



Understanding Guardianships, Legal Custody, and Physical Custody for School Professionals in Wisconsin

With Appendices: Appendix A - Delegation of Parental Powers - [Wis. Stat. sec. 48.979](#)

Appendix B - Guardianship Process

Purpose

While parents usually retain legal authority over important decisions regarding their children, there are sometimes exceptions made by the court. This document outlines basic information about guardianships, legal custody, and physical custody in Wisconsin to assist school professionals in supporting students and families. After definitions are described, some common questions and answers related to educational decision-making authority are discussed. Appendices include a basic overview of the processes related to the delegation of parental powers and guardianship.

This document is intended as a guide for local educational agencies and community partners. This document is intended solely to provide general information, and nothing written here shall be understood to constitute legal advice or a legal service. For specific legal advice, an attorney should be consulted.

Additional considerations related to this topic can be found in the following DPI Resources:

- [Educational Services Frequently Asked Questions \(FAQ\)](#)
- [Frequently Asked Questions \(FAQ\) Related to the Definitions, Roles, and Responsibilities of Parents, Persons Acting as the Parent of a Child, and Surrogate Parents](#)
- [Parent Consent Requirements When Parents Who Share Legal Custody Do Not Agree Bulletin](#)
- [Student Records and Confidentiality](#)
- [DPI's Guide to Adult Services](#)
- [DPI's Information Update Bulletin 19.01 Supported Decision-Making Agreements.](#)
- [Administration of Medications in WI Schools](#)

Types of Minor Guardianships ([Wis. Stat. § 48.9795](#))

Guardianship is a legal relationship in which one party is empowered to act for the benefit of another (Kids Matter Inc. n.d.). A guardian is given the legal authority to make important decisions about the child's life, such as their education, medical needs, shelter, and more. Guardianship transfers the decision-making authority and legal responsibility of the child to the guardian; however, parents' rights are not terminated. Parents may still make decisions regarding any rights not given to the guardian. The Dispositional Order will specify which rights and duties are transferred to the guardian. Guardianship is different from adoption where parents' rights are terminated. *Note:* Placement of a child with a foster parent, or other out-of-home care provider, does not mean that the foster parent has been granted guardianship of the child.

Full Guardianships

- This type of guardianship transfers all the duties and authority specified in 48.023, Wis. Stats., to the child's guardian, absent any order that may limit the guardian's authority, such as a visitation order for the child.
- There is no requirement to set an expiration date for a full guardianship; so, unless a lesser period of time is provided, it will continue until the child's 18th birthday unless terminated earlier.



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Limited Guardianships

- This type of guardianship transfers specific, limited duties and decision-making authority to the guardian and may allow the child's parent to maintain certain duties and/or decision-making authority for the child.
- Under limited guardianships, the court must specify the duties of the guardian and parent(s) and must identify an expiration date of the guardianship, which may be extended.

Temporary Guardianships

- This type of guardianship allows for the transfer of specific, limited duties and decision-making authority when the child's particular situation, including the inability of the child's parent to provide for the care, custody, and control of the child for a temporary period of time, requires the appointment of a temporary guardian.
- Temporary guardianship can be ordered for up to 180 days, with the option to extend the temporary guardianship for an additional 180 days with good cause.
- The court must limit the authority to those acts reasonably related to the need for guardianship.

Emergency Guardianships

- This type of guardianship may be put into effect when the child's welfare requires the immediate appointment of an emergency guardian, and the court must limit their authority to those acts reasonably related to the reasons for the appointment.
- This type of guardianship can be ordered for up to 60 days and cannot be extended and provides limited decision-making authority to the guardian.

Child Welfare Guardianships

Guardianships Specific to Child in Need of Protection or Services (CHIPS)/Juvenile in Need of Protection or Services (JIPS) Proceedings ([Wis. Stat. § 48.977](#))

- Guardianships specific to CHIPS/JIPS proceedings require that the child has been adjudged to be in need of protection or services under specified grounds in order to petition for the appointment of a guardian. Under this section, the appointed person might have full guardianship, or the court can order that the guardianship be limited to only certain duties and decision-making authority. *Note:* Placement of a child in out-of-home care does not mean that the foster parent or out-of-home care provider has guardianship of the child.
- Subsidized guardianship payments are available for this type of guardianship.

Post-Termination of Parental Rights Guardianship ([Wis. Stat. § 48.427](#))

- Guardianship could be transferred to a county department, the state, a child welfare agency, or under some circumstances, an individual. For public adoptions, guardianship is generally transferred to the state (the Wisconsin Department of Children and Families) at the time of termination of parental rights (TPR) before an adoption is finalized with an individual.



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Adult Guardianships under Chapter 54

- An adult who is unable to make personal or financial decisions may need a guardian. Guardianship laws in Chapter 54 explain that a person needing assistance with decision-making should have this done with methods that are "least restrictive" to personal liberty and their ability to exercise their rights. Parents and others do not automatically become guardians of an individual with a disability when they turn age 18. In order to have a legally authorized decision-maker for another person, the court must be petitioned for a guardian to be appointed. Guardianship under Chapter 54 can be complex, and the court has the ability to limit guardianship to very specific decision-making authority.
- For more information about Adult Guardianships, please see [DPI's Guide to Adult Services](#).
- **Supported decision-making agreements** - Guardianship is only one option for adult students with a functional impairment. Supported decision-making agreements are an alternative to guardianship, and provide an additional option for individuals and families seeking assistance with life decisions. Supported decision-making agreements permit an adult student, at least 18 years of age, with a functional impairment to enter into a written agreement with a supporter(s) of their choosing to help them gather information, understand their options, and communicate their decisions to others. Local education agencies (LEAs) are required to provide students and their parents with information on supported decision-making under Chapter 52 of the Wisconsin Statutes, other alternatives to guardianship, and strategies to remain engaged in the student's secondary education.
- For more information about Supported Decision-Making Agreements, please see DPI's [Information Update Bulletin 19.01 Supported Decision-Making Agreements](#), and [Supported Decision-Making: Because Choices Matter](#).

The Distinction between Legal Custody and Physical Custody

- "Legal custody" means a legal status created by the order of a court, which confers the right and duty to protect, train and discipline the child, and to provide food, shelter, legal services, education, and ordinary medical and dental care, subject to the rights, duties, and responsibilities of the guardian of the child and subject to any residual parental rights and responsibilities and the provisions of any court order. [Wis. Stat. § 48.02\(12\)](#).
- "Physical custody" means actual custody of the person in the absence of a court order granting legal custody to the physical custodian. For a child in out-of-home care, legal custody is generally held with the parent but could also be with the child welfare agency or another individual. Physical custody is held with the person with whom the child is living (e.g., the out-of-home care provider), [Wis. Stat. § 48.02\(14\)](#).
- "Physical placement" means the condition under which a party has the right to have a child physically placed with that party and has the right and responsibility to make, during that



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placement, routine daily decisions regarding the child's care, consistent with major decisions made by a person having legal custody." [Wis. Stat. § 767.001\(5\)](#).

Questions and Answers Relating to the Educational Decision-Making Authority of Parents, Guardians, and Custodians

1) What rights are afforded to parents under the 14th Amendment to the United States Constitution?

Under the due process clause of the 14th Amendment, parents have a fundamental right to make decisions concerning the care, custody, and control of their children, including the right to direct the upbringing and education of children under their control. However, that right is neither absolute nor unqualified. Parents do not have a fundamental right to direct how a public school teaches their child or to dictate the curriculum at the public school to which they have chosen to send their child. (*Larson v. Burmaster*, 2006 WI App 142, 295 Wis. 2d 333, 720 N.W.2d 134.)

2) Who may enroll a student in school when a parent or guardian is not available?

State law does not specify who may enroll a child in school. A school district's obligation to enroll a student is based on the student's residency, not based on who may be engaging in the actual enrollment process on behalf of the student. [Wis. Stat. § 121.77\(1\)](#). A school district may deny education services only if a student is not a resident of the district or if a student is currently expelled from another Wisconsin public school district. [Wis. Stat. § 120.13\(1\)\(f\)](#).

It should also be noted that compulsory attendance laws state that "any person having under control a child... shall cause the child to attend school...". [Wis. Stat. § 118.15\(1\)\(a\)](#). Further, when a pupil has withdrawn from the recovery charter school, a school board shall "[p]rovide assistance to a person who has control over the pupil to meet the requirements under s. 118.15". [Wis. Stat. § 120.12\(26\)\(a\)](#).

A district might wish to create a process for situations that arise when the parent or guardian is not present at enrollment, including what steps to take if a child welfare professional, out-of-home care provider, or other non-parent/guardian wishes to enroll a child. The district also has an obligation under the McKinney-Vento Homeless Assistance Act to enroll an unaccompanied homeless youth immediately, even before the district obtains necessary enrollment documents, such as proof of age.

Additional information regarding residency can be found in [DPI's Clarification Regarding Residency; Constitutional Requirements, Compulsory Attendance and Fiscal Implications for Students Living Away From Their Parents](#).

3) Is a custodian different than a guardian?

Yes, a custodian is different than a guardian. There are a few types of non-parental custodians that a child could have: physical custodian, legal custodian, or Indian custodian.



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In addition, a parent can be given legal custody and/or physical placement through a family court order.

4) Does physical custody include the authority to make educational decisions?

No. Physical custody simply means actual custody of the child in the absence of a court order granting legal custody to the physical custodian. [Wis. Stat. § 48.02 \(14\)](#).

5) Does legal custody include the authority to make educational decisions?

Yes. Legal custody means “a legal status created by the order of a court, which confers the right and duty to protect, train and discipline the child, and to provide food, shelter, legal services, education and ordinary medical and dental care, subject to the rights, duties and responsibilities of the guardian of the child and subject to any residual parental rights and responsibilities and the provisions of any court order.” [Wis. Stat. § 48.02\(12\)](#).

6) Does an Indian custodian have the authority to make educational decisions?

Yes, if the Indian custodian also has legal custody or guardianship of the child. An Indian custodian means “an Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of the child.” [Wis. Stat. § 48.02\(8p\)](#).

7) Can the authority to make educational decisions reside with the parent as a residual parental right even if a legal custodian or a guardian has been appointed?

Yes, depending on the court order.

8) Does a Guardian ad Litem (GAL) have the same authority as a guardian?

No. The GAL has none of the rights or duties of a general guardian. [Wis. Stat. § 48.235\(3\)\(a\)](#). The guardian ad litem is an attorney who may be appointed by a court in certain proceedings to advocate in the best interest of the child. [Wis. Stat. § 48.235\(2\)](#). Parents may be asked to sign a release authorizing the GAL to review relevant records, such as school, medical, or mental health records.

9) Does state law grant educational decision-making authority to Public Defenders or Court Appointed Special Advocates (CASA)?

No. A Public Defender is an attorney appointed through the Wisconsin State Public Defender's Office for a child 12 years or older. This attorney advocates on behalf of the child and represents the child in court proceedings. Public defenders may ask parents or guardians to provide written authorization allowing them to access pupil records. They may also seek a court order for this purpose.

A CASA is a volunteer or employee of a court-appointed special advocate program who has been selected and trained and who may be appointed by a court in certain proceedings to advocate in the best interest of the child. [Wis. Stat. § 48.236\(2\)](#). The court may issue a court order granting access by a CASA to specific records, including pupil records. [Wis.](#)



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[Stat. § 48.236\(4\)](#).

10) Who has the authority to make decisions related to special education evaluations and services?

Parents retain the right to make decisions related to special education evaluation and services except for when specifically denied this right by a court. *Note:* Circumstances such as incarceration do not in and of themselves indicate that a parent has been denied this right.

Additional considerations related to the authority of parents, guardians, and custodians to make decisions for purposes of special education may be found in the following DPI resources: [Frequently Asked Questions \(FAQ\) Related to the Definitions, Roles, and Responsibilities of Parents, Persons Acting as the Parent of a Child, and Surrogate Parents](#), and [Parent Consent Requirements When Parents Who Share Legal Custody Do Not Agree Bulletin](#).

11) Who, other than a parent or guardian, has the authority to authorize field trips and other age or developmentally appropriate extracurricular, enrichment, cultural, and social activities?

- a) Out-of-Home Care Providers - An out-of-home care provider, under the [Reasonable and Prudent Parent Standard](#), may "... make decisions concerning a child's participation in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities. ..." [Wis. Stat. § 48.383\(1\)](#). This may include, but is not limited to, granting permission for field trips and participating in sports. If reasonably possible to do so, a child's parents will be consulted and advised that the child's cultural, religious, and tribal values will be considered but that these values will not necessarily be the determining factor in making decisions concerning the child's participation in those activities. [Wis. Stat. § 48.383\(2\)\(a\)\(1\)](#).
- b) Unaccompanied Homeless Youth - Because the [McKinney-Vento Homeless Assistance Act](#) defines enrollment as "attending classes and participating fully in school activities," school districts must develop policies not only related to enrolling unaccompanied youth but also related to determining who can sign for activities as part of a student's ongoing school participation.

12) Who has the ability to authorize medical care in schools?

Generally, a parent or guardian retains the right to consent; however, a parent or guardian may sign a consent form authorizing the out-of-home care provider to consent to routine and/or emergency medical care, or in some cases, a court order may provide other authority to consent to medical care. This may include the administration of over-the-counter drugs and some or all prescription drugs. School districts should consult the child welfare agency regarding the authority of the out-of-home care provider to consent to routine and/or emergency medical care.

Full legal guardianship allows the caregiver to make legal decisions and sign paperwork for a child, such as school and medical documents. For other levels of guardianship, the court



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must specify authority to authorize and access information related to medical care in the court order.

For more information regarding the administration of medication, please see the DPI document entitled [Administration of Medications in WI Schools](#).

13) When a student has been removed from the home, should parents be involved in the student's educational experience?

Yes, unless there are compelling safety or legal reasons to specifically exclude parents from school involvement. These decisions should be made in light of any court order and in consultation with child welfare professionals.

When children are removed from the home for child welfare concerns, parents often retain many educational rights, including the right to access pupil records school information and to attend conferences and events. Parents may even be required by the court to show their interest and involvement with their child's education as part of their conditions for regaining placement or custody. Most children removed from their homes have reunification as a goal, which means they will return home to live with one or both parents, legal guardian, or Indian Custodian in the future.

Best practice often means that both the parents and other adult caregivers (with appropriate authorizations) should be included in the student's educational experience to the extent possible in the best interest of the student. Schools are encouraged to review their policies and practices relating to engaging parents and other caregivers in a way that prioritizes the student's best interests.

14) Who has the authority to access pupil records?

Information related to access and disclosure authority of pupil records in Wisconsin can be found in the DPI publication, [Student Records and Confidentiality](#).

References

Kids Matter Inc. n.d. "Types of Guardianships in Wisconsin." Accessed January 26, 2022. <https://kidsmatterinc.org/legal-help/guardianship/>.

*This document was developed in collaboration with the Wisconsin Department of Children and Families (DCF) in February 2022.

For questions about this information, contact dpisspw@dpi.wi.gov or (608) 266-8960.



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Overview

A delegation of parental powers is available when a parent with legal custody of a child grants decision-making authority for that child to another individual (also referred to as an “agent”). It allows the agent to perform acts regarding the care and custody of the child for a specified period of time; generally considered to be one year or less.

A parent may transfer all allowable parental powers or may enumerate specific powers that are to be transferred, such as for health care, education or employment, obtaining a driver’s license, travel, or other decisions that are usually made by a parent. During this time, a parent with legal custody of the child retains all of their rights and authorities over the child.

It is important to note that in order for a delegation of parental powers to be valid, **all parents with legal custody of the child must consent in writing**. There is no method to obtain a delegation of parental powers without consent or over the objection of a parent with legal custody. The agreement is revocable by any parent with legal custody of the child at any time and court approval is not required to revoke it.

A delegation parental powers may **not** transfer the authority to:

- consent to the marriage or adoption of the child;
- the performance or inducement of an abortion on or for the child;
- the termination of parental rights to the child; or
- the enlistment of the child in the U.S. armed forces.

1) Where is the form for Power of Attorney Delegating Parental Powers located?

The form for Power of Attorney Delegating Parental Power is available in statute at [Wis. Stat. 48.979\(2\)](#). While use of this form is not required, use is recommended since it includes all necessary information to grant this type of Power of Attorney.

[Delegating Parental Powers Form Example](#)

2) Must a delegation of power by a parent be granted by a court?

No. In most situations, a delegation of power by parent may be granted without any court involvement. However, there are three situations in which the court must approve the delegation:

- a. The child/juvenile is subject to a child in need of protection or services (CHIPS), juvenile in need of protection or services (JIPS), delinquency, guardianship, or mental commitment case;



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- b. The delegation is to a non-relative of the child and is to last for longer than one year; or
- c. The delegation involves an Indian child as defined by [Wis. Stat. 48.02\(8g\)](#).
 - i. NOTE: additional statutory requirements and procedures exist for cases involving an Indian child under the Wisconsin Indian Child Welfare Acts (WICWA). Due to the complexity of ICWA/WICWA cases, these procedures are not explored in this guide.

3) When does the delegation of parental powers take effect?

- a. If none of the circumstances exist as seen in Question 2 (a-c) (above), then the delegation of parental powers takes effect upon completion of the form, including notarization. The document does not get filed with the court.
- b. If any of the circumstances exist as seen in Question 2 (a-c) (above), court approval must be sought in order for the delegation of parental powers to be valid.

4) What is the process if court approval must be sought?

Under circumstances as seen in Question 2 (a-c) (above), the person facilitating the delegation of parental powers shall file a petition with the court requesting the court's approval of that delegation.

The proper venue for the case would be the county where the child resides or is present at the time of the filing.

If filing a petition for court approval:

- a. There is no standard court form to use for the petition. The petition shall be entitled "In the interest of (child's name), a person under the age of 18."
- b. The petitioner shall attach a draft copy of the power of attorney delegating those powers (see sub. 3.) to the petition and shall state all of the information listed under [Wis. Stat. 48.979\(1m\)\(a\)1. to 10.](#)
- c. The person filing the petition must also ensure that the petition and the notice of the hearing is provided to all applicable persons and entities listed under [Wis. Stat. 48.979\(1m\)\(b\)](#) and [\(bm\)](#) in the manner prescribed in those statutes, as well as following all stated timeframes.
- d. The court will conduct a hearing within 45 days to determine if the petition is being contested by any of those receiving the required notice.
 - i. If the petition is not contested, the court will immediately conduct what is called a fact finding and dispositional hearing.
 - ii. If the petition is contested, then the fact finding hearing may be scheduled on a different date.



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1. A fact finding hearing is where the court will hear evidence as to why the delegation of parental powers should or should not be granted.
2. After the fact-finding hearing, the court will enter a disposition (either approving the Delegation of Parental Powers or dismissing petition).

5) Is there a fee to file a petition to approve the delegation of parental powers with the court?

No. There is no fee to file a petition to approve the delegation of parental powers. However, the petitioner or parents may incur legal costs associated with hiring their own attorney or may be ordered to provide reimbursement if a guardian ad litem (GAL) or adversary counsel is appointed for the child.

6) What powers does the delegation of parental powers authorize?

If a valid delegation of parental powers is in effect, the agent may exercise any and all of the authorities indicated in the power of attorney or court order.

7) It is important for the agent to retain a copy of the order?

Yes. The agent should retain a copy of the order, as this document will be necessary to provide consent or otherwise act within the authorities granted.



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Overview

A court-ordered minor guardianship of the person provides a guardian with specific duties and authorities to make decisions such as the child's residence, visitation, medical treatment, and education. The court will transfer specific duties and authorities to a legal guardian and include these in the Letters of Guardianship and Dispositional Order Appointing Guardian. Guardianship does not terminate a parent's rights.

1) When does a minor guardianship terminate?

A minor guardianship will terminate the earliest of the following: when the guardianship order expires, upon the court entering a Termination Order, or at age 18 (full guardianships).

2) What are the types of minor guardianships?

There are three types of minor guardianships:

- a. A **Chapter 54 minor guardianship of the estate** only relates to the child's assets and finances. This may be requested in addition to a minor guardianship of the person.
- b. A [§ 48.977 guardianship](#) requires an underlying CHIPS (child in need of protection or services) case.
- c. A [§ 48.9795 guardianship](#) can be filed for any child under the age of 18. There are four different types of §48.9795 guardianships: Full, Limited, Temporary, or Emergency.

3) Is there a guide to help with filing a guardianship?

Yes. The [Filing a Minor Guardianship of the Person Case](#) guide can assist individuals filing a § 48.9795 guardianship. It defines the four types of §48.9795 guardianships, explains what is required to be proven for each type of guardianship, and includes which Circuit Court forms must be filed.

4) What fees are involved with filing a guardianship?

- a. There is no fee to file a minor guardianship petition.
- b. The petitioner or parents may be ordered by the court to reimburse the GAL or adversary counsel fees. The court will appoint a guardian ad litem (GAL) for the child once a guardianship petition is filed.
- c. Additionally, the petitioner or parents may hire their own attorney at their own expense.



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5) Does training on activities related to guardianships exist?

Yes. Online training activities related to § 48.977 guardianships and § 48.9795 guardianships can be found at: <https://wicciptraining.com/ELearningActivities>. While this resource is intended for use by judges, attorneys, and child welfare professionals, it contains information on the court process that other individuals may find helpful.