



# DISABILITY LAW COLORADO™

OVERVIEW OF DLC'S SERVICES &  
DISCUSSION OF SUPPORTED DECISION MAKING

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# Disability Law Colorado is...

A private non-profit law firm

Protection & Advocacy System (P&A) for Colorado

- Primarily federally funded
- Also funded from grants and donations
- Part of nation-wide system of P&A's and NDRN

*Mission - To protect and promote the rights of people with disabilities and older people through direct legal representation, advocacy, education, and legislative analysis.*

# The P&A System

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# DLC's Work

Focus on systemic issues

Emphasize self-determination

Provide information, referrals, technical assistance & direct representation

No disability vs. disability issues

Both investigations and advocacy/legal work

Work within our priorities

- Education
- Housing
- Employment
- Public Accommodations
- Voting
- Medicaid Waivers
- Community Integration
- Older Americans Program

# Abuse & Neglect

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## Authority to investigate abuse and neglect of people with disabilities in:

- Regional centers,
- Host homes,
- Group homes,
- Prisons/Jails,
- Schools,
- Private psychiatric hospitals,
- State mental health hospitals,
- Children's residential facilities,
- etc.

## Primary vs. Secondary Investigations

- If another entity is responsible for investigating, we can ensure that entity conducts a thorough investigation by conducting a secondary investigation

# Quick Tip on Abuse and Neglect!

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DLC Authority to Investigate

Abuse-as distinct from neglect: any act which resulted or *may have* resulted in harm

Neglect-any *failure to act* which resulted in or may result in harm

Err on the side of caution

Look at it from all angles

Examples from case work

# Education

**K-12:** Cases involving the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act (ADA), or Section 504 of the Rehabilitation Act

- Typically involves a student with an Individualized Education Program (IEP) or a 504 Plan
- Current Priorities:
  - COVID – equal access to services
  - Discipline
  - Transition Services
  - Charter Schools
  - DYS Monitoring
  - Residential School Monitoring

**Colleges & Universities:** Cases involving the ADA or Section 504 (IDEA does not apply to colleges/universities) – we are not currently taking these cases for individual representation, but we can still provide technical assistance

# Housing

Failure to provide reasonable accommodations, such as:

- Charging a pet fee for a companion animal
- Refusing to change date rent is due to accommodate for person waiting for SSDI check

Failure to provide reasonable modifications, such as:

- Refusing to allow tenant to move to an open unit on the first floor when tenant's disability makes it such that person can no longer readily access their unit on the 2<sup>nd</sup> floor
- Refusing to allow a tenant to install grab bars in the shower

Threatening eviction because of behavior related to a person's disability

We DO NOT provide representation for people who are already in the eviction process – already received 3-day Notice

# Employment

Problems with the Division of Vocational Rehabilitation (DVR)

Refusing to provide reasonable accommodations

Failing to consider a lateral move within the organization as a reasonable accommodation

Failure to hire and termination are not currently in our priorities

We DO NOT take cases involving federal employment

# Public Accommodations

Reasonable Accommodations

Effective Communication

Architectural Access

Applies to privately operated entities who own, lease, lease to, or operate facilities that are open to the general public, such as:

- Places of lodging
- Establishments service food or drinks
- Place of exhibition or entertainment
- Place of public gathering
- Sales or rental establishment
- Service establishment
- Station used for public transportation
- Public display or collection
- Recreation or exercise
- Social service center

Does not apply to religious entities or bona fide private membership clubs

# Voting

## Protect & Advocate

...for people with disabilities to:

- Register to vote
- Cast their vote
- Access their polling place

## Provide

...outreach, information, training and technical assistance to people with disabilities

## Work

...with Election Officials throughout CO to assist them in meeting disability-related requirements under the Help America Vote Act (HAVA), which was passed by Congress in 2002

## Medicaid Waivers

Funding from our Protection and Advocacy for Individuals with Developmental Disabilities (PADD) grant

Assist and represent individuals when their Medicaid Waiver services are being

- denied,
- reduced, or
- terminated

## Community Integration

*Olmstead* – Supreme Court case that held that people with disabilities have a right to live in the least restrictive environment

We assist individuals with disabilities who want to live in a less restrictive setting when they are facing barriers to this transition process

- This most often involves individuals who have been placed in nursing homes

## Older Americans Program

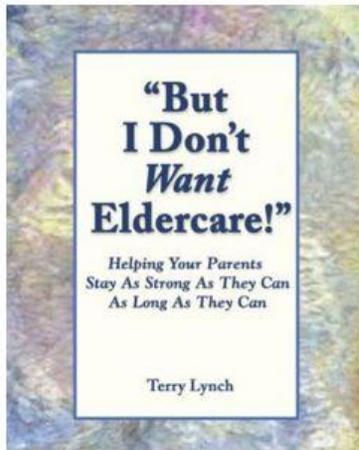
Statewide network of advocates for residents in nursing homes and assisted living facilities

State Long-Term Care Ombudsman provides training, technical assistance, and certification to the Regional Ombudsmen

Legal Assistance Developer provides:

- Training and technical assistance to local legal providers who contract with the Area Agencies on Aging to provide legal assistance to older adults.

# Mighty Rights Press



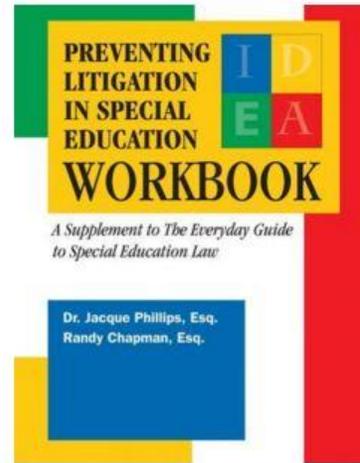
But I Don't Want Elder Care!

\$14.95



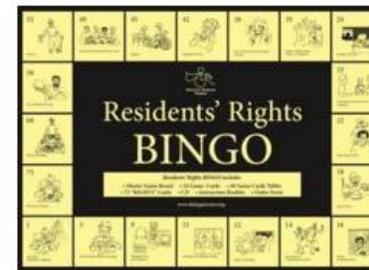
Guía de la Ley de Educación Especial

\$29.95



Preventing Litigation in Special Education Workbook

\$19.95



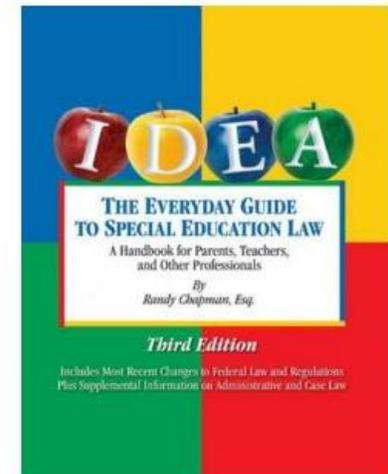
Rights Bingo

\$95.00



Average: 5

(2 votes)



The Everyday Guide to Special Education Law

Available for purchase at: <https://disabilitylawco.org/resources/mighty-rights-press>



# Who gets to decide?

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SUPPORTED DECISION MAKING  
& GUARDIANSHIPS



# Topics to discuss

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Need for support

Supported Decision Making

Guardianship

Standards of practice

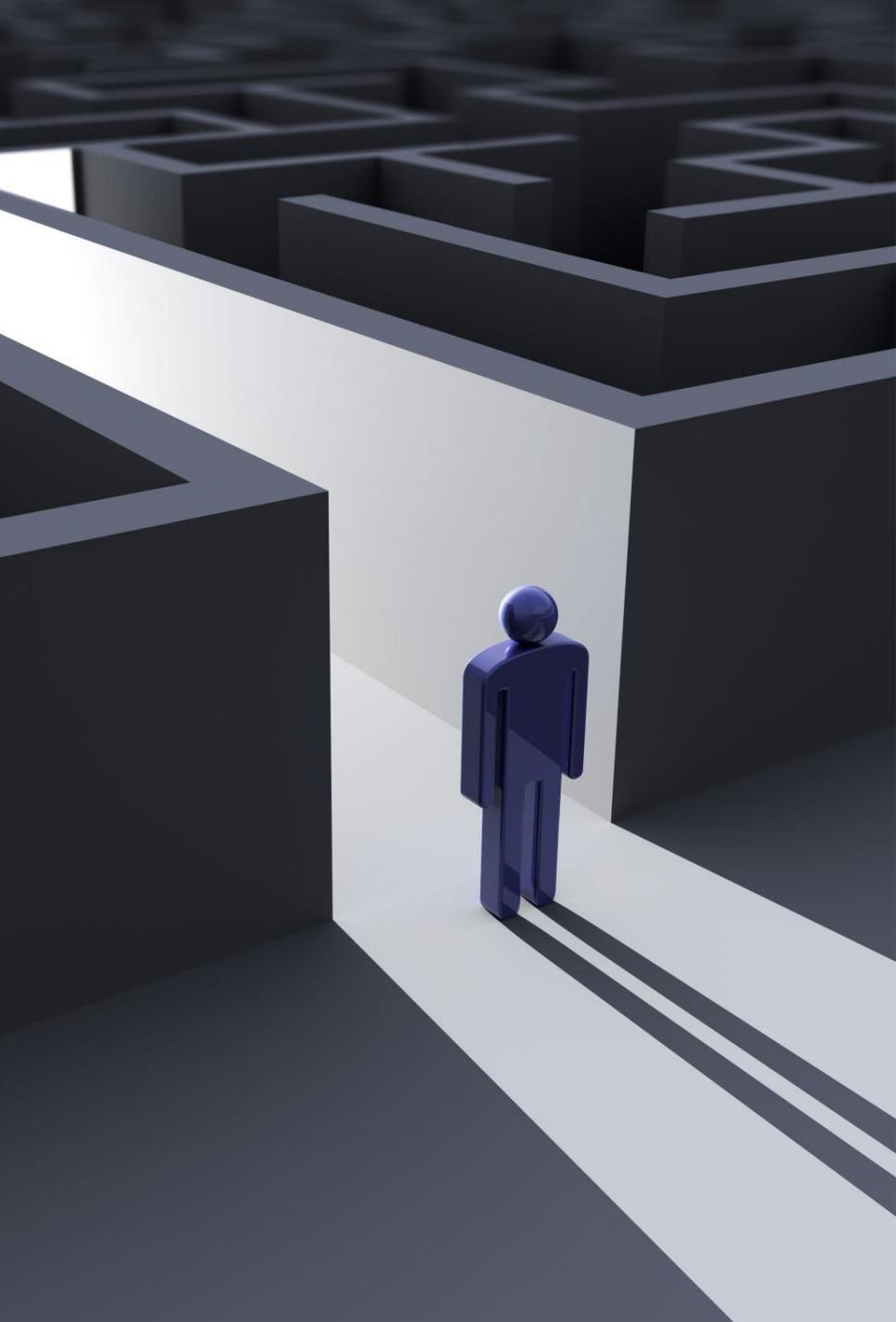
How to raise a concern

# How to know if a person needs help making decisions

Colorado law defines an “Incapacitated Adult” as a person:

*“who is unable to effectively receive or evaluate information or both or make or communicate decisions to such an extent that the individual lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance.”*

Colorado Revised Statutes §15-14-102(5)



Essentially, a  
person who  
needs help  
making decisions

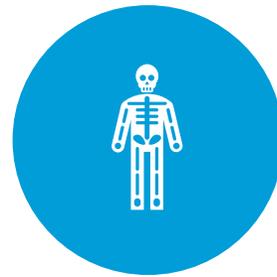
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# Start with the least restrictive alternative

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Overly restrictive measures can limit the development of important independent living skills. (Quality Trust for Individuals with Disabilities et al., 2015).



People under guardianship experience *low self-esteem and feelings of inadequacy*, in contrast with those who exercised self-determination showing greater quality of life and being better able to resist abuse and neglect. (Jameson et al., 2015).

# The Practical Tool from the American Bar Association

- Presume
  - Reason
  - Ask
  - Community
  - Team
  - Identify abilities
  - Challenges
  - Appoint
  - Limit
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THE PRACTICAL  
TOOL FROM THE  
AMERICAN BAR  
ASSOCIATION

**Presume** guardianship is not needed.

**Reason** whether an individual can meet some or all tasks of independent living, like managing money, making health care decisions, finding and retaining employment, fostering healthy relationships, maintaining personal safety, and other tasks.

**Ask** if a triggering concern is caused by temporary or reversible conditions, such as depression, side effects from medication, or hearing/vision loss.

**Community**. Could the needs of the individual be met through existing community resources and supports that are less restrictive?

**Team**. Ask the individual if they already have a network of supporters in place to help with decision-making.

## The Practical tool from the American bar association

**Identify abilities.** Can the individual explain reasoning for his or her decisions, do they remain consistent over time, and does the individual understand the consequences of the decision?

**Challenges.** Are there barriers to supported decision-making, such as the undue influence of a supporter, or excessive cost, time, or risk to public benefits?

**Appoint** a legal supporter or surrogate consistent with the person's values and preferences.

**Limit** any necessary guardianship petition and order. If guardianship is necessary, limit it only to the areas of a person's life where it is needed, such as in financial or health matters. Periodically reassess for modification and restoration of rights.



Not specific to those with disabilities.



Recognizes none of us exist in a vacuum! We all need advice from time to time in order to make decisions.



Can (should) be used in place of more restrictive means, to preserve a person's autonomy and independence, while still providing the person with support from his or her family, friends, and community.

First up - SUPPORTED DECISION MAKING  
what is it?

Methods of support can be informal, like asking a relative for help making financial decisions or formal, like signing a HIPAA release so a parent can help make medical decisions.



The individual decides who will support her and how much support they will offer.



The supporters & individual sign a Supported Decision-Making Agreement - A document that lists the areas in which an individual would like to be supported, along with the extent that this support should occur, and who should provide support.

# More on supported decision making

If there is not a less restrictive alternative, *limited guardianship* can be used in coordination with Supported Decision Making to help foster and develop independence.

Guardianship should be used as a last resort when no other measure sufficiently protects a person with a disability.

If supported decision-making hasn't worked. . .

# Guardianship

## What is a Guardian?

- A person or persons appointed by the court to assist with the personal affairs and make decisions on behalf of a minor or an adult who is incapacitated. A person under a guardianship is called an individual.

## Who can be a Guardian?

- Any person, age 21 or older.
- Colorado law prohibits long-term care providers from serving as a guardian for a person for whom they provide care, unless related by blood, marriage or adoption.
- Professional guardians cannot serve as both a guardian and direct service provider.

# How are guardians appointed?

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A petition is filed in District Court where person lives. Can be filed by any interested person or agency.

Pay the filing fee. Pay for a Court Visitor. Fees may be waived by court.

Medical information must be attached to support the need for guardianship. If no documentation, the court can order an evaluation.

The petition must identify all interested persons.

The Court Visitor must meet with the individual and the petitioner.

Notices of the hearing must be served personally on the individual.

The individual must attend in person, unless excused by the court. Petitioner must attend, along with proposed guardian(s).

Within 30 days of appointment, the guardian must give notice to the individual and all interested parties.

Within 60 days, must file a report which includes a personal care plan.

# Duties & responsibilities of a guardian



Make decisions only as necessitated by the individual's limitations.



*Encourage the individual to participate in decisions, act on his/her own behalf and develop or regain the capacity to manage his/her own personal affairs.*



When making decisions, *consider the expressed desires and personal values* of the individual to the extent known.



Determine where the individual should live.



Arrange for and make decisions about care, medical treatment or other services for the individual.

## Duties & responsibilities cont.



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See that the *basic daily personal needs of the individual are met, including food, clothing and shelter.*



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Financial management for an individual with limited assets if there is no conservator.



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Within 60 days after the appointment, guardians must file a report which includes a personal care plan for the individual.



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*Submit annual reports* to the court regarding the status of the guardianship and condition of the individual.



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Obtain permission from the court to move the individual out of Colorado.

# What are *limited* guardianships?

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The court limits the guardian's authority to specific matters only.

***Colorado law presumes that only limited guardianships are necessary in all cases.***

When requesting unlimited (or plenary) guardianship, the petitioner must explain why a limited guardianship is not appropriate.



# Are guardians responsible for an individual's behavior?

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## A guardian is not:

- Required to provide for an individual out of his/her own funds.
- Required to provide actual physical custody of the individual.
- Liable for an individual's actions and behaviors.
- Liable for harm to an individual caused by a caregiver selected by the guardian.



The right to vote



The right to be free from involuntary commitment in an institution



The right to stay in Colorado



Guardians need specific authority from the court for any of these – above and beyond guardianship

Some RIGHTS individuals retain even with a guardianship

# Can guardianships be modified?

**Yes.** The court can modify:

- Type of guardianship
- Powers granted
  - Upon a showing that the protection or assistance is currently excessive or insufficient or if the individual's capacity to provide support, care, education, health and welfare has changed.

A temporary substitute guardian may be appointed for up to 6 months when guardian is not performing effectively or the individual's welfare requires.

# Can guardianships be terminated? Yes, if:

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The individual dies.

The individual no longer meets the standard for establishing guardianship.

A petition is filed to remove guardian in best interest of the individual or for other good cause. The court will follow same procedure as setting up a guardianship.

The guardian resigns.

# What if I believe I don't need all of the duties assigned to me by the court as guardian?

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## Go to court

- To get your powers modified
- To modify guardianship to a limited guardianship
- To remove guardianship
- To add/substitute supported decision-making



# What if I am concerned that a guardian may not be acting in the best interest of the individual?

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**CALL THE POLICE**



**CONTACT ADULT  
PROTECTIVE SERVICES**



**CONTACT THE COURT**



Remember not to assume  
guardianship is needed

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Meet Amanda!

<https://supporteddecisions.org/stories-of-supported-decision-making/amandas-story/>

Questions?

# Thank you!

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