Preparing for the Future...

Understanding Guardianship and Alternatives

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Introduction

This guide has been created as a resource for families and professionals working with young adults. The discussion about guardianship and understanding alternatives to guardianship is very important and can be confusing. It is important that conversations with youth about their rights, alternatives to guardianship, and guardianship include timely, understandable facts that they can use to participate in making an informed decision about their lives.

During the course a person's life there are many transitions that occur. During those times, decisions will be made that require thoughtful consideration and deliberation. South Dakota Parent Connection and Disability Rights South Dakota support a life-long journey of self-determination and shared decision-making for individuals with disabilities. Throughout the lifespan, parents and professionals who work with young adults with disabilities are encouraged to start a process of teaching self-determination from a young age with the goal that, as the young adult reaches maturity, they can make choices to the fullest extent possible as would be typical for others within their peer group.

South Dakota Parent Connection and Disability Rights South Dakota are frequently contacted by families who have begun addressing transition requirements with the team at their child's school through their child's Individual Education Program (IEP). It is at this time that school districts typically provide information to families about transfer of rights, guardianship, and other alternatives.

Guardianship/conservatorship is a complex process that is important for individuals with disabilities and their families to understand. It is a legal process used to protect individuals who are unable to care for themselves in certain aspects of their lives. Because discussions about guardianship/conservatorship touch individual lives in many areas, South Dakota Parent Connection and Disability Rights South Dakota have summarized helpful information and resources for individuals and their families. This guide has been created to address the questions and concerns parents, students, or teachers may have as they begin discussions about decision-making that may include guardianship, conservatorship, or other options.

Why is it important for me to learn about guardianship/conservatorship?

There are many transitions in children's lives and turning eighteen is one of them. But what does that transition mean for a child with a disability? When a child turns eighteen, they will be considered an adult with all the rights and responsibilities as any adult. Throughout this guide the child will be referred to as 'young adult'.

Some examples of these ***rights parents have*** that will transfer to the young adult include:

- Speaking for themselves, making decisions about their education program including participating in individualized education program (IEP) meetings
- Deciding who is invited to the IEP meeting (e.g., parents, adult service providers, people who know about and understand the young adult's disability)
- Making decisions about what IEP and post-school goals to include in the IEP and Transition Plan
- Giving signed consent for re-evaluation and changes in placement
- Deciding whether to continue education
- Requesting mediation or other ways to resolve disputes

Your child must be invited to the IEP meeting starting at age sixteen, but it's a good idea to start earlier. And many states do!

Turning eighteen comes with ***all responsibilities adults have*** such as:

- Having auto insurance if you drive
- Financially supporting yourself
- Being eligible for jury duty and voting
- Being able to sign an enforceable contract (e.g., rent, purchases, loans)
- Being able to obtain medical treatment, choose a provider and approve or refuse medical treatments and medications, etc.
- Being completely independent of parental control
- Choosing friends and level of intimacy in personal relationship

This is an exciting time in a young adult's life, but for parents who have a child with a disability, this can also be a time of conflicting emotions and information overload. When a young person has a disability that seriously affects decision-making, the challenge of "letting go" is much greater. You may hear the terms, *Guardianship, Power of Attorney, Supported Decision-Making, Conservatorship*, and more. This guide was created in hopes of making this transition go as smoothly as possible.

When will I be notified that rights transfer at age eighteen?

At least one year before a young adult with a disability reaches the age of majority (eighteen years of age), the school must notify parent/guardian(s) and the young adult about transfer of rights.

When a young adult turns eighteen, all rights afforded to parents under the Individuals with Disabilities Education Act (IDEA) transfer to the young adult unless a guardianship is in place. All special education documents and notices are sent to the young adult. The school should ask if the young adult wants notices, documents, and/or invitations to meetings sent to parent(s) or other person of their choice. A Parental Prior Written Notice (PPWN) should be used to document the young adult's request for copies to be sent to their parent(s) or other person of their choice. This is a conversation to have with a young adult prior to turning eighteen.

Before considering guardianship, what other options are available?

Securing guardianship is a legal process. Before considering guardianship/conservatorship, first consider investigating less restrictive ways others can help a young adult. There are many alternatives to consider before deciding if guardianship/conservatorship is appropriate for a young adult. Choosing the one that is best for the young adult and their family will require honest, open conversations.

On a scale of least restrictive to most restrictive options, guardianship is the most restrictive option available. Other less restrictive options include:

- Providing advice and council
- Receiving support at meetings such as IEP, Individual Support Plan (ISP), and Person-Centered Thinking assistance from the person the young adult chooses
- Granting permission allowing a person of choice to have access to records and discuss with others
- Supported Decision-Making

What is supported decision-making?

Using supported decision-making, a person with a disability makes their own decisions by using support networks to help understand issues and choices.

Everyone in life needs help and advice when making decisions at one time or another. The people in a young adult's life can help by offering information and supports needed for making good decisions. This network of people could include friends, siblings, parents, teachers, pastors, staff members, case managers, doctors, and other health professionals. The team can also be just two people – the young adult and their one chosen person. Anyone who is important to the young adult who could help them make good choices and decisions in their life can be utilized. Even if guardianship is decided to be the best choice for the young adult, supported decision-making can and should be used to help the young adult make their own decisions.

South Dakota does not have a formal supported decision-making section in state law, as some states do. That does not mean that individuals cannot utilize this model in South Dakota, or that courts will not recognize the process. It just means that if the individual formally wants an additional person to assist with certain matters such as financial or healthcare decisions and be legally recognized, there must be some pre-planning done, and possibly some legal paperwork, depending on what the individual and their team decides will work best for that young adult.

Supported decision-making can be utilized when considering both the financial and medical needs of the young adult. More information can be found at the National Resource Center for supported decision-making: http://supporteddecisionmaking.org/.

What are some financial alternatives?

Dual Signature Bank Accounts: Young adults can open a joint account that requires two or more signatures for withdrawals. The account would be linked with the word *and*. A bank can help with the process of establishing dual signature checks. This is a helpful way for the young adult and parents to work together regarding financial signatures and monitoring.

Representative Payee: If Social Security determines a young adult, called the *beneficiary*, is incapable of managing their Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) payments, the Social Security Administration (SSA) will appoint someone, called a *representative payee*, to manage the payments on behalf of the young adult. Generally, the SSA will look for family or friends to serve as payees, but if that is not an option, the SSA will look for an organization to serve as payee.

A representative payee should use the SSI or SSDI funds to meet the current and reasonably foreseeable needs of the young adult (such as food, clothing, shelter, utilities, dental and medical care, and personal comfort items). Once the current needs have been met, the young adult has a right to some discretionary spending money. If there is extra money, a representative payee must conserve or invest these funds in the best interests of the young adult.

A representative payee's responsibility and authority does not extend beyond the SSI or SSDI benefits. A representative payee cannot sign legal documents, other than Social Security documents. A representative payee does not have authority over any earned income (wages), pensions, or any income from sources other than SSI or SSDI benefits. For further information about representative payee go to https://www.ssa.gov/payee/.

Power of Attorney (POA): A young adult who has the capacity to understand and sign a contract may knowingly and voluntarily sign a legal document called a Power of Attorney giving authority to another person to act on his or her behalf, except for acts requiring the young adult's personal attention. In this type of arrangement, the young adult is referred to as the *principal* and the person given the authority to act is referred to as an *agent* or *attorney-in-fact*.

A power of attorney can be set up in different ways. It may go into effect immediately, at a future date, or after a future event. Depending on the circumstances, a POA may or may not terminate if a young adult becomes incapacitated. (See section below on Durable Power of Attorney). A young adult may appoint more than one person to act as their agent. A young adult may also designate one or more successor agents to act if the original agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve.

A power of attorney can be very useful and helpful for a young adult with a disability. A young adult could appoint their parents or another person as the young adult's agent under a POA. This would allow the agent to assist with making decisions at IEP meetings, in working with vocational rehabilitation, in signing housing leases, and in working with other agencies. A power of attorney does not give away one's rights. A young adult can and should make all the decisions and sign documents the young adult is capable of doing. The agent should be assisting in making decisions only to the extent needed. A POA provides the flexibility to allow the agent, acting for the young adult, to make decisions and sign documents when needed.

A **Durable Power of Attorney** is a type of Power of Attorney that contains specific language showing that it is the desire of the young adult that the named person or agent has authority to make decisions on behalf of the young adult in the event the young adult becomes unable to make decisions should the young adult become incapacitated.

The agent must act in accordance with the young adults' reasonable expectations, acting in good faith to represent the young adult's best interest, and act only within the scope of authority granted through the POA. The agent should encourage the young adult to participate in decisions and act on their own behalf as much as possible even if the young adult becomes incapacitated at some point. An agent should keep an accurate, ongoing record of any receipt, disbursement, and transaction made on behalf of the young adult. An agent should also cooperate with a person that has authority to make health care decisions for the young adult (if this is a different person).

A power of attorney terminates if

- the person with a disability dies
- the person with a disability becomes incapacitated (if the POA is not durable)
- the person with a disability revokes the Power of Attorney
- the Power of Attorney contains a termination date
- the agent dies, becomes incapacitated, or resigns, or if a guardian or conservator is appointed

Within a POA, a young adult may nominate the person they would recommend for conservator or guardian to the court for consideration should it be determined one is needed. For more information about establishing a Power of Attorney, visit the following links:

Power of Attorney FAQ - United States (lawdepot.com): https://bit.ly/createmydoc

Free South Dakota Power Of Attorney Forms | PDF Templates : https://bit.ly/POAFAQs

What is a healthcare power of attorney?

South Dakota has separate requirements for the creation of a healthcare power of attorney. A healthcare power of attorney must be durable, meaning it must give authority to another person to make healthcare decisions at any time during which the individual lacks capacity. The young adult's signature must be witnessed by two adults or by a notary public. The healthcare power of attorney may authorize the attorney-in-fact to consent to, reject, or to withdraw consent for healthcare, including any care, service, or procedure to maintain, diagnose, or treat a person's physical or mental condition.

The attorney-in-fact or agent may make any healthcare decisions for the young adult which they could make individually if the young adult had the capacity to do so. All such decisions shall be made in accordance with accepted medical standards. Whenever making any health care decisions for the young adult, the attorney-in-fact or agent shall consider the recommendation of the attending physician, the decision that the young adult would have made if they had the capacity to do so, if known, and the decision that would be in the best interest of the young adult.

If a separate healthcare power of attorney and power of attorney for other aspects of the young adult's life are created, the same person could act as agent for both, such as a parent. Similarly, there would not need to be separate documents so long as the document clearly sets out the agent's responsibilities and contains the required signatures for a healthcare power of attorney. Visit with your healthcare provider to discuss other healthcare alternatives.

What are guardianship and conservatorship?

Guardianship and conservatorship are legal processes that gives someone the responsibility of the personal affairs of another person. The person over whom the guardianship or conservatorship is granted is referred to as the *protected person*. Under South Dakota law, a *guardian* has authority over personal and/or healthcare decisions while a *conservator* has authority over the protected person's property and financial affairs. In South Dakota, the appointment of a guardian or conservator does not mean there was a findng of incompetency unless the court specifically makes such a finding.

Are there different types of guardianships and conservatorships?

Yes, there are different types depending on the individual's needs.

- **Full Guardianship** provides the guardian with decision-making authority and responsibility over the protected person's personal affairs, except for financial affairs.
- **Limited Guardianship** gives the guardian decision-making authority and responsibility over only selected areas that the protected person has been determined unable to manage. For example, a limited guardianship may apply only to health care or placement decisions.
- **Temporary Guardianship** could be appointed over a person for a ninety-day period if it is felt that such an appointment is in the person's best interest. A temporary guardian could be appointed in emergency situations.
- **Joint Guardianship** involves more than one person acting as a protected person's guardian at the same time and sharing in the decision-making authority and responsibilities that accompany guardianship.
- **Conservatorship** provides the conservator with decision-making authority and responsibility over the protected person's financial affairs. A conservatorship may also be full, limited, temporary, or joint.

To be legally recognized, only a court can appoint an individual as a guardian or conservator over another person. To assist the reader, guardianship/conservatorship will be referred to from this point in the guide as "guardianship" or "guardian" except when clearly differentiated between the two.

Who could be a guardian?

A family member or other interested individual could be a guardian. While in many instances the same person will act as guardian and conservator, sometimes it may be preferrable to divide the duties. It may be decided that two people will act as joint guardians. It is important to name a successor so that if the appointed guardian is no longer willing or able to be the guardian, there is someone who can assume those responsibilities. If there is no willing and/or capable family member or other interested individual to perform the guardianship role when one is clearly needed, the state's Guardianship Program may be an option.

What is the process for obtaining guardianship?

A family member or other interested person, or even the young adult, may petition to have a guardian appointed. The person filing the petition does not have to be the person seeking to be appointed as guardian, but often is. Asking for assistance from an attorney is recommended. First, **a petition** for the appointment of guardianship outlining the need for the appointment and the type of appointment requested is filed in the appropriate county.

The petitioner will need to provide the court a statement of the young adult's financial resources and must include with the petition a report from a physician, psychologist, or psychiatrist describing the young adult's level of impairment, ability to appear at the hearing, and need for protection. The person proposed to become the guardian (which may be the petitioner) will need to obtain a state and federal criminal background check (per state law requirements) and obtain fingerprinting. A notice with the scheduled court date along with the petition is sent to the young adult alleged to need protection and appropriate family members.

For guardians and conservators appointed after July 1, 2021, an online training through the State Bar of South Dakota must be completed and certificate(s) of completion filed with the court prior to appointment by the court. For more information, please go to the State Bar of South Dakota website: https://bit.ly/3VS1IU8.

The court then conducts a hearing (within sixty days of filing the petition) and determines whether a guardianship is appropriate, and if so, whether a full or limited appointment is most appropriate. A circuit court judge will determine the suitability of the person proposed to become a guardian. Here are some important points to remember:

- The person seeking guardianship and the young adult have the right to and should attend the hearing.
- The young adult also has the right to oppose the petition, have legal representation, demand a jury trial, present evidence, compel attendance of witnesses, and confront and cross-examine all witnesses. The young adult can also appeal the decision within thirty days. The young adult, if contesting the guardianship, has the right to obtain an evaluation by a licensed healthcare worker at the young adult's own expense. The evaluation must be considered by the court.
- A young adult under a guardianship can contact the court with concerns about the guardian or if the young adult believes a guardianship is no longer needed. Guardianship can be revoked, terminated, or modified later through a petition to the court and if deemed appropriate by the court.

What if I live on tribal lands or I am a tribal member?

In creating this guide, South Dakota Parent Connection and Disability Rights South Dakota sought information from a variety of tribal resources. Tribal guardianship rules vary from tribe to tribe and are complex. Not wanting to misrepresent any tribal communities' rules related to guardianship, we recommend referencing your individual tribal court system.

What does guardianship cost?

Because this is a legal process there will be lawyer's fees, which can be expensive. The actual cost will vary based on an attorney's hourly rate and the amount of time needed. There is an Establishment Program in South Dakota to assist families or friends of adults who reside in South Dakota to pay some legal costs associated with establishing a guardianship or conservatorship. To learn more about the Establishment Program and whether or not you are eligible, visit the Department of Human Services site: http://bit.ly/3XSgxa5

What are the responsibilities of a guardian?

A guardian is required to adhere to the duties as assigned and described in the guardianship order. The following are some examples of those duties:

- maintain contact with the young adult to remain or become familiar with the young adult's capabilities and limitations, needs and opportunities
- exercise their decision-making authority only to the extent required by the young adult's limitations
- attend any annual and special meetings regarding the young adult
- provide consent for supportive programs and/or services
- respect the fact that their relationship with the young adult is a confidential one
- encourage the young adult's participation in decision-making to the extent possible (refer to the supported decision-making information in the appendix)
- consider the expressed desires and personal values of the young adult and always act in their best interest
- provide an annual report to the court

The following links contain more information about the duties of a guardian:

South Dakota Legal Self-Help Forms

https://bit.ly/GuardConvForms

https://bit.ly/GuardiansReport

Is there anything a guardian should NOT do?

The guardian does not have the right to assume more authority over a young adult than what is in the guardianship order. A guardian cannot change a young adult's state of residence, marital status, parental rights, or power of attorney without the court's specific written authorization in a court order. The guardian should never become involved in a situation that might be a conflict of interest (the guardian would be acting in the interest of themselves, and not the young adult).

Under what conditions can a guardianship end?

Assuming there is not a co-guardian or named successor, the guardianship ends upon the death, resignation, removal, or termination of the guardianship. If there was not a successor appointed, an assessment for continued guardianship may be appropriate to determine if the vacancy needs to be filled.

If a successor is not in the initial court appointment, any party to the action can ask the court through a petition to appoint a successor or co-guardian. That individual will need to go through the same background checks and training as the original guardian.

However, if a successor is named, appointment does not take place until after the death, resignation, termination, or removal of the guardian. To then be fully recognized as the new guardian, the successor guardian will have to file acceptance of office (a specific court pleading) and provide any required bond with the court within sixty days of the vacancy. There may also need to be a hearing and other pleadings filed.

If a guardianship ends and no suitable person is secured who is willing to serve as guardian, the court can terminate the guardianship. For more information about ending guardianship, please refer to: http://bit.ly/3IrhXmq

How can I predict what level of support a young adult may need once they leave high school?

Schools are required to engage students and parents in transition planning as part of the IEP process beginning at age sixteen. The young adult's IEP team should continue talking about the academic goals and begin to include life skill goals as well. The transition section of the IEP includes goals and activities that the young adult will work on as part of their IEP in the areas of independent living skills, pre-employment, etc. Each year, this transition plan is reviewed as part of the annual IEP review process and progress on these goals and activities is discussed. Students who make substantial progress on their transition plan may require less support moving into adulthood, while students continuing to require substantial support may require ongoing levels of support in individual areas.

What are some tools and resources that could be used to help with the process?

There are tools that can help determine what kind of supports may be needed. Starting these conversations earlier than later will help make the best decision for all involved. Here are descriptions of some tools to decision-making as well as the links where they can be found. Samples can also be found in the appendix of this guide.

"The Identifying Alternatives to Guardianship" tool was designed to help with identifying a person's ability to make decisions and manage key areas of life. It is intended to help with exploring alternatives and less restrictive options to general or full guardianship.

Identifying Alternatives to Guardianship
https://bit.ly/GuardianshipAlternatives

Tool and Resources for Exploring Decision-Making Supports

LifeCourse Nexus
http://bit.ly/3DW4e4I

South Dakota Parent Connection
https://www.sdparent.org/

Disability Rights South Dakota
https://drsdlaw.org/

Transition Services Liaison Project
https://tslp.org/

South Dakota Legislature Legislative Research Council
https://bit.ly/codifiedlaws

Department of Human Services Guardianship Home Page
https://bit.ly/guardianshipdhs

South Dakota Legal Self-Help Guardianship and Conservatorships Forms
https://bit.ly/GuardConvForms

State Bar of South Dakota Guardianship & Conservatorship Home Page
https://bit.ly/3VS1IU8

Dakota Plains Legal Services
https://www.dpls.org/

East River Legal Services
https://erlservices.org/services/

Turning eighteen is yet another life changing transition. We hope this guide provides you with some information to help make the best, informed, least restrictive decision. Remember, start with the least restrictive options and find additional supports as needed. The resources listed above and in the appendix section of this guide are intended to help through this process. These tools explore the areas of life where people make choices, decisions, and decide when and how much support might be needed for making and communicating these decisions.

Glossary and Acronyms

Agent. For purposes of this guide, this is a person given the authority to act on behalf of another individual and is interchangeable with Attorney-In-Fact.

Conservator. A person appointed by the court to handle financial decisions for a person who is incapacitated or debilitated.

Conservatorship. Provides the conservator with decision-making authority and responsibility over the protected person's financial affairs. A conservatorship may be full, limited, temporary, or joint.

Durable Power of Attorney. A type of power of attorney. A power of attorney is a legal document that gives one person (such as a relative, lawyer, or friend) the authority to make legal, medical, or financial decisions for another person. It may go into effect right away, or when that person is no longer able to make decisions for himself or herself. A durable power of attorney remains in effect until the person who grants it dies or cancels it. It does not need to be renewed over time.

Guardian. A family member or other interested party who has been given some responsibility over the personal affairs of another person.

Guardianship. A judicial determination under which a guardian is appointed to provide input, make decisions, and give consent for an adult with a disability (at least eighteen years of age) who cannot act on his or her own behalf. The court order will specify the nature and scope of the guardian's authority. A guardian may be full, limited, or joint.

Healthcare Power of Attorney. A legal document that allows an individual to empower another person to make decisions about their medical care. A healthcare power of attorney refers to both a legal document and a specific person with legal authority.

Individuals with Disabilities Education Act (IDEA). A federal law ensuring services to children with disabilities. The IDEA governs how states and public agencies provide early intervention, special education and related services to individuals with disabilities. Infants and toddlers with disabilities (birth to three) and their families receive services under IDEA Part C. Children and youth (ages three to twenty-one) receive special education and related services under IDEA Part B.

Individualized Education (IEP) Program. The document parents jointly develop at least annually with school personnel that contains services provided to a child with a disability.

Individualized Education Program (IEP) Team. The group of individuals who make decisions regarding a child with a disability's identification, evaluation, placement, and provision of a free appropriate public education and who develop, review, and revise the child's IEPs.

Individualized Support Plan. A plan that identifies needed services and supports (regardless of funding source) to ensure the person's health, safety and independence. The ISP is written by the Case Manager when services begin and is monitored and updated annually or as needed.

Individual Support Plan (ISP) Team. Helps determine supports needed to assist adults with a disability in meeting their goals.

Parent. For the purposes of this guide, this is an individual who brings up and cares for a child or young adult.

Person-Centered Decision-Making. Involves placing the individual at the forefront of their own decisions to ensure they maintain control.

Power of Attorney. The authority to act for another person in specified matters.

Parent Prior Written Notice (PPWN). Written notice that must be sent to parents/guardians five days before a school district's proposed action goes into effect.

Principal. As referred to in this guide, is the young adult who has the capacity to understand and sign a contract and may knowingly and voluntarily give authority to another person to act on the young adult's behalf.

Representative Payee. Receives and is responsible for managing Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits for someone who is not capable of managing their own benefits. The representative payee also assists the individual with money management and protects them from victimization or financial abuse, such as identity theft and other forms of fraud. A representative payee is appointed by the Social Security Administration.

Supported-Decision-Making. This process is collaborative in nature and helps ensure that individuals are supported to make decisions that are right for them.

Young Adult. For the purposes of this guide, a young adult is an individual with a disability who will be turning age eighteen.

Notes

APPENDIX

IDENTIFYING ALTERNATIVES TO GUARDIANSHIP

This tool was designed to help with identifying a person's ability to make decisions and manage key areas of life. It is intended to help with exploring alternatives and less restrictive options to general or full guardianship.

Person in Need of Support: _____

Name of person completing this form: _____

Relationship to person *(circle one):* Self Family Friend Guardian Other: _____

How long have you known the person? _____ Today's Date: _____

Step 1: Discuss each question and decide whether this is something the person is already able to do independently most of the time? If so, check the GREEN column. If the person cannot do this now independently or with the supports already in place, check YELLOW. Do not check the RED column at all yet.

Step 2: When you have completed all the questions, explore how the person can get the support for decision-making for everything checked off in the yellow column. Use the Options & Alternatives to Guardianship Star Tool to look to one or a combination of less restrictive alternatives, including:

- Supported Decision-Making
- Powers of Attorney
- Substitute Health Care Decision-Maker
- Representative Payee
- Other financial options include limited and/or joint bank accounts, direct deposit and automatic bill pay, as well as special needs trusts.

Step 3: Check the red box only if there is not alternative support available that can help meet the person's needs. For items in red, consider whether a limited guardianship (for example, temporary and/ or only medical or financial) would be appropriate. Remember: Legal guardianship is not always the right tool to address a need that may be identified in the red column – e.g., helping a person maintain a job or stop taking certain risks. Once you have a guardianship, it can be hard to remove. Getting a person a general or full guardian should be the last resort for support.

NOTE: The answers to these questions will likely change: we expect decision-making abilities grow and change over time. This form should be revisited as many times as necessary, but at the very least, once a year.

Good to Go
Person Can Make Decisions with Supports in Place

Can person decide or direct this activity independently most of the time?

Or, could they decide or direct this if they had some practice and support?

Person May Need More Supports for Decision-Making

With support, can this person decide or direct this activity most of the time?

Or could the person learn to do this?

Consider Guardianship Options Only if Other Supports Are Not Sufficient

Is the person not able to decide or direct this activity, even with support?

Would a substitute decision-maker be helpful?

This tool was adapted by the DC Department on Disability Services, in partnership with the DC Developmental Disabilities Council, Disability Rights DC/ University Legal Services, Georgetown University Center for Excellence in Developmental Disabilities and Quality Trust for Individuals with Disabilities, from tools developed by University of Missouri-Kansas City Institute for Human Development, University Center for Excellence in Developmental Disabilities (2015). (Last revised 2-2016)

IDENTIFYING ALTERNATIVES TO GUARDIANSHIP

	Good to Go (with Supports in Place Now)	Consider More Supports for Decision-Making	Consider Guardianship
DAILY LIFE & EMPLOYMENT			
Can the person make and communicate choices in regard to employment or retirement activities?			
Can the person look for and find a job or retirement activities? Could they go to RSA or a One Stop? Do they know to ask their network for help?			
Can the person manage their money? Can they pay their bills?			
Can the person manage the public benefits (like SSI or SSDI) he or she is supposed to receive?			
Can the person identify and resist financial exploitation?			
HEALTHY LIVING			
Can the person decide and direct what kinds of support they need or want for activities of daily living?			
Can the person choose who provides those supports?			
Can the person make decisions about where, when, & what to eat?			
Can the person follow a prescribed diet and/or take medicines as directed?			
Does the person understand the health effects of high risk behaviors like substance abuse, smoking, having unprotected sex, and/or overeating?			
Does the person understand the need to maintain personal hygiene and dental care?			
Can the person make and communicate decisions about medical treatment, including understanding the consequences of not accepting treatment?			
Can the person alert others and seek medical help for serious health problems?			
PERSONAL SAFETY & SECURITY			
Does the person avoid common dangers like traffic, sharp objects, hot stove, or poisonous products?			
Can the person recognize when someone is taking advantage of them, hurting them, or abusing them (physical, sexual, emotional) and protect themselves?			
Does the person know who to contact if they are in danger, being exploited, or being treated unfairly?			

IDENTIFYING ALTERNATIVES TO GUARDIANSHIP

	Good to Go (with Supports in Place Now)	Consider More Supports for Decision-Making	Consider Guardianship
SOCIAL & SPIRITUALITY			
Does the person understand that how we talk with and, especially, touch others depends on the type of relationship we have with them – whether they are family, friends, co-workers, support staff, boyfriend/girlfriend, etc.?			
Does the person understand the potential outcomes about decisions to marry and have sexual relationships?			
Does the person understand consent and permission in regards to sexual relationships?			
Can the person access community resources like church or a local recreational center?			
COMMUNITY LIVING			
Does the person understand what is involved with managing a home that is safe, like having regular home maintenance, and safe, secure and sanitary conditions.			
Can the person access community resources to function successfully and safely in community settings? Does the person know how to use transportation? Go to the bank or use an ATM? Go shopping? How and when to call for emergency services?			
CITIZENSHIP & ADVOCACY			
Can the person understand and communicate consent and/or permissions regarding legal documents like a basic contract or power of attorney? Or can the person agree to services like an attorney or advocate?			
Can the person choose someone they want to support them with making their own decisions, if they want that kind of help? Can the person pick someone to make decisions on their behalf, if they cannot do it themselves?			
Does the person understand his or her right to vote?			
Does the person understand how to follow the law and how to not commit crimes?			
Can the person communicate approval to share information with parents, family members, and friends who are not legal guardians?			

Life Trajectory | Supported Decision-Making

Past Experiences

What helps me UNDERSTAND the issues and my options?

What has helped me COMMUNICATE my preferences, choices, and decisions?

What has helped me FOLLOW THROUGH on my choices and decisions?

What were past barriers that made it hard for me to understand, communicate, or follow through with my choices and decisions?

Moving Forward

What do I need now to help me UNDERSTAND the issues and my options?

What do I need now to help me COMMUNICATE my preferences, choices, and decisions?

What do I need to help me FOLLOW THROUGH on my choices and decisions?

What needs to happen to avoid barriers that make it hard for me to understand, communicate, or follow through with my choices and decisions?

Vision for What I Want

What decisions and choices do I want to make myself or with help from my supporters?

My vision for a good life

What I Don't Want

What decisions and choices do I NOT want someone else making for me or without my input or approval?

Not a good life

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Exploring Decision-Making Supports

My Name: _____ Date: _____

Supporter's name (if needed): _____

Relationship to person (check one): Self Family Friend Guardian Other: _____

How long have you known the person? _____

For each question below, mark the level of support you need when making and communicating decisions and choices in the Charting the LifeCourse life domains.	I can decide with no extra support	I need support with my decision	I need someone to decide for me

Daily Life & Employment

Can I decide if or where I want to work?			
Can I look for and find a job? (read ads, apply, use personal contacts)			
Do I plan what my day will look like?			
Do I decide if I want to learn something new and how to best go about that?			
Can I make big decisions about money? (open bank account, make big purchas-			
Do I make everyday purchases? (food, personal items, recreation)			
Do I pay my bills on time? (rent, cell, electric, internet)			
Do I keep a budget so I know how much money I have to spend?			
Am I able to manage the eligibility benefits I receive?			
Do I make sure no one is taking my money or using it for themselves?			

Healthy Living

Do I choose when to go to the doctor or dentist?			
Do I decide/direct what doctors, medical/health clinics, hospitals, specialists or other health care providers I use?			
Can I make health/medical choices for my day-to-day well-being? (check-ups, routine screening, working out, vitamins)			
Can I make medical choices in serious situations? (surgery, big injury)			
Can I make medical choices in an emergency?			
Can I take medications as directed or follow a prescribed diet?			
Do I know the reasons why I take my medication?			
Do I understand the consequences if I refuse medical treatment?			
Can I alert others and seek medical help for serious health problems?			
Do I make choices about birth control or pregnancy?			
Do I make choices about drugs or alcohol?			
Do I understand health consequences associated with choosing high risk behaviors? (substance abuse, overeating, high-risk sexual activities, etc.)			
Do I decide where, when, and what to eat?			
Do I understand the need for personal hygiene and dental care?			

Continue on back

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Exploring Decision-Making Supports

For each question below, mark the level of support you need when making and communicating decisions and choices in the Charting the LifeCourse life domains.	I can decide with no extra support	I need support with my decision	I need someone to decide for me

Social & Spirituality

Do I choose where and when (and if) I want to practice my faith?			
Do I make choices about what to do and who to spend time with?			
Do I decide if I want to date, and choose who I want to date?			
Can I make decisions about marriage? (If I want to marry, and who)			
Can I make choices about sex, and do I understand consent and permission in regard to sexual relationships?			

Safety & Security

Do I make choices that help me avoid common environmental dangers? (traffic, sharp objects, hot stove, poisonous products, etc.)			
Do I make plans in case of emergencies?			
Do I know and understand my rights?			
Do I recognize and get help if I am being treated badly? (physically, emotionally or sexually abused, or neglected)			
Do I know who to contact if I feel like I'm in danger, being exploited, or being treated unfairly? (police, attorney, trusted friend)			

Community Living

Do I decide where I live and who I live with?			
Do I make safe choices around my home? (turning off stove, having fire alarms, locking doors)			
Do I decide about how I keep my home or room clean and livable?			
Do I make choices about going places I travel to often? (work, bank, stores, church, friends' home)			
Do I make choices about going places I don't travel to often? (doctor appointments, special events)			
Do I decide how to get to the places I want or need to go? (walk, ask a friend for a ride, bus, cab, car service)			
Do I decide and direct what kinds of support I need or want and choose who provides those supports?			

Advocacy & Engagement

Do I decide who I want to represent my interests and support me?			
Do I choose whether to vote and who I vote for?			
Do I understand consequences of making decisions that will result in me committing a crime?			
Do I tell people what I want and don't want? (verbally, by sign, device), and tell people how I make choices?			
Do I agree to and sign contracts and other formal agreements, such as powers of attorney?			
Do I decide who I want information shared with? (family, friends etc.)			

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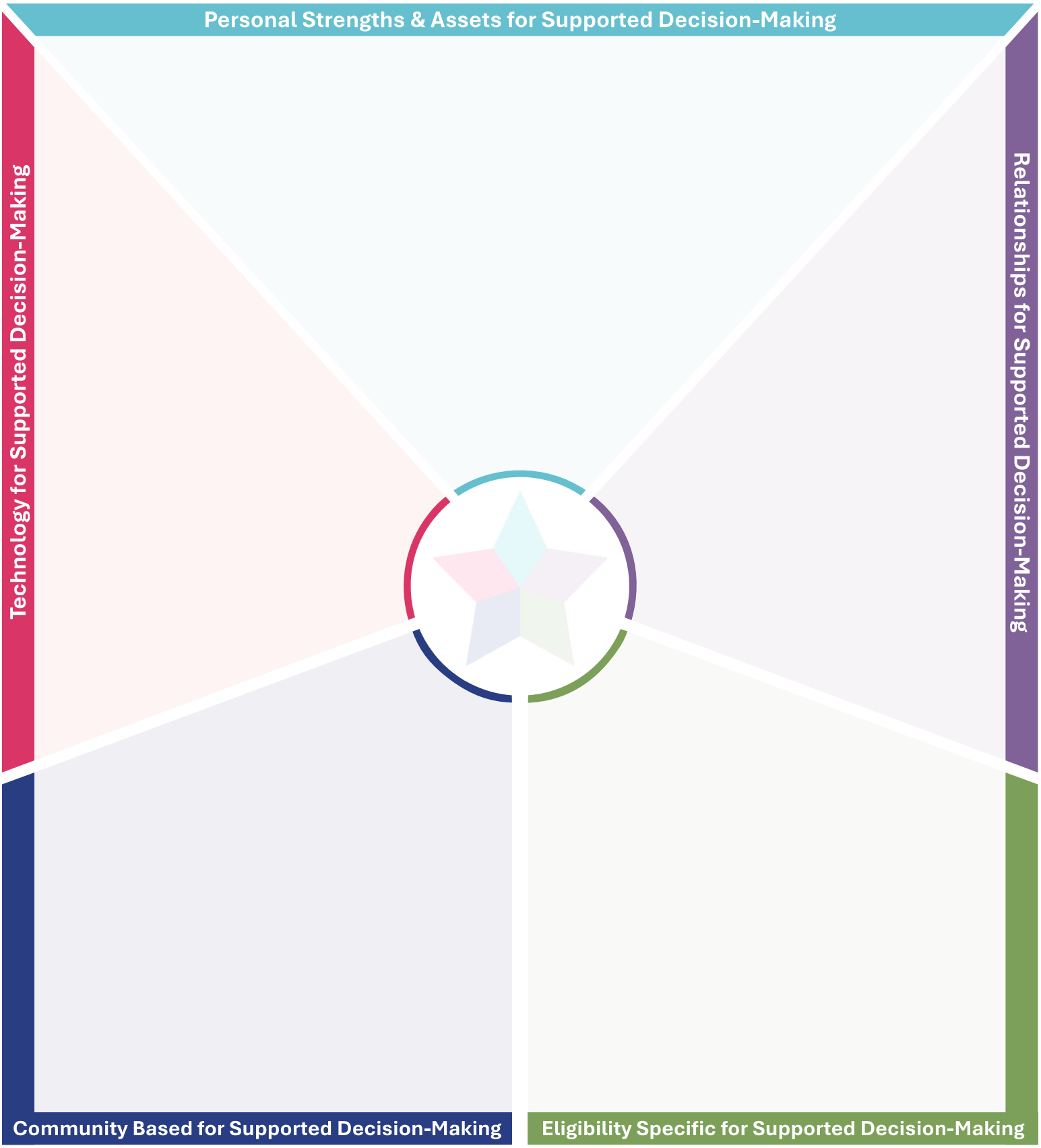
Integrated Supports Star | Supported Decision-Making

My Name is:



Charting the LifeCourse Framework and Tools

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Integrated Supports Star | Supported Decision-Making

Prompts to help you fill out the Integrated Supports Star:
The Integrated Support Star helps anyone map out current services, solve specific problems, and plan next steps. It can be used to explore needs, find gaps, or plan how to get future support.

Personal Strengths & Assets for Supported Decision-Making

- Skills, personal abilities, knowledge or life experiences;
- Strengths, things a person is good at or others like and admire;
- Assets, personal belongings and resources

Technology for Supported Decision-Making

- Personal technology anyone uses;
- Assistive or adaptive technology with day to day tasks;
- Environmental technology designed to help with or adapt surroundings

Community Based for Supported Decision-Making

- Places such as businesses, parks, schools, faith-based communities, health care facilities;
- Groups or membership organizations;
- Local services or public resources everyone uses

Eligibility Specific for Supported Decision-Making

- Needs based services based on age, geography, income level, or employment status;
- Government paid services based on disability or diagnosis, such as special education or Medicaid

Relationships for Supported Decision-Making

- Family and others that love and care about each other;
- Friends that spend time together or have things in common;
- Acquaintances that come into frequent contact but don't know well

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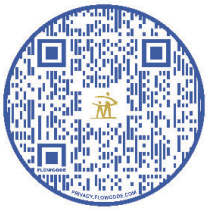
Have questions or need more information?
We're here to help!

South Dakota Parent Connection provides resources for families of children with disabilities and special health care needs; individual assistance and workshops; connects families to programs at the state and national level; and helps parents and schools navigate the special education process, all at no cost to families.

www.sdparent.org |(800) 640-4553

Sioux Falls
3701 W 49th St, Ste 102
Sioux Falls, SD 57106
(605) 361.3171



Disability Rights South Dakota is the non-profit legal services agency dedicated to protecting and advocating for rights and inclusion of South Dakotans with disabilities.

www.drsdlaw.org | (800) 658-4782

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