

# 5 Myths About Guardianship

**RIPIN**

Though each state creates its own rules for guardianship, there are some general rules that are specific to Rhode Island:

- To become someone's guardian, you must go to a [local probate court](#).
- A [local probate judge](#) will decide whether the person can make their own decisions or needs a guardian.
- The [local probate 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, family, and caregivers for as long as they are 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 Intellectual Developmental Disabilities (IDD) and their families should understand.**



## **Myth 1. Parents are automatically the guardian of their adult children with disabilities.**

All guardianships require going to a RI probate 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 a RI probate court and getting a court order. However, they are separate 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 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.



**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, as mentioned above, most schools have a form that the adult student can sign, which gives the school permission to include the parent in meetings and allows them to be aware of any changes to their child's IEP and services. This is helpful to families in supporting their children in decision making.



**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 additional 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.

**Important Note**

[Chapter 33-15 Limited Guardianship and Guardianship of Adults](#) 33-15-1. Legislative Intent – *"The (Rhode Island) legislature finds that adjudicating a person totally incapacitated and in need of a guardian **deprives that person of all his or her civil and legal rights and that this deprivation may be unnecessary.** The legislature further finds that it is desirable to make available, the least restrictive form of guardianship to assist persons who are only partially incapable of caring for their needs."*

Before considering guardianship for an Individual with a Developmental Disability, we encourage you to learn more about Supported Decision Making (an effective guardianship alternative), by visiting [Disability Rights Rhode Island](#) and [Supported Decision-Making](#).

**Rhode Island Parent Information Network has been the state designated Parent Center in Rhode Island for more than 30 years. For more information about our many programs, please visit our website at [www.ripin.org](http://www.ripin.org) or call us at 401.270.0101**

*Adapted from The Arc Center for Future Planning, [Guardianship Myths](#), 4/23/21*

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