

Notes from presentation by Mary Denise Cahill, a special needs attorney in Naperville. Ms. Cahill spoke about Special Needs Trusts and Guardianship.

TRANSITION PLANNING

Transition planning for a child with a serious emotional disability includes much more than college or vocational choices. It is often wise to establish a trust and, in some cases, to gain legal guardianship, according to Mary Denise Cahill, a Naperville attorney who specializes in special education law.

“When your child turns 14, your school district has an obligation to start to talk about transitioning,” Ms. Cahill said at the Sept. 23 Parent Association meeting “You have to start planning for the next steps. What is your child going to do after residential school?”

Cahill recommended that parents consider creating a special needs trust to set aside or protect assets for their child with mental illness. A special needs trust is established in the disabled person’s name, but the disabled person does not have direct access to assets. Instead, a trustee makes payments for allowance or other needs.

The trust, rather than the disabled individual, should be named as a beneficiary in documents such as wills or life insurance policies. This form of trust also can preserve a disabled person’s eligibility to for Social Security, Medicaid and Medicare benefits, which have asset qualification limits.

One father said he decided to create a special needs trust after realizing, as he and his wife set out on a long-distance car trip, that if the couple died in a crash, their disabled son would inherit half of the family’s assets with no guidance or oversight. A special needs trust eliminates this worry, Ms. Cahill said.

Seeking guardianship of a disabled person over age 18 may also be necessary to protect an individual who is completely or partially incapable of making decisions regarding personal, financial or medical matters, Ms. Cahill said. Legal guardianship allows parents access to medical records, and can be invaluable if hospitalization is required or there are insurance disputes. Guardianship can also enable parents to communicate with colleges about their students, and allow parents to make decisions about housing, spending and other contractual matters.

Obtaining guardianship requires a physician’s report on the disabled individual’s physical and mental condition, and can be done easily and without an attorney if the disabled person consents. If the disabled person opposes the guardianship petition, however, a judge will name a guardian ad litem to represent the person, and will order a second physician’s evaluation.

“Then you’ve got a fight on your hands,” Ms. Cahill said. Often, when a young person has been in residential therapeutic care, judges are inclined to grant guardianship. A power of attorney can provide the same protections as guardianship, but is signed voluntarily and can be revoked without appearing before a judge.

It is also important to know that the authority of guardianship and power of attorney are limited by law. A person over 18 can sign himself or herself out of a psychiatric or medical facility—including a residential school—at any time, regardless of guardianship. In a crisis, however, police who witness out-of-control can order a 72-hour hold in a psychiatric facility.

Ms. Cahill recommended that parents students apply for Social Security benefits for their child before he or she turns 18, so that the student will be “in the pipeline” and can more quickly obtain support and medical benefits at age 18. The disabled person is permitted to have only \$2,000 in savings to qualify for benefits, so if a young person has more in bank accounts, stocks or other assets, those funds should be spent on the child’s educational or personal needs or transferred to a trust before the child turns 18, Ms. Cahill advised.

Ms. Cahill invited parents to call with questions at no cost, and provided forms and a checklist for seeking guardianship. (These scanned documents are attached with this newsletter, and will be posted on the O School Parents Yahoo website). Ms. Cahill can be reached at 630-778-6500.