

What are some useful websites to explore?

<http://montanayouthtransitions.org>

—Parent Information—*After I'm Gone*

<http://opi.mt.gov>

<http://ruralinstitute.umt.edu>

[www.pluk.org](http://www.pluk.org)

The following sources were used in compilation of this leaflet:

*Power of Attorney— A Self Learning Resource MontGuide MT199001HR Revised 3/13 published by the Montana State University Extension Office*

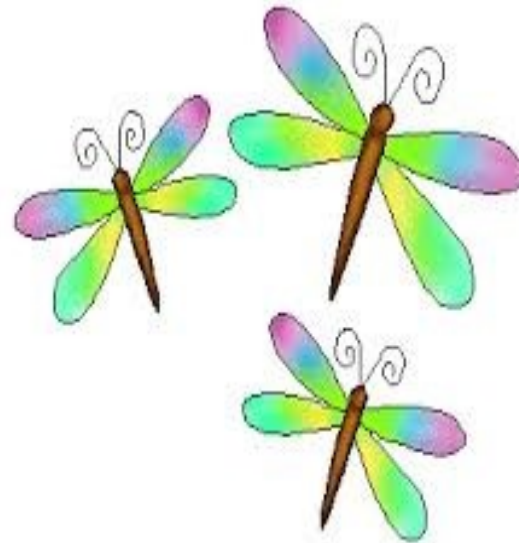
*Guardianship and Conservatorship in the Legal Guide to Long Term Care Planning 2012/13 - Published by the State of Montana, Department of Health and Human Services, Senior and Long Term Care Division. Also available at:*

[www.dphhs.mt.gov/sltc/services/aging/legal/documents/LegalGuide1213/FullLegalGuide1213.pdf](http://www.dphhs.mt.gov/sltc/services/aging/legal/documents/LegalGuide1213/FullLegalGuide1213.pdf)

*Secondary Transition— Transfer of Rights to the Adult Student* <http://opi.mt.org>

*Planning for Your Transition from High School to Adult Life — Ellen Condon and Kim Brown from The Rural Institute University of Montana, Missoula.*

<http://ruralinstitute.umt.edu>



*Produced by the*

*Region II Youth Transitions Committee*

*A multidisciplinary group working to promote successful transitions for students with disabilities as they move from school and education services to adult living.*

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# TURNING 18— Who Makes the Decisions?

*TRANSFER OF RIGHTS TO  
THE ADULT STUDENT*



**Region II Youth Transitions Committee**



### What does Transfer of Rights mean for parents?



Under Montana State law, all rights of parents of students with disabilities under the Individuals with Disabilities Act (I.D.E.A. 2004) transfer to the student on his or her 18th birthday, unless parents have been granted legal guardianship for education of the adult student.

### What does Transfer of Rights mean for students?

At age 18, students with disabilities have the right to make their own decisions about their current and future educational services as well as other legal choices.

### What are the responsibilities of the school?

Beginning at least one year before the student reaches the age of 18, the school will provide notice to both the student and parents of the transfer of rights. The Student's Individual Education Plan (IEP) must include a statement that the student has been informed of the rights that will transfer to him or her at the age of 18. Unless alternative arrangements are made, all of the educational rights previously provided to the parents transfer to the student.

### Can parents continue to retain educational rights after a student reaches the age of 18?

In certain circumstances a court can appoint the student's parent, or another appropriate individual as the legal guardian. Guardianship is the legal process of determining a person's capacity to make his or her decisions about personal affairs. If the guardianship is awarded for educational purposes, the guardian will make educational decisions for the adult student as a member of the IEP team.



### What are some different types of legal arrangements concerning a person with diminished capacity?

**Guardian:** A guardian is a person appointed by the court to handle the affairs of a person who has been judged to be incapacitated (i.e. not capable of handling his or her personal affairs). A guardian has the duty of taking care of someone who is incapacitated.

**Conservator:** A conservator is a person appointed by the court to manage the financial affairs of someone who is incapacitated. (Montana State Extension MontGuide MT199001HR Revised 3/13) Incapacitated means anyone who suffers from mental or physical illness or disability to the extent that he/she lacks sufficient understanding or capacity to make or communicate responsible decisions.

**Power of Attorney:** is a document in which one person gives another person the power to conduct certain actions on his or her behalf as specifically described in the document.

### Who might need a guardian or conservator?

If a young person is unable to plan ahead regarding their personal care, medical care and financial matters and finds it hard to make everyday decisions independently, then it may be necessary to appoint a guardian and/or conservator to make those decisions and handle those matters. For example, a young adult with significant cognitive delay who is unable to live or work independently may benefit from the appointment of a guardian and/or conservator.



### Who might need a Power of Attorney?

Power of Attorney gives certain individuals limited responsibilities to act on the part of another. An example of a situation in which a written Power of Attorney could be useful might be where a young adult with a cognitive or mental health disability may live and work independently, but needs assistance with financial decisions.

### How do parents obtain guardianship?

Guardianship is a legal process and parents may wish to seek the assistance of an attorney who practices family law.

### What documents should I bring to a meeting with a family attorney?

Helpful documents to take to a meeting with a family attorney include:

- The young person's birth certificate
- Current educational records such as the young adult's Individual Education Plan (IEP)
- Medical records
- A letter from a Doctor including any current diagnosis and implications for independent adult living.

### Who can parents contact to discuss questions regarding the Transfer of Rights process?

The Office of Public Instruction, Special Education Division  
Telephone **406-444-5661**

-or-

Parents Let's Unite for Kids (PLUK) **1 800-222-7585**

