**Long Term Planning and Legal Matters for People with Disabilities, NJ**

Compiled by Sarah McCulloh, Transition Coordinator

Updated 10/2017

**This guide is only to be used as a reference tool**

**and not to be taken as a formal recommendation of the Township of Union School District.**

**These resources are not intended to service all populations.**

**Please contact the listed resources for additional information.**

This packet includes information on:

1. Long Term Planning
2. Power of Attorney
3. Wills
4. Trusts
5. Guardianship
6. Burial Fund
7. Where to go for help!

**Any questions, please contact your Child Study Team (CST) Case Manager**

**and/or your Transition Coordinator:**

**Ms. Sarah McCulloh (908) 851-4431** [**smcculloh@twpunionschools.org**](mailto:smcculloh@twpunionschools.org)

**Mrs. Vanessa Tuohy (908) 851-6538** [**vtuohy@twpunionschools.org**](mailto:vtuohy@twpunionschools.org)

**Union High School, 2350 North Third Street, Union, NJ 07083**

1. **Long Term Planning (LTP):**

LTP may be difficult for you, as a caregiver, to consider, but it may be very helpful to you in preparing your adult child for life after graduation from high school. The following resources are intended to give you a starting point and may help you navigate the legal system, entitlement/eligibility programs for adults with disabilities, as well as adult service provider system. One thing to keep in mind as you consider this information is that you are not alone! Your child’s school, Child Study Team, and Transition Coordinator are here to support you as you make some difficult decisions, so please reach out if/when the need arises.

“You may suddenly feel that you are back to the beginning stages of accepting (your child’s) diagnosis. However, it may help to remind yourself that with planning, you may find some peace of mind. There are changes when a person with autism…” (or disability) “…reaches the age of majority, which is 18 years old in most states. Parents no longer have the legal rights that they were entitled to throughout their child’s youth. This can include accessing confidential health and school records.

It can be difficult to take the first steps in planning for your child’s future. As parents, you are often busy with the daily challenges of raising a child with autism…” (or special needs). By taking action early on, you can help protect your child’s future wellbeing and rest a bit easier. Before your child with autism…” (or special needs) “reaches the age of majority, we suggest that you consult with professionals: Attorneys, financial planners, and others who can help you make critical decisions about your child’s future.”

Adapted from: <https://www.autismspeaks.org/family-services/tool-kits/transition-tool-kit/legal-matters>.

Two publications online (they will periodically be referenced in this document) that may be helpful to you during this process are:

“Legal Matters to Consider” written by Autism Speaks:

https://www.autismspeaks.org/family-services/tool-kits/transition-tool-kit/legal-matters

“Caregiving for a Loved One with a Disability” written by the United Way:

http://unitedwaynnj.org/documents/14UWCaregiversPathwaysInside\_SectionB.pdf

1. **Power of Attorney:**

“A power of attorney is a legal document transferring decision-making authority to a person designated by your loved one in advance. The power can be related to the management of your loved one’s property or related to decisions about medical treatment.

A “durable” power of attorney goes into effect when your loved one signs it and stays in effect for their lifetime unless they cancel it. Your loved one must put specific language in the document stating that they want their agent’s power to stay in effect even if they become incapacitated. A “springing” power of attorney is another option, but this document only becomes effective when a specific event happens, such as when your loved one becomes incapacitated. Your attorney must carefully draft a “springing” power of attorney to avoid any difficulty in determining exactly when the “springing” event has happened. Unlike many other uses of the term “disability,” (which might refer to a physical handicap, when the term is used within a Power of

Attorney), “disability” means lacking mental capability to manage property or make decisions about medical treatment….Caregivers should be aware of what, who, and where Powers of Attorney have been provided. These documents should be current, accessible, and understood by the caregiver.”

Adapted from <http://unitedwaynnj.org/documents/14UWCaregiversPathwaysInside_SectionB.pdf>

1. **Wills**

A “Living Will” “is a type of directive providing comprehensive instruction as to the medical situations where a patient would want to be kept alive and what measures should or should not be used to prolong life or delay death. A living will is a critical legal document for you, the caregiver, as it clearly articulates the wishes of your loved one. Without such instruction you, as the caregiver, could be left speculating as to how, when, and to what extent your loved one wants medical means to continue or not continue his or her life. Your loved one’s guidance is most instructive and important. His or her directions go a long way to help ease your burden in carrying out decisions that your loved one may not be able to make independently.

A “Will” is the written statement of a person’s wishes as to the disposition of his or her property following death…Up until death…a will can be amended or revoked…To make a valid will, the person must possess the mental capacity to know what he/she is doing. It is not an excessively high standard of “awareness” but does require awareness of some essential facts. A will accomplishes a number of important issues: a) a will allows for the nomination of an executor; without a will, the state would determine who is to serve as executor of your loved one’s estate; b) a will avoids “intestacy.” Intestacy is where, in the absence of a will, state law dictates who inherits a person’s probate assets; c) a will allows a person to define who gets what property. Often a person wants to provide a specific person with a specific item of property. A will allows for such special bequests. A person may want to distribute property unequally to children, as children often have different needs; a will allows for such unequal distributions. A person may want to disinherit a natural heir; a will allows for disinheritance; d) a will allows for the nomination of a guardian or trustee, if the person dies with minor children.

Adapted from: <http://unitedwaynnj.org/documents/14UWCaregiversPathwaysInside_SectionB.pdf>

1. **Trusts**

“A trust is a contractual third party arrangement where one person transfers property to another person to hold in trust for the benefit of a third person. While that may sound confusing, a properly designed trust accomplishes as much as a will, while providing a greater flexibility for life and estate planning. A trust may be “revocable” or “irrevocable.” A trust may be created while your loved one is living (living trust) or created via a will (testamentary trust).

Irrevocable Trust

An irrevocable trust cannot be amended or changed. The person transferring the property (the “trustor”) cannot later change his or her mind. There are tax and planning reasons why a person would transfer property through an irrevocable trust.

Revocable Trust

A revocable trust can, by its definition, be amended or changed. Like a will, the person transferring the property can change his or her mind or change the terms of the trust. It is completely flexible. As such, a revocable trust serves a wide variety of needs related to lifetime planning, extending control over your loved one’s estate following death, and minimizing succession transfer costs.

A revocable living trust does all that a will does, plus more. It allows for the continued management of your loved one’s assets should he/she become disabled. A trust avoids the need, delay, and cost of probate. A will becomes a public document; a trust does not and, thus, is a great way to keep your loved one’s affairs more private.

Special Needs Trust

A person with a disability and receiving government benefits is often limited as to the amount of assets that they can own directly. A Special Needs Trust is developed to manage resources while maintaining the individual’s eligibility for public assistance benefits.

Two types of Special Needs Trusts exist to hold assets for a person with a disability in such a way as to not disqualify them such benefits. The first type is with a third party Special Needs Trust, where a third party wants to set aside monies for the benefit of the loved one. This trust can be established during the grantor’s life or in the grantor’s last will. The second type of Special Needs Trust is where the person with the disability is the direct owner of an asset, such as an award following a lawsuit. These monies can be placed in a court-approved Special Needs Trust more commonly referred to as a D4A Special Needs Trust. The Trust is developed to manage resources while maintaining the individual’s eligibility for public assistance benefits. A trustee manages the trust on behalf of the person with the disability. It is important to establish a Special Needs Trust as soon as possible and to inform family members of its existence. Sometimes family members, most often grandparents, leave a bequest in their wills to their special needs grandchild, which might then disqualify the child from continuing to receive SSI and Medicaid benefits.

“Please be aware that each type of trust requires very specific language and management. Individuals should contact a Special Needs Trust attorney for appropriate counsel.”

Adapted from: <http://unitedwaynnj.org/documents/14UWCaregiversPathwaysInside_SectionB.pdf>

1. **Guardianship**

“Guardianship is a court-ordered arrangement in which one person is given the legal authority to make decisions on behalf of another person whom a court has deemed to be “incapacitated.” The guardian’s decision-making authority extends to all areas specified by the court.”

There are a number of different types of Guardianship a family may consider:

Limited Guardian: A limited guardian makes decisions in only some specific areas, such as medical care. Limited guardianship may be appropriate if the person with a disability can make some decisions on his/her own.

General, (or Plenary), Guardian: A general guardian has broad control and decision-making authority over the individual. General guardianship may be appropriate if the person has a significant intellectual disability or mental illness and, as a result, is unable to meaningfully participate in important decisions that affect him/her.

Conservator: A conservator manages the finances (income and assets) of a person with a disability. A conservator has no authority to make personal decisions (medical, educational, etc.) for the person whose funds he/she is managing.

Deciding Whether Guardianship is Necessary

When considering how much authority, and how much independence your son/daughter should retain, you should begin with an assessment of the different areas in which they may need your assistance. For each area, please assess whether your son/daughter can do the following:

Medical:

Seek medical care when he/she is sick or injured

Weigh the risks and benefits of any particular medical procedure that is being proposed

Understand the need for routine medical care

Understand that even if a medical procedure is painful or unpleasant, it may still be necessary

Assess whether a particular medication is desirable, even though it may have unpleasant side effects

Provide accurate information about his or her medical condition

Follow medical advice

Education:

Grasp the essentials of his or her leaning problems and understand the services needed to learn effectively

Advocate for themselves to obtain necessary education services

Finances:

Understand money basics, including the purpose of money, how to count money, and how to make change

Safeguard his/her money so that it is not lost or stolen

Budget money so that some funds are available to pay expenses at the end of the month

Vocational/Adult Services:

Apply for services from agencies that serve people with disabilities

Access necessary services/supports such as job training, employment support, or a day habilitation program

Negotiate with the agency overseeing his/her care to obtain the best possible services

Living Arrangements:

Provide for their own physical care and well-being such as purchasing proper food, clothing, and shelter

Live harmoniously in a group setting, respecting others’ needs for quiet, privacy, and cleanliness

Legal and Decision-Making:

Understand the implications of signing documents

Make sound decisions in important areas such as living arrangements, school, and work

Self-Care and Safety:

Have personal safety skills (staying out of dangerous areas, not talking to strangers, and keeping doors locked)

Know how to summon help in an emergency such as a fire or accident

Have basic safety skills such as being careful around fires, stoves, candles, etc.

Communication:

Communicate effectively (verbally or by other means)

Understand that he or she has choices and be able to express them

Even if your son/daughter needs help with any of the above items, you should also consider whether they can be assisted by any means short of guardianship. For example, sometimes a person who needs help to make medical decisions can appoint a health care agent to act on his or her behalf. A person who receives government benefits such as Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) can have a representative payee manage them (instead of petitioning for general guardianship).

Adapted from: <https://www.autismspeaks.org/family-services/tool-kits/transition-tool-kit/legal-matters>

**How to Apply for Guardianship of the Person and Estate (Property) of an Individual Eligible for Services from the Division of Developmental Disabilities (DDD) (Title 30 Guardianship)**

Under Title 30, an application for guardianship must be supported by an affidavit or certification of a physician or psychologist who has personally examined the alleged incapacitated person within six (6) months prior to filing. A second document must also be attached to the verified complaint. This second attachment must be one (1) of the following: An affidavit from the chief executive officer, medical director, or other officer having administrative control over the program from which the alleged incapacitated person is receiving functional or other services provided by the DDD; an affidavit from a designee of the DDD having personal knowledge of the functional capacity of the alleged incapacitated person; a second affidavit from a physician or psychologist; a copy of the Individualized Education Program, including any medical or other reports, for the alleged incapacitated person, which shall have been prepared no more than two (2) years prior to the filing of the verified complaint; or an affidavit from a licensed care professional having personal knowledge of the functional capacity of the alleged incapacitated person. Once the verified complaint and supporting documents are filed with, and reviewed by, the Surrogate, they will contact you to complete the guardianship process.

**For more information on Guardianship in New Jersey, please use the following link as your guide:**

[**http://www.njcourts.gov/courts/civil/guardianship.html**](http://www.njcourts.gov/courts/civil/guardianship.html)**.**

If you wish to pursue guardianship pro se (on your own and without an attorney),

please got to the above link, got to “Additional Forms,” then “Pro Se Packets”

You may also visit:

<https://www.youtube.com/watch?v=S9AowILqHAY&feature=youtu.be>

to watch a **Court-Appointed Guardian Video Tutorial**.

When applying for guardianship of the **person only**, use this form:

<http://www.njcourts.gov/forms/12009_guardianship_person.pdf>

When applying for guardianship of the **person and property**, use this form:

<http://www.njcourts.gov/forms/10558_guardianship_person_and_estate.pdf>

**For more information about Guardianship in Union County, please visit** [**http://ucnj.org/surrogate/**](http://ucnj.org/surrogate/)**.**

**James S. Lacorte, Surrogate** **Lisa Taylor Brophy, Esq.**

908-527-4280 Attorney

Second Floor, Old Annex, Union County Court House, lbrophy@ucnj.org

2 Broad St., Elizabeth, New Jersey

1. **Burial Fund**

“A burial fund is money set aside to pay for burial expenses. This money can be in a bank account, other financial instrument, or a prepaid burial arrangement. This can be helpful to eliminate emotional stress and financial burden on a caregiver, or other family member, at the time of a person’s death. Parents of a child with a disability can set up a burial fund to ensure that their child’s end-of-life costs are covered if they will not be here to address these needs.”

Adapted from: <http://unitedwaynnj.org/documents/14UWCaregiversPathwaysInside_SectionB.pdf>

1. **Where to go for Help!**

**PLAN/NJ: P.O. Box 547, Somerville, NJ 08876-0547, (908) 575-8300**

**Ellen B. Nalven, Executive Director, Email: info@plannj.org, ellen.nalven@plannj.org**

**www.plannj.org**

Planned Lifetime Assistance of New Jersey (PLAN/NJ) offers vital family service options to all individuals with disabilities and to their families, supporting them so they can thrive. Their high-quality, individualized support model ensures that individuals with one or more disabilities have access to a continuum of quality services and resources. Our goal is to support each person’s optimal health and well-being over the course of a lifetime. Service Options include Life Planning, Special Needs Trust Administration, Guardianship, Home Visit Monitoring, and they can act as a Representative Payee for Social Security Benefits.

**Professional Directory: Attorneys and Financial Advisors/Planners:**

[**www.plannj.org/wp-content/uploads/2017/06/PLAN-NJ\_Prof-Directory-.pdf**](http://www.plannj.org/wp-content/uploads/2017/06/PLAN-NJ_Prof-Directory-.pdf)

The following link provides a list of professionals that have expertise in estate planning and other related matters for individuals with disabilities and their families including Special Needs Trusts, guardianship, public benefits and special education laws. Inclusion on this list does not represent a recommendation or endorsement by PLAN/NJ (and/or the Township of Union School District), and the list is not inclusive of all attorneys in New Jersey who provide such legal services. Families should contact attorneys personally regarding services, fees, and to determine whether a particular attorney meets their family’s needs.

**Free Legal Aid NJ-Pro Bono Services**

**Legal Services of New Jersey (LSNJ),** [**www.lsnj.org**](http://www.lsnj.org)

(888) LSNJ-LAW (888-576-5529)

LSNJ is a non-profit organization that provides legal information, advice, and referral to low-income residents of New Jersey with civil legal problems.

**In Union County, please contact Central Jersey Legal Services, 60 Prince Street, Elizabeth, NJ 07208,**

**(908) 354-4340, www.lsnj.org/cjls/**

**Disability Rights NJ (DRNJ),** [**http://www.drnj.org/**](http://www.drnj.org/)

**210 S. Broad Street, 3rd Floor, Trenton, NJ 08608, (800) 922-7233**

DRNJ is a private, non-profit, consumer directed organization established to advocate for/advance the human, civil and legal rights of citizens of NJ with disabilities, promotes public awareness and recognition of individuals with disabilities as equally entitled members of society, advises and assists persons with disabilities, family members, attorneys and guardians in obtaining and protecting the rights of individuals with disabilities, and provides education, training, and technical assistance to individuals with disabilities, the agencies that serve them, advocates, attorneys, professionals, courts, and others regarding the rights of individuals with disabilities.

You can begin DRNJ's intake process by completing a form online. After you submit your request, a member of DRNJ's intake staff should attempt to contact you within 5 days. For more information, please visit: <http://www.drnj.org/onlineintakeform.htm>.