

# Guardianship Myths

## Don't Most People With Intellectual and Developmental Disabilities (IDD) Need a Guardian?

Though each state creates its own rules for guardianship, there are some general rules:



To become someone's guardian, you must go to court.



A judge will decide whether the person can make their own decisions or needs a guardian.



The judge will decide who the guardian will be and what decisions the guardian will make.

Guardianship can be expensive and time-consuming. It invites the court into the lives of the person with a disability, their family, and caregivers, for as long as the person is under guardianship. Guardianship typically lasts until the person under guardianship dies or has their right to make their own decisions restored. Guardianship can make it harder for a person to learn how to make good decisions on their own.



There are many myths about guardianship that people with IDD and their families should understand.

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### **MYTH #1**

**Parents are automatically the guardian of their adult children with disabilities.**

All guardianships require going to court and getting a court order, no matter what a person's disability is or how it affects them.



### **MYTH #2**

**Individuals who have been appointed guardian over a minor child with a disability remain that person's guardian when the child becomes an adult.**

Guardianship over children and guardianship over adults both require going to court and getting a court order. However, they are different processes with different requirements and different court orders. Guardianship over a minor child ends when the child becomes an adult.



### **MYTH #3**

**Parents need guardianship once their child becomes an adult to access their child's school, medical, legal, and other records.**

An adult with IDD can sign a release of information or other authorization form allowing their parent to access some or all of their educational, medical, and other records. Many schools have a form that students can request. Nearly all medical providers have a form that patients can sign allowing other individuals, including their parents or other support people, to talk to their medical providers and access some or all their medical records.

People with IDD and their families can also talk to a special needs attorney about creating an authorization form that would allow their parent to access other records, as they wish. You can find private and protection and advocacy lawyers in the [Center for Future Planning's Resource Directory](#).



#### **MYTH #4**

**Parents need guardianship once their child becomes an adult to attend IEP and other meetings related to their child's services.**

Parent's rights under the Individuals with Disabilities Education Act (IDEA) transfer to students when they become adults. However, parents **must** still receive all the same notices that the student is now required to receive. Therefore, parents will still receive an invitation to all their child's school meetings and written notice anytime the school wants to change or refuses to change their child's services. These notices ensure parents will know about meetings and can attend meetings, with their child's permission. Parents will also know about any changes to their child's services, so they can talk to their child and support their child in discussing any concerns or taking steps to disagree with the school's actions.

Parents also do not need guardianship to attend medical appointments or other meetings with their adult child. Any person can allow anyone to attend their medical appointments or other meetings, including their parent or other support person.



#### **MYTH #5**

**Guardianship will protect people with IDD from financial, physical, and other abuse.**

Having a guardian does not stop a person from giving others money, engaging in risky behaviors, getting arrested, being injured, or otherwise being taken advantage of. While guardianship allows a guardian to take legal action on behalf of the person **after** financial, physical, or other abuse has occurred, parents and other support people can also support the person with IDD to take their own legal action or have the person sign a power of attorney for the limited purpose of taking legal action.

The best way to prevent people with IDD from being taken advantage of is to educate and regularly communicate with them about safe choices, healthy relationships, and recognizing bad situations.