.gov/topics/permanency/guardianship/>

## **Coalition of Texans with Disabilities**

<https://www.txdisabilities.org/guardianship-reform>

## **Navigate Life Texas**

<https://www.navigatelifetexas.org/en/transition-to-adulthood/legal-guardianship-for-young-adults-withdisabilities>

## **Office of the Texas Governor**

<https://gov.texas.gov/organization/disabilities/guardianship>  
[Governor's Committee on People with Disabilities](#)

## **National Guardianship Association**

<https://www.guardianship.org/what-is-guardianship/>

## **Texas Guardianship Association:**

<http://texasguardianship.org/guardianship-information/faqs-2/>  
<http://texasguardianship.org/guardianship-information/guardianship-basics/guardianship-process-2/>

## **Texas Health and Human Services**

<https://hhs.texas.gov/sites/default/files/documents/laws-regulations/legalinformation/guardianship/pub395-guardianship.pdf>  
<https://hhs.texas.gov/laws-regulations/legal-information/guardianship>  
<https://hhs.texas.gov/laws-regulations/handbooks/guardianship-provider-handbook>

## **Texas Parent to Parent**

<https://www.txp2p.org/services/services-for-parents-pathway-to-adulthood/legal-issues-guardianshipfinancial-planning>

## **Texas Project First**

<http://texasprojectfirst.org/node/207>

[The Arc of Texas https://www.thearc.org/file/Guardianship-White-Paper.pdf](https://www.thearc.org/file/Guardianship-White-Paper.pdf) <https://www.thearcoftexas.org/information-resources/>

[The Legal Framework for the Child-Centered Special Education Process - ESC 18 https://framework.esc18.net/display/Webforms/ESC18-FWSummary.aspx?FID=146&SearchTerm=adult+student](https://framework.esc18.net/display/Webforms/ESC18-FWSummary.aspx?FID=146&SearchTerm=adult+student)

## Information Regarding Alternatives to Guardianship

Because guardianship is restrictive, entities have acted to provide alternatives to guardianship for some adults with disabilities. Some of these alternatives are explained below.

**Durable Power of Attorney:** A durable power of attorney gives someone the ability to act on your behalf. A durable power of attorney limits what your representative may do. For example, durable power of attorney may be in place to allow your parent(s) to make only educational decisions for you. In this case, your parent(s) would not be able to make medical or **financial** decisions for your because the durable power of attorney, in this case, is limited to education. This sort of arrangement gives you, as an adult student, autonomy over the other elements of your life.

**Special Needs Trust:** Another option is a special needs trust. This type of trust allows you, as someone with a disability, to have funds available for certain expenses while protecting your eligibility for public benefits and access to care and services. Always contact an expert in special needs trust and estate planning before you open a trust.

**Representative Payee:** A **representative payee**, or **substitute payee**, is a person who acts as the receiver of United States [Social Security Disability](#) or [Supplemental Security Income](#) for a person who is not fully capable of managing their own benefits, i.e., cannot be their own [payee](#). The representative payee is expected to assist the person with money management, along with providing protection from financial abuse and victimization.

**Achieving a Better Life Experience (ABLE) Act:** This Act amends Section 529 of the Internal Revenue Service Code of 1986 to create tax-advantaged savings accounts for individuals with disabilities. These tax-advantaged savings accounts can be used to cover qualified disability expenses such as, but not limited to, education, housing, and transportation.

There are also formal and informal services and supports that enable individuals to help adult students with disabilities meet their needs for food, clothing, or shelter; to care for their physical or mental health; to manage their financial affairs; and to make personal decisions regarding residence, voting, operating a motor vehicle, and marriage. One or more of these services and supports may be helpful for you.

Resources regarding alternatives to guardianship are on the next page.

# Resources Regarding Alternatives to Guardianship

## [ABLE National Resource Network](#)

<http://ablenrc.org/>

## [Catholic Charities](#)

<http://www.sabirthdoulas.org/guardianship/guardianship.html>

## [Disability Rights of Texas](#)

<https://www.disabilityrightstx.org/resources/supported-decision-making>

[https://www.disabilityrightstx.org/files/Making\\_My\\_Own\\_Choices\\_Final\\_3\\_28\\_2018.pdf](https://www.disabilityrightstx.org/files/Making_My_Own_Choices_Final_3_28_2018.pdf)

## [Master Pooled Trust](#)

<https://www.thearcoftexas.org/trust/>

## [National Resource Center for Supported Decision-Making](#)

<http://supporteddecisionmaking.org/legal-resource/supported-decision-making-model-agreements>

## [Texas Able](#)

<https://www.texasable.org/>

## [Texas Council of Developmental](#)

[Disabilities](http://www.tcdd.texas.gov/resources/guardianship-alternatives/) <http://www.tcdd.texas.gov/resources/guardianship-alternatives/>

<http://www.tcdd.texas.gov/resources/guardianship-alternatives/supported-decision-making/>

## [Texas Guardianship Association](#)

<http://texasguardianship.org/guardianship-information/guardianship-alternatives/>

## [Texas Law Help](#)

<https://texaslawhelp.org/resources/supported-decision-making-forms>

## [Texas Project First](#)

<http://texasprojectfirst.org/node/207>

[The Arc of Texas](https://www.thearc.org/file/Guardianship-White-Paper.pdf) [https://www.thearc.org/file/Guardianship-White-](https://www.thearc.org/file/Guardianship-White-Paper.pdf)

[Paper.pdf](https://www.thearcoftexas.org/alternatives-to-guardianship/) <https://www.thearcoftexas.org/alternatives-to-guardianship/>

There is another alternative to guardianship that adult students with disabilities and their parents may want to be aware of: supported decision-making agreements. Information regarding this alternative is on the next page.

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## [Texas Council of Developmental](#)

[Disabilities](http://www.tcdd.texas.gov/resources/guardianship-alternatives/) <http://www.tcdd.texas.gov/resources/guardianship-alternatives/>

<http://www.tcdd.texas.gov/resources/guardianship-alternatives/supported-decision-making/>

## [Texas Guardianship Association](#)

<http://texasguardianship.org/guardianship-information/guardianship-alternatives/>

## [Texas Law Help](#)

<https://texaslawhelp.org/resources/supported-decision-making-forms>

## [Texas Project First](#)

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There is another alternative to guardianship that adult students with disabilities and their parents may want to be aware of: supported decision-making agreements. Information regarding this alternative is on the next page.

# Information Regarding Supported Decision-Making

[Texas Education Code §29.017](#) requires that school districts provide students with disabilities and their parents with information on, among other things, alternatives to guardianship, including supported decision making agreements under [Chapter 1357 of the Texas Estates Code](#). The school district must provide this information not later than one year before a student turns 18.

To understand what a supported decision-making agreement is and who may enter into such an agreement, the Texas Estates Code provides the following definitions:

- “Adult” is an individual 18 years of age or older or an individual under 18 years of age who has had the disabilities of minority removed.
- “Disability” concerning an individual is a physical or mental impairment that substantially limits one or more major life activities.
- “Supported decision-making” is a process of supporting and accommodating an adult with a disability to enable the adult to make life decisions without impeding his/her self-determination, including.
  - decisions related to where the adult wants to live, services, support, and medical care the adult wants to receive, whom the adult wants to live with, and where the adult wants to work.
- “Supported decision-making agreement” is an agreement between an adult with a disability and a supporter.
- “Supporter” is an adult who has entered into a supported-decision-making agreement with an adult with a disability.

State law also provides additional information about supported decision-making agreements. The following information is also from the Texas Estates Code.

Supported decision-making agreements support and accommodate an individual with a disability to make life decisions. These decisions include where the individual wants to live, the services, supports, and medical care the individuals want to receive, whom the individual wants to live with, and where the individual wants to work, without interfering with the self-determination of the individual with a disability. A supported decision-making agreement allows an adult with a disability to voluntarily, without unnecessary influence or force, enter into a supported decision-making agreement with a supporter under which the adult with a disability approves the supporter to:

- assist in understanding the options, responsibilities, and consequences of the adult’s life decisions, without making those decisions on behalf of the adult with a disability;
- assist in accessing, collecting, and obtaining information that is relevant to a given life decision, including medical, psychological, financial, educational, or

treatment records, from any person; assist in understanding the information described in the above bullet; and

- assist in communicating the adult's decisions to appropriate persons.

Once an adult with a disability and a supporter enter into a supported decision-making agreement, it will remain in effect until either party ends it, or when the terms of the agreement specify that it will end. Also, the agreement will no longer be in effect if the Department of Family and Protective Services finds that the adult with a disability has been abused, neglected, or exploited by the supporter, or the supporter is found criminally liable for abusing, neglecting, or exploiting the adult with a disability.

Regarding access to that adult's personal information, the supporter is limited to assisting the adult with a disability in accessing, collecting, and obtaining relevant information. The supporter must ensure that private information is kept confidential and that it is not inappropriately accessed, used or disclosed.

An adult with a disability cannot be forced into entering into a supported decision-making agreement. Both the adult with a disability and the supporter must sign the agreement voluntarily. They must sign it in the presence of two or more subscribing witnesses who are at least 14 years old, or they may sign it before a notary public.

For a supported decision-making agreement to be valid, it must be in a form substantially similar to the following:

**SUPPORTED DECISION-MAKING AGREEMENT**

Appointment of Supporter I, (insert your name) make this agreement of my own free will.

I agree and designate that:

Name:

Address:

Phone Number:

E-mail Address:

is my supporter. My supporter may help me with making everyday life decisions relating to the following:

Y/N obtaining food, clothing, and shelter

Y/N taking care of my physical health

Y/N managing my financial affairs

My supporter is not allowed to make decisions for me. To help me with my decisions, my supporter may:

- 1. Help me access, collect, or obtain information that is relevant to a decision, including medical, psychological, financial, educational, or treatment records;
- 2. Help me understand my options so I can make an informed decision; or
- 3. Help me communicate my decision to appropriate persons.

Y/N A release allowing my supporter to see protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) is attached.

Y/N A release allowing my supporter to see educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) is attached.

**Effective Date of Supported Decision-Making Agreement**

This supported decision-making agreement is effective immediately and will continue until (insert date) or until the agreement is terminated by my supporter or me or by operation of law.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

**Consent of Supporter**

I, (name of supporter), consent to act as a supporter under this agreement.

\_\_\_\_\_  
(Signature of Supporter)

\_\_\_\_\_  
(Printed Name of Supporter)

Signature

\_\_\_\_\_  
(My Signature)

\_\_\_\_\_  
(My Printed Name)

\_\_\_\_\_  
(Witness 1 Signature)

\_\_\_\_\_  
(Printed Name of Witness 1)

\_\_\_\_\_  
(Witness 2 Signature)

\_\_\_\_\_  
(Printed Name of Witness 2)

This document was acknowledged before me on \_\_\_\_\_ (date)

by \_\_\_\_\_ and \_\_\_\_\_  
(Name of Adult with Disability) (Name of Supporter)

\_\_\_\_\_  
(Signature of Notarial Officer)

\_\_\_\_\_  
(Printed Name of Notarial Officer)

(Seal, if any of notary)

My commission expires: \_\_\_\_\_

**WARNING: PROTECTION FOR THE ADULT WITH DISABILITY**

IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE ADULT WITH A DISABILITY IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES BY CALLING THE ABUSE HOTLINE AT 1-800-252-5400 OR ONLINE AT [WWW.TXABUSEHOTLINE.ORG](http://WWW.TXABUSEHOTLINE.ORG).

# Information Regarding Independent Living

Adult students with disabilities want to live independent lives. You want to set their own life goals and work toward reaching those goals. There are numerous resources available to help adult students live lives of independence. The foundation of many of these resources is the Developmental Disabilities Assistance and Bill of Rights Act (DD Act).

The DD Act speaks to “self-determination activities.” It explains that these are “activities that result in individuals with developmental disabilities, with appropriate assistance . . . to advocate for themselves and others, to develop leadership skills, through training in self-advocacy, to participate in coalitions, to educate policymakers, and to play a role in the development of public policies that affect individuals with developmental disabilities.”

Becoming independent, or self-determined, as an adult begins early. To facilitate independent living, transition requirements for students with disabilities must begin no later than when he or she turns age 14. Additional transition requirements take effect by the time the student turns age 16. These transition requirements are meant to assist students in preparing for success after high school.

Resources regarding independent living follow on the next page.

## Resources Regarding Independent Living

### [Beach Center on Disabilities](http://www.beachcenter.org/beach-self-determination)

<http://www.beachcenter.org/beach-self-determination>

### [D & S Community Services](https://www.dscommunity.com/locations/texas/)

<https://www.dscommunity.com/locations/texas/>

### [Disability Rights Texas](https://www.disabilityrightstx.org/resources/community-living)

<https://www.disabilityrightstx.org/resources/community-living>

[https://www.disabilityrightstx.org/files/Making My Own Choices Final 3 28 2018.pdf](https://www.disabilityrightstx.org/files/Making_My_Own_Choices_Final_3_28_2018.pdf)

f <https://www.disabilityrightstx.org/resources/supported-decision-making>

[I'm Determined](https://www.imdetermined.org/quick-links/transition-guide/transition-guide-independent-living/) <https://www.imdetermined.org/quick-links/transition-guide/transition-guide-independent-living/>

### [Independent Living Research Utilization](#)

### [National Center on Secondary Education and Transition](http://ncset.org/topics/sdmhs/default.asp?topic=30)

<http://ncset.org/topics/sdmhs/default.asp?topic=30>

**National Parent Center on Transition and Employment**

<http://www.pacer.org/transition/learning-center/independent-community-living/selfdetermination.asp>

**Navigate Life Texas** <https://www.navigatelifetexas.org/en/transition-to-adulthood/helping-your-child-build-their-independence>

<https://www.navigatelifetexas.org/en/transition-to-adulthood>

<https://www.navigatelifetexas.org/en/transition-to-adulthood/legal-options-for-age-18-and-beyond>

<https://www.navigatelifetexas.org/en/insurance-financial-help/texas-medicaid-waiver-programs->

[for-children-with-disabilities](#)

**Self-Determination.org** [http://www.selfdetermination.dept.ku.edu/wp-](http://www.selfdetermination.dept.ku.edu/wp-content/uploads/2016/03/SDI-Student-ReportGuide_small.Final_.pdf)

[content/uploads/2016/03/SDI-Student-ReportGuide\\_small.Final\\_.pdf](http://www.selfdetermination.dept.ku.edu/wp-content/uploads/2016/03/SDI-Student-ReportGuide_small.Final_.pdf)

**Texas Council for Developmental Disabilities**

<http://www.tcdd.texas.gov/resources/guardianship-alternatives/supported-decision-making/>

**Texas Health and Human Services** [https://hhs.texas.gov/doing-business-hhs/provider-](https://hhs.texas.gov/doing-business-hhs/provider-portals/long-term-care-providers/local-intellectual-developmental-disability-authority-lidda/local-authorities-directory)

[portals/long-term-care-providers/local-intellectual-developmental-disability-authority-](https://hhs.texas.gov/doing-business-hhs/provider-portals/long-term-care-providers/local-intellectual-developmental-disability-authority-lidda/local-authorities-directory)

[lidda/local-authorities-directory https://hhs.texas.gov/sites/default/files/documents/doing-business-with\\_hhs/providers/resources/ltss-waivers-2-8.pdf](https://hhs.texas.gov/sites/default/files/documents/doing-business-with_hhs/providers/resources/ltss-waivers-2-8.pdf)

**Texas Project First**

<http://www.texasprojectfirst.org/node/234>

**Texas Workforce Commission** [http://www.twc.state.tx.us/jobseekers/vocational-](http://www.twc.state.tx.us/jobseekers/vocational-rehabilitation-services)

[rehabilitation-services](http://www.twc.state.tx.us/jobseekers/vocational-rehabilitation-services)

**The Arc of Texas** <https://www.thearcoftexas.org/information-resources/>

[https://www.thearcoftexas.org/wp-](https://www.thearcoftexas.org/wp-content/uploads/2016/06/Supported_Decision_Making_For_Families_UPDATED_Jan_2016.pdf)

[content/uploads/2016/06/Supported Decision Making For Families UPDATED Jan 2016.pdf](https://www.thearcoftexas.org/wp-content/uploads/2016/06/Supported_Decision_Making_For_Families_UPDATED_Jan_2016.pdf)

**The Developmental Disabilities Assistance and Bill of Rights Act of 2000**

<https://www.acl.gov/about-acl/authorizing-statutes/developmental-disabilities-assistance-and-billrights-act-2000>

**Transition in Texas**

<https://www.transitionintexas.org/Page/97>