

Guardianship in Kentucky provided by



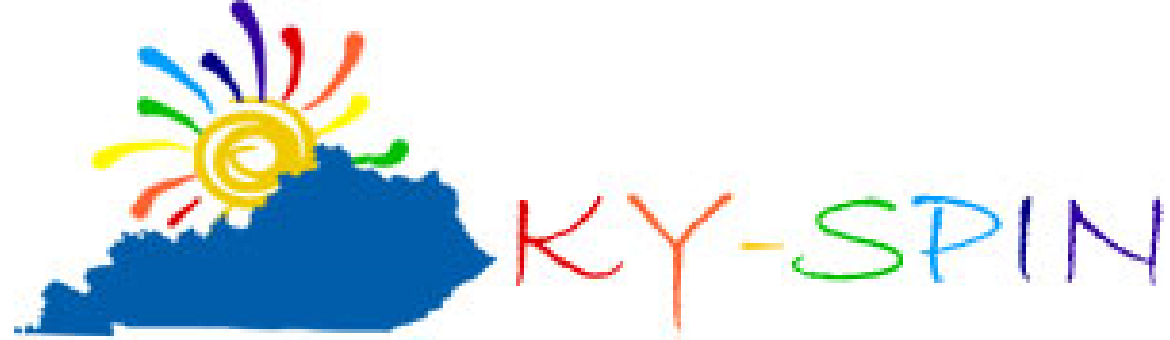
KY-SPIN

EFMP Family
Support

Fort Knox Exceptional Family Member Program (EFMP)

Kentucky Special Parent Involvement Network (KY-SPIN) Parent Training & Information (PTI) Center

Funded by the U.S. Dept. of Education under IDEA since 1988 when Kentucky first received a PTI. KY-SPIN Parent Center provides training, information and support for children and youth with all types of disabilities (birth through 26 years old), their parents, families and professionals.



We do NOT:
Act as Attorneys

We DO:

- ♥ Empower Families to Effectively Advocate for their Children
- ♥ Provide “peer to peer” support to help families access needed information and resources



Today's Agenda

1. Overview of Guardianship in Kentucky/Age of Majority
 1. Different types of Guardianship
 1. Alternatives to Guardianship
 1. How to apply for Guardianship
 1. Questions and Answers



1. Parents of children with disabilities are automatically guardians of their child when they reach the age of majority?

1. What is the age of majority in Kentucky?



Parents of children with disabilities are automatically guardians of their child when they reach the age of majority?

Answer: NO! Once a child reaches the Age of Majority in Kentucky, the parent is no longer their legal guardian and cannot make decisions on their behalf without their child's consent.

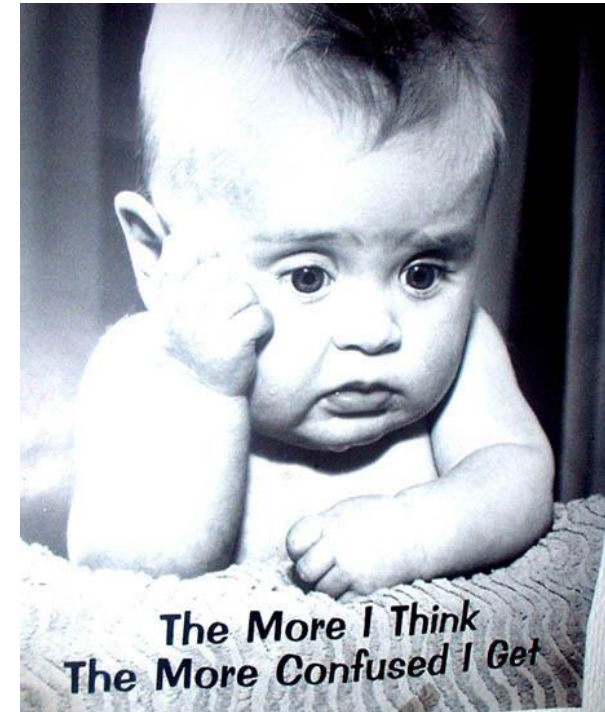


1. What is the Age of Majority in Kentucky?

Answer: KRS 2.015 Age of majority -- Exceptions. Persons of the age of eighteen (18) years are of the age of majority for all purposes in this Commonwealth except for the purchase of alcoholic beverages and for purposes of care and treatment of children with disabilities, for which twenty-one (21) years is the age of majority, all other statutes to the contrary notwithstanding. Effective: July 15, 1994 History: Amended 1994 Ky. Acts ch. 405, sec. 1, effective July 15, 1994.

Age of Majority is something that needs more clarification. Regarding “age of majority” parents are the “natural” guardians.

Parents do not have to obtain guardianship to continue to attend ARC/IEP meetings. Your adult child can invite you to attend. There is a form called the **Determination of Educational Representative Form**, but it is not really used for that purpose.



KDE Determination of Educational Representative Form

| Enter District Name Here | | |
|--|------------------|--------------|
| Determination of Educational Representative | | |
| Complete this form at the time of referral for a student who is suspected of needing special services and at the time of enrollment for a student who is transferring into the district and received special education services from another district. | | |
| Student's Full Name: | SSID: | |
| Date of Birth: | Grade: | |
| School: | | |
| <input type="checkbox"/> 1. The student is represented by natural or adoptive parent(s) or a legal guardian. If guardian, attach official copy of court order appointing guardian. <input type="checkbox"/> 2. The student's parent(s), as applicable, has/have given permission for a relative/friend with whom his/her child is residing to act as a parent in educational decision-making. Attach a copy of the written statement from the Parent(s), as applicable, verifying that the parent(s) are allowing the individual to act as the parent in educational decision-making. <input type="checkbox"/> 3. The student is, or had been, married. Student represents self. Attach official copy of proof of marriage. <input type="checkbox"/> 4. The student is 18 or over and does not have a court-appointed guardian. Student represents self. <input type="checkbox"/> 5. The student is 18 or over, has been declared incompetent by court order, and is represented by a guardian. Attach official copy of court order appointing guardian. <input type="checkbox"/> 6. The student is under 18, but is emancipated by court order. Student represents self. Attach official copy of court order emancipating the student. | | |
| Determination of need for surrogate parent | | |
| <input type="checkbox"/> 7. The student's parents are unknown. Attach written verification. <input type="checkbox"/> 8. The student's parents have not been located after reasonable efforts. Attach copy of written documentation of efforts. <input type="checkbox"/> 9. The rights of the biological or adoptive parents have been terminated and the student is committed to the state. Attach official copy of both court orders. | | |
| If 7, 8, or 9 apply to the student, a surrogate parent must be appointed. Send to DoSE. (707 KAR 1:280) | | |
| Educational Representative | Address | Phone |
| | | |
| ARC Chairperson | Signature | Date |
| | | |

https://education.ky.gov/_layouts/download.aspx?SourceUrl=https://education.ky.gov/specialed/excep/Documents/DeterminationofEducationalRepresentative.doc

Dear school personnel,

I give my consent and permission for _____ to act as my educational representative and attend all ARC/IEP meetings or any other necessary meetings to help me with my educational decisions.

Thank you,

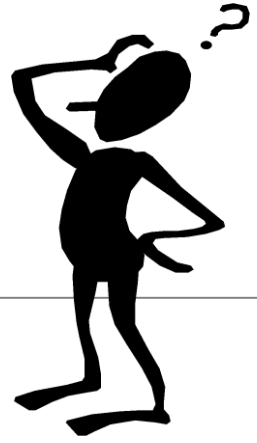
Student's Name

Note: I would recommend having this form notarized and then given to school Always keep a copy for your files.

Questions to Consider

- ? Look at the abilities of your child.
- ? Can they take care of their own personal needs?
- ? Can they manage their finances?
- ? Can they be easily taken advantage of?
- ? Are there alternatives available?





What Skills Should They Know?

- Communication skills
- Self-understanding, including strengths, needs and effects of disability
- Self-advocacy skills (*using my voice ; sticking up for myself; letting people know what I need*)
- Goal setting skills
- Problem solving skills
- Social skills/friendship building
- Knowledge of their rights
- Ability to tell about their disability and request/utilize needed accommodations

While in school, we fight for an inclusive education for our children with disabilities or the **least** restrictive environment. When they turn 18, we immediately feel we need to go to the **most** restrictive environment for their protection and turn to full guardianship. That may not always be the best solution. Look at all the options before making those life changing decisions.

Terms and what they mean.....

Guardianship is a legal tool that grants a parent or other adult the legal authority to make decisions for a legally disabled adult. A Guardian has complete responsibility for the person including all financial affairs.

Limited Guardian doesn't have all the legal powers and duties.

Conservator has responsibility for the person's financial affairs.

Limited Conservator has some responsibility for the person's financial affairs.

What are some alternatives to Guardianship?

- Provide additional skills training development
- Be a co-signer to help with money management
- Open a Kentucky STABLE Account

For more info visit: www.stablekentucky.com/

- Create a Power of Attorney – this gives one person the ability to make certain decisions on behalf of another
- Representative Payee – this allows someone else to manage SSI and other funds for the person (this is decided on by the Social Security Administration, if needed).

What are some alternatives to Guardianship?

- Signing Advance Directives allows adults who can communicate health care decisions to provide directions about what they want when they aren't able to do it anymore
- Supported Decision Making (we are going to talk a little more about this option).



What is Supported Decision Making?

Rights = Choice

Choice = Self Determination

Supported Decision Making is.....

“A recognized alternative to Guardianship through which people with disabilities use friends, family members, and professionals to help them understand the situation and choices they face, so they can make their own decisions with the “need” for a guardian.” – Blanck & Martinis, 2015

supporteddecisionmaking.org

Think about it?

- Taxes
- Medical Care?
- Auto Repairs?
- House Repairs?

**WE ALL USE SUPPORTED
DECISION MAKING!**



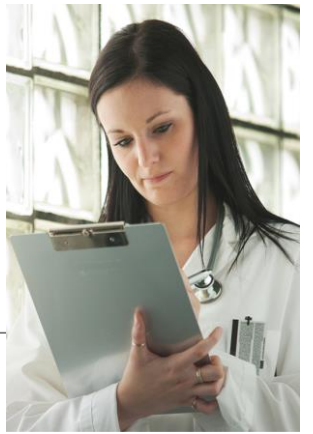
What does the National Guardianship Association Say?

Guardianship should be utilized only when lesser restrictive supports are not available. Alternatives to guardianship, including supported decision-making, should always be identified and considered whenever possible prior to the commencement of guardianship proceedings.

Whenever guardianship is necessary to assist a person, the guardianship must be limited, allow the maximum retention of individual rights, and be customized to the individual needs of the person under guardianship.

guardianship.org/documents/NGA_Policy_Statement_052016.pdf

Guardianship Process



- The Petitioner files a petition in the district where the Respondent resides.
- The Respondent will be represented by an attorney. This can either be a court-appointed attorney or an attorney chosen by the Respondent.
- Evaluations will be completed by a doctor, a psychologist, and a social worker. These persons may be referred to as the Interdisciplinary Team. Reports from the team members must be filed with the court and copies should be provided to the parties.
- A hearing is held to determine whether the Respondent is disabled, partially disabled, or not disabled. This hearing can be held before a judge or if any party requests, a jury. This is also referred to as the “disability trial.” The County Attorney will enter evidence and a member of the interdisciplinary team will attend to give testimony about the interdisciplinary team reports.
- If the Respondent is determined to be disabled or partially disabled, the judge will then appoint an appropriate Guardian and/or Conservator. If it is determined that the Respondent is not disabled, a no one will be appointed.

More info visit Kentucky Guardianship Association (KGA): www.kyguardianship.org/

[KGA Guardianship Manual](#)

Legislative Changes to Guardianship in Kentucky - 2018

Kentucky HB 5 amends its jury trial requirement for guardianship cases. Kentucky is the only state that requires a jury trial for guardianship cases. Now, a bench trial is permissible if: “(a) the respondent is present, counsel for the respondent, and the attorney for the Commonwealth agree to a bench trial; (b) no objection to a bench trial is made by an interested person or entity; and (c) the interdisciplinary evaluation report prepared for the proceeding reflects a unanimous consensus of the persons preparing it that the respondent is disabled or partially disabled, the court has reviewed the report, and the court finds no cause to require a jury trial.”

Signed by Governor Bevin – March 13, 2018

Duties of Guardian/Conservator

- Responsible for the care and custody of the person
- Managing the financial resources of the person
- Reporting to the court
- Making sure rights and personal freedoms aren't restricted
- Within 60 days after being appointed, the conservator must file a list of the person's property with the court
- Must report every 2 years to tell the court how much money the person received and how it is spent

Voting Rights

- People no longer automatically lose the right to vote if a guardian is appointed
- Make sure to remind the judge of their voting rights
- The judge must make a specific finding to remove voting rights
- If a person loses the right to vote, they can petition the court to get it back
- Watch voter registration deadlines and start early



Change is Hard

We all make bad decisions. We can learn from them. Haven't we all? So can an adult with a disability. (Health, Money, Love, Living Situation). We can't always protect. We must let them learn to fly!!!!

“We were not promised ease. The purpose of life is not ease. It is to choose, and to act upon the choice. In that task, we are not measured by outcomes. We are measured only by daring and effect and resolve.” - Stephen R. Donaldson

Resources/Sources

- [Guardianship and Alternatives to Guardianship in KY \(KY P&A\)](#)
- [Guardianship Comparison Chart \(KY P&A\)](#)
- [KGA Guardianship Manual](#)
- [Tool for Exploring Decision Making Supports \(Charting the LifeCourse\)](#)
- [KY-SPIN's Self-Advocacy Tips Infographic](#) or [Video](#)
- [KY-SPIN Self-Determination Infographic](#) or [Video](#)



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If you still have questions...

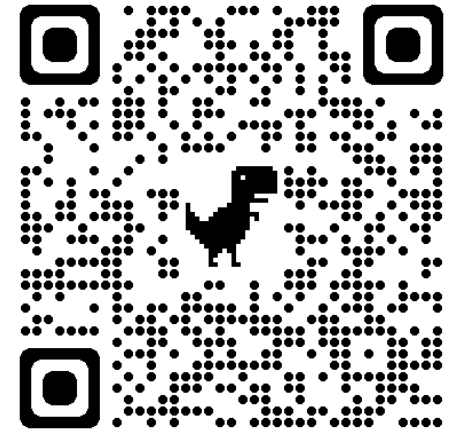
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Please complete our
evaluation!!!



<https://forms.gle/JTESPggZ12RrVjEv5>



Some slides referenced from Kentucky Protection
and Advocacy – Guardianship Resources