

Less Restrictive Alternatives to Guardianship: Educational Decision-Making Guide

DISCLAIMER: This document is intended solely for informational purposes. Its use is not mandatory, and school districts are encouraged to seek legal counsel to ensure compliance with state and federal law.

Purpose and Overview

This guide helps Oregon families, students, and school teams explore alternatives to guardianship that support students in making their own educational decisions. These alternatives preserve student rights while providing needed support.

Key Message: Guardianship removes a person's legal rights and should only be considered when all other options have been tried and proven insufficient. Most students can make their own decisions with the right support.

Why This Matters: When students turn 18, they become legal adults with the right to make their own educational decisions. This guide helps teams prepare students for this responsibility while ensuring they get the support they need.

Key Principles for Choosing Alternatives

- **Presumption of Competence**
 - **All students are presumed capable of making decisions.**
 - Disability does not equal incapacity.
 - Communication differences do not mean inability to choose.
 - Start by assuming support, not substitution, is needed.
 - Example: A student who takes longer to process information is not incapable. They just need more time.
- **Least Restrictive Support for Decision-Making**
 - **Use only the support actually needed.**
 - Different decisions may need different levels of support.
 - Preserve autonomy wherever student shows capacity.
 - Regularly reassess and reduce restrictions when possible.
 - Example: A student might need help understanding financial aid but can independently choose their classes.
- **Student-Centered Approach**
 - **The student is the expert on their own life.**
 - Honor student preferences for who provides support.
 - Respect all communication methods.
 - Include the student in every discussion about their support needs.
 - Document the student's own goals and dreams.
 - Example: If a student trusts their sibling more than their parent for certain decisions, honor that preference.

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Understanding the Continuum of Decision-Making Support

Decision-making support exists on a continuum from least to most restrictive. The goal is to identify the least restrictive option that provides adequate support while preserving the student's rights and dignity. For example, a student might use informal supports for choosing electives, formal supports for post-graduation planning, and never need more restrictive options for their educational program.

Decision-Making Supports

Presume independence and provide additional support only as needed.

LEAST RESTRICTIVE

1. Independent Decision-Making

What it is: Student makes all decisions independently.

Example: Maria, who has a learning disability, reviews her IEP with her teacher beforehand, then leads her own IEP meeting at age 18.

When to use: When student can understand information and communicate choices.

2. Informal Supported Decision-Making

What it is: Student gets help from trusted people but keeps all legal rights.

Example: Josh brings his sister to IEP meetings to help him understand options and ask questions.

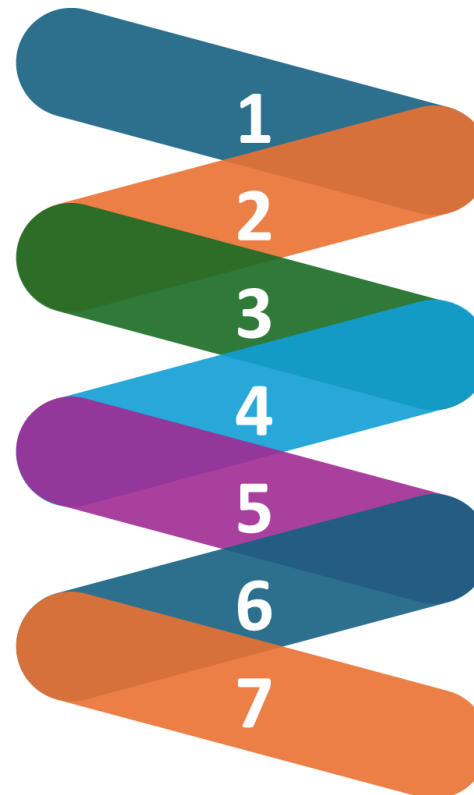
When to use: When student benefits from having a trusted person explain things.

3. Formal Supported Decision-Making

What it is: Written agreement outlining how specific people will help.

Example: Aisha signs an agreement that her aunt will help her understand graduation requirements and college options.

When to use: When informal support isn't enough or consistency is needed.



MOST RESTRICTIVE

4. Surrogate Parent

What it is: Someone appointed to make only educational decisions.

Example: The district appoints Mr. Johnson to help make IEP decisions for Tyler, but Tyler still makes all other life choices.

When to use: When student cannot participate in educational decisions even with support.

5. Limited Power of Attorney

What it is: Student voluntarily gives someone specific decision-making powers.

Example: Emma grants her mom power to make educational decisions for one year while she focuses on mental health treatment.

When to use: When student recognizes temporary need for someone else to decide.

6. Limited Guardianship

What it is: Court gives guardian power over specific life areas only.

Example: Court appoints dad as guardian for medical decisions only; student keeps all other rights.

When to use: When less restrictive options do not provide needed protection.

7. Full Guardianship

What it is: Court removes most or all decision-making rights.

Example: Court appoints full guardian who makes all major life decisions.

When to use: Only when person cannot make any decisions safely, even with maximum support.

Making It Work: A Step-by-Step Approach

Step 1: Start Early (Middle School or Before)

Age 11-13:

- Let student choose electives.
- Practice explaining their disability and needs.
- Include student in IEP meetings for at least part of the time.

Age 14-15:

- Student helps develop IEP goals.
- Practice self-advocacy skills.
- Identify trusted supporters.

Age 16-17:

- Student leads parts of IEP meeting.
- Make decisions with natural consequences (class schedule, activities).
- Develop formal support plan if needed.

Example: “When my daughter was 14, we started having her order her own food at restaurants and explain her accommodations to servers. By 18, she confidently explained her needs to college disability services.”

Step 2: Assess What Support Your Student Really Needs

Ask these questions:

- What decisions can they make independently? (Start here!)
- Where do they need explanation or encouragement?
- What decisions truly need someone else to make?

Remember: A student who needs help understanding a class schedule may still be able to choose their lunch independently. Support should match the specific decision.

Step 3: Try Simple Solutions First

Before jumping to legal options:

- Use visual aids and plain language.
- Allow extra time for decisions.
- Break complex decisions into smaller parts.
- Practice with low-stakes choices.

Example: Before considering a surrogate parent, try having a trusted teacher attend IEP meetings solely as a supporter for the student (not fulfilling another IEP role). This gives the student two intentional supports: their parent and the trusted teacher.

Step 4: Create a Support Plan That Works

Include:

- Who will help with which decisions?
- How they will help (explain options, attend meetings, etc.)?
- When to review and adjust the plan?
- What are the student's goals?

Sample Language for Informal Agreement:

"I, [Student], want [Supporter] to help me by:

- Coming to my IEP meetings.
- Helping me understand my choices.
- Reminding me of questions I wanted to ask.

I can change this anytime I want."

Step 5: Monitor and Celebrate Progress

- Review every 3-6 months.
- Reduce support as student gains skills.
- Document what works.
- Celebrate independence milestones!

Common Concerns and Real Answers

"My child's intellectual disability means they can't make good decisions."

Reality: People with intellectual disabilities make decisions every day. Start with simple choices and build skills. A student who can choose between pizza and hamburger can learn to choose between classes with support.

"What if they make a bad decision?"

Reality: Everyone makes imperfect decisions and learns from them. Supported decision-making includes helping students understand consequences and learn from mistakes safely.

"My child doesn't speak. How can they make decisions?"

Reality: Communication happens many ways: pointing, eye gaze, behavior, assistive technology, or choosing between objects. If your child shows preferences, they're communicating decisions.

"The school says I need guardianship to stay involved with my child's IEP."

Reality: This is incorrect. IDEA recognizes supported decision-making. Schools must work with students and their chosen supporters when supported decision-making enables the student to provide informed consent.

"What happens at age 18 if we do nothing?"

Reality: Your child automatically gains all adult rights at 18, including educational decision-making. Without preparation, this sudden change can be overwhelming. That's why starting early matters.

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Implementation Checklist for School Districts

Policy Level:

- ☐ Develop clear policies recognizing supported decision-making.
- ☐ Create or review procedures for appointing surrogate parents.
- ☐ Establish monitoring systems for less restrictive alternatives.
- ☐ Include supported decision-making in documents provided to parents.

School Level:

- ☐ Integrate decision-making skills into curriculum starting in elementary.
- ☐ Ensure that alternatives to guardianship are included in professional development opportunities.
- ☐ Create IEP meeting environments that support student participation.
- ☐ Develop peer mentorship programs for self-advocacy.

Student Level:

- ☐ Include decision-making goals in IEPs by age 14.
- ☐ Assess individual support needs annually.
- ☐ Document which supports work best for each student.
- ☐ Practice with progressively complex decisions.

Family Level:

- ☐ Provide information about alternatives at transition planning meetings.
- ☐ Connect families with local advocacy organizations.
- ☐ Offer supported decision-making workshops.
- ☐ Share success stories from other families.

Training Requirements:

- ☐ Ensure all special education staff are trained on supported decision-making.
- ☐ Ensure general education staff receive awareness training.
- ☐ Train administrators so they understand legal requirements.
- ☐ Provide annual refresher training for all staff.

Signs More Support May Be Needed

Consider more formal supports if:

- Student cannot understand consequences even with extensive explanation.
- Student's decisions consistently put them in danger.
- Student cannot communicate any preferences.
- Less restrictive options have been tried for 6+ months without progress.

Important: Even in these situations, start with the least restrictive option that provides adequate protection.

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Cultural Considerations

Different cultures view disability and independence differently. Supported decision-making can honor your family's values while respecting your student's growing autonomy. Work with your team to find culturally responsive solutions that work for your family.

Possible Next Steps for Families

Start Small:

- Identify one decision your student can practice making today (what to wear, what to eat, which activity to do first)
- Notice and celebrate when your student makes choices throughout the day
- Ask your student their opinion about everyday decisions

Build Understanding:

- Review this guide with your family
- Talk to your student about their preferences for who helps them
- Learn about your student's communication style and preferences
- Share this guide with extended family and friends who support your student

Connect with Your School Team:

- Bring this guide to your next IEP or school meeting
- Ask about including decision-making goals in the IEP
- Request training on supported decision-making from your district
- Discuss which supports might work best for your student

Explore Resources:

- Join a parent support group in your area
- Learn about self-advocacy programs for your student
- Research person-centered planning options

Document and Plan:

- Start keeping notes about what decisions your student makes well
- Write down which supports work best
- Create a simple visual showing your student's support preferences
- Begin thinking about supporters your student trusts

Practice and Build Skills:

- Use visual aids to help explain choices
- Give your student extra time to make decisions
- Practice with low-stakes decisions before moving to bigger ones
- Role-play upcoming decisions or meetings

Advocate and Share:

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- Share success stories with other families
- Ask your district about their supported decision-making policies
- Connect with Oregon's disability advocacy organizations
- Help other families learn about these options

Remember:

- Every student has the right to make choices
- Support, not substitution, should be the goal
- Start where your student is and build from there
- You don't have to figure this out alone - help is available

Conclusion

Supporting students to make their own decisions is not just about legal compliance. It is about dignity, respect, and preparing them for the fullest life possible. By starting early and using these less restrictive alternatives, we can help all students develop the skills and confidence to direct their own lives.

The path to independence is different for every student. Some will need minimal support, while others will need significant help throughout their lives. What matters is that we presume competence, provide appropriate support, and protect rights whenever possible.

Together, we can ensure every student has the support they need to make their own choices and live their fullest life.