



Position Statement on Guardianship

The Idaho Council on Developmental Disabilities supports increasing opportunities for, and protecting the civil rights of, people with developmental disabilities. These rights include the right to live, develop, and fully participate in society; the right to be treated with dignity and respect; the right to live free from mental, physical, or emotional harm; the right to procedural safeguards and informed consent; and the right to be free from discrimination.

The Council believes that:

Guardianship is an outdated attempt at protecting and caring for people with developmental disabilities. If support is planned for and people are allowed to voice their choices in any way they are able to do so, full guardianship is usually not necessary.

Many adults with developmental disabilities are able to make their own decisions and manage their lives. Some adults with Developmental Disabilities benefit from the use of natural supports to assist with decision-making and managing their individual responsibilities.

Supporting individuals, rather than “taking care” of them, changes how we view and interact with people with disabilities. Accommodating an individual’s disability and making sure the supports they want and need to live, work, play and participate in their communities is a different image.

Guardianship is in conflict with the philosophy of self-determination. It intrudes upon individual rights as well as our obligation to honor a person’s preferences.

Guardianship permanently changes the relationship between parent and adult son or daughter. Instead of a two-party relationship, it now becomes a three-party relationship, with the third party being the courts.

Further, the Council understands that:

Because it is not a requirement in Idaho for individuals to be present in court as their rights are removed, it is near automatic for the subjects of guardianship proceedings to be left out of their own hearings.

Attorneys appointed by the court usually have little or no knowledge or background in the social model of disability. Their actions are often coming from wanting to “protect” or “take care of” people with disabilities.

Many school professionals make recommendations to parents to seek guardianship without an understanding of life for people with developmental disabilities beyond high school and without knowledge of the alternatives to guardianship.

Therefore, it is the position of the Idaho Council on Developmental Disabilities that:

1. An individual’s ability to make decisions should be developed and supported to the maximum extent possible, and guardianship should not lessen an individual’s dignity or the right to make choices if there is no undue risk.
2. Individual abilities must be carefully looked at, with a belief that people with disabilities are capable. Individuals may need help from others or accommodations based on their disability but are still able to make informed choices. Most importantly, having a physical or cognitive disability does not indicate the need for a guardian.
3. Appointment of a guardian should only be made to the extent necessary to protect the health and well-being of the individual and not for the convenience of the family, service system, or society. Limited guardianships or power of attorney should always be considered first.
4. Guardianship should be granted only if all other alternatives are insufficient, and only to the extent and for the length of time determined to be necessary. Best practice would include annual

reviews to determine if the guardianship can be terminated or reduced. All guardianships should be as limited as possible.

5. In order for guardianships to be limited and for alternatives to be considered, education of families, transition-age students, and adults with developmental disabilities must be provided over a long-term period.
6. Parents should receive information about alternatives to guardianship before their child turns 16 years old.
7. Students should begin learning about their rights and alternatives to guardianship throughout their transition-age years (ages 14-18). IDEA '04 mandates that students learn of their rights and responsibilities one year before reaching the age of majority. This year is an opportunity for school professionals to assist students and their parents on planning for alternatives to guardianship while also planning for outcomes toward self-determination, meaningful employment, continued education, supports needed for living arrangements outside of their parents' home, etc.
8. Individuals subject to guardianship proceedings should be required to be present at their hearing unless sufficient evidence is presented to the judge prior to the hearing as to why the respondent is unable to be present for their hearing.
9. Information about the process for wards to reexamine their individual guardianship, reverse their guardianship, or review unnecessarily restrictive forms of existing guardianships must be made available in simplified and alternative formats.
10. Potential wards going through the process of guardianship should have legal representation at all stages of the process and must be informed about alternatives to guardianship and the possibility and process to have the guardianship removed.
11. Guardians, conservators, judiciary, attorneys, and guardianship evaluation committee members need a process for continuing education on alternatives to guardianship, and progressive education in the area of disability.

12. Guardians and Conservators should be accountable for their actions, and best practice would include reviewing those actions bi-annually.