



# Five Questions to Ask About Guardianship

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## 1. I make decisions for my child now because I am a parent/guardian. How does this change when my child turns 18?

When your child turns 18, decision-making rights transfer from you to your child and your child is presumed by law to have the ability to make their own decisions. Students over the age of 18 who have IEPs are expected to make their own educational decisions about classes, services, accommodations, and placement. Doctors will increasingly look to your child to make medical decisions, especially when your child transitions from a pediatrician to a general practitioner, and financial institutions will no longer allow you to open or close accounts in your child's name alone. However, your child CAN ask you to go to IEP meetings, CAN sign consent forms to allow doctors to speak with you, and CAN ask you to get on the phone with the bank, etc. Parents used to be able to go quite a long time in this fashion without doing anything to provide legal decision-making support to an adult child, but it is much harder to do so now.

## 2. I am not sure my child can make these kinds of decisions on their own. What can I do to help my child?

One way to help your child make decisions when they turn 18 is to get a **Guardianship**, which is a proceeding in the local Circuit Court. A guardian's primary responsibility is to make decisions for a person, such as educational decisions, medical decisions, and decisions about where to live. Guardianships take away rights, however, so it can be a difficult decision. The two fundamental rights a person under a Guardianship loses are, the right to decide where to live, and the right to make their own medical decisions. Other rights include the right to own a firearm, the right to make contracts, the right to vote, and the right to drive. It is possible for a person to retain the right to drive and the right to vote, though, and rights can be restored. To learn more about guardianships [click here](#).

### 3. I am not completely comfortable with a guardianship for my child. Are there any other options?

If your child has the legal capacity to sign them, a [Power of Attorney for Education](#) would allow you to attend and make decisions during IEP meetings, a [Durable General Power of Attorney](#) would allow you to conduct financial transactions and sign contracts for services for your child, and an [Advance Directive for Healthcare](#) would allow you to help your child make medical decisions. Powers of Attorney and Advance Directives take away none of your child's rights. However, these documents do not allow you to override or change decisions your child makes. Also, your child may revoke them at any time.

### 4. How do I know what would be best for my child?

It is recommended that you contact an attorney that works with children and adult children with disabilities to help you make this decision. Your attorney can determine which options are available to your child and help you weigh the pros and cons of each. For example, in order for your child to legally sign a Power of Attorney or an Advance Directive, they must be able to understand the authority that the document gives you and must be able to communicate their understanding. This is a legal question that likely requires an attorney's opinion. And, if you are thinking about a Guardianship for your child, you will need an attorney to file the petition for you and to make sure all of the statutory requirements are met.

### 5. When should I start?

It's recommended that you start the process when your child turns 17 and a 1/2. Why 17 and a 1/2? A few reasons. First, if you decide that a Guardianship is in your child's best interest, then the earliest a petition can be filed is when they are 17 and a 1/2. Second, if you decide that Powers of Attorney and an Advance Directive are the best way to go, then your child cannot sign them until they turn 18. Until then, your child does not have the legal capacity to sign these documents. And third, your child will develop and mature quite a bit in the years before they turn 18 so there is no reason to start any earlier than 17 and a 1/2.