

# TRANSFER OF RIGHTS

for students with disabilities

PARENTS & GUARDIANS!

## SD LAW SAYS:

- T**he child will legally become an adult at age 18.
- T**hey will be responsible for making their own decisions – no matter how significant their disability.
- P**arents/**G**uardians will lose their right to make decisions on the child's behalf.



If you believe the child's disability prevents them from making decisions to keep them healthy and safe, you need to plan ahead to ensure a power of attorney, conservatorship, and/or guardianship is in place when the child turns 18.

It is best to allow a young adult to keep as many rights as possible. Carefully consider his/her limitations – and abilities – when making these decisions.

## POWER OF ATTORNEY

If the person has the ability to understand and sign contracts, consider...

Young adult giving authority is called **PRINCIPAL**

Person receiving authority is called **AGENT** or **ATTORNEY-IN-FACT**

## THERE ARE TWO TYPES

### POWER OF ATTORNEY

- Authority given orally or in writing (in writing is best)
- Authorizes agent to act on behalf of principal
- Terminates when principal:
  - Revokes the authority
  - Dies
  - Becomes incapacitated

### DURABLE POWER OF ATTORNEY

- Attorney should help write the document
- Sets out agent's authority to act on principal's behalf, even if principal becomes incapacitated
- Can go into effect now or upon principal's incapacity
  - Terminates when principal:
    - Revokes (prior to incapacity)
    - Dies

Information on Power of Attorney can be found in South Dakota Codified Law (SDCL) Title 59.

MORE ON THE OTHER SIDE...

IN SITUATIONS WHERE THE PERSON DOES NOT HAVE THE CAPACITY TO SIGN CONTRACTS AND NEEDS HELP MAKING DECISIONS, **CONSERVATORSHIP** AND/OR **GUARDIANSHIP** IS AVAILABLE IN SOUTH DAKOTA TO FILL THAT NEED.

# CONSERVATOR

# GUARDIAN

## WHAT

Responsible for only a person's estate and finances

## WHO

- One or more adults; or
- Public agency; or
- Non-profit corporation; or
- Bank or trust company

## HOW

Appointed by a judge during a court hearing

## WHAT

Responsible for one or more areas of a person's affairs (except finances) and helps make decisions

## WHO

- One or more adults; or
- Public agency; or
- Non-profit corporation

## HOW

Appointed by a judge during a court hearing

# HOW IT WORKS

## START

Find attorney with conservatorship and/or guardianship experience.

Expect to pay \$500 or more. South Dakota Establishment Grant can assist with \$500. Apply at [dhs.sd.gov/gdn/EstablishmentPage3.aspx](http://dhs.sd.gov/gdn/EstablishmentPage3.aspx).

Attorney will file petition, along with current evaluations, IEP, and financial statements.

Court hearing will be set within 60 days of filing petition.

Attorney mails letters to the person and family members to notify them of petition for conservatorship and/or guardianship.

Attend court, and the judge determines if the person is in need of a conservator and/or guardian and the type (full, limited, or temporary).

The judge issues order appointing conservator and/or guardian. The person in need of a conservator and/or guardian can appeal the decision within 30 days.

The court order can be modified as needed or completely revoked if the person no longer needs assistance.

## 3 DIFFERENT TYPES OF CONSERVATORS & GUARDIANS

**Full** All areas of a person's life

**Temporary** Need help right away, but only for a short time

**Limited** Only some areas of a person's life

## RESPONSIBILITIES OF A CONSERVATOR & GUARDIAN

- Encourage person to be an active participant in decision-making process and act on their own behalf.
- Consider the desires of the person.
- Be knowledgeable about the person.
- Make decisions to keep the person safe and healthy.
- Act in the person's best interests.

Information on the South Dakota Guardianship and Conservatorship Act can be found in South Dakota Codified Law (SDCL) 29A-5-101 through 29A-5-510.



This document is for informational purposes only. It is not intended as legal advice. Because each situation is unique, it is recommended that you consult with an attorney to discuss all options. The contents and printing were developed under a grant from the U.S. Department of Education (Project # H328M140021). However, the contents do not necessarily represent the policies of the Department of Education, and you should not assume endorsement by the Federal Government.