

LEGAL GUIDE FOR MAINE GRANDFAMILIES

*For more information, or to discuss the family, financial, or service issues related to your case, please contact **Families And Children Together** at 1-866-298-0896.*

DISCLAIMER

This guide is intended only to provide general guidance on the issues addressed herein; **it does not purport to provide, nor should be taken as providing legal advice.** This guide does not create or constitute an attorney-client relationship. Moreover, the law in Maine and services to families are constantly changing and evolving. Therefore, it should be noted that this information was accurate to the best knowledge of the writers at the time of printing. In addition, all references to laws and monetary limits for public benefits programs are subject to change at any time. It is always best to consult an attorney about your individual case. **Again, this manual is a general guide and not legal advice.**

To get a referral for legal advice or to discuss the family issues related to your case, contact **Families And Children Together** at **1-866-298-0896** and ask for the Maine Kids-Kin program.

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Introduction

Over 11,350 children in Maine live with relatives or close family friends. For many of these children, the birth or adoptive parents are unable to care for the children. In this book, we refer to families in this situation as *grandfamilies*. People caring for the children, are called *relative caregivers*. This type of living situation is also sometimes referred to as *kinship care*. The children are typically living with grandparents, other non-parent relatives (such as aunts, uncles, cousins or siblings), or family friends.

Relatives and family friends can become grandfamilies in one of several ways. Sometimes the living situation is formal, and is requested by a State agency and ordered by a Court. Other times, the living situation is very informal and the birth parents have simply asked friends or relatives to care for their children for a short period of time. This handbook introduces the different legal options available. We discuss the legal authority given to the caregiver under each of those options and explain the caregiver's rights and responsibilities.

Parents, whether biological or adoptive, are joint guardians of children. This means they both have responsibility for the children's care and control, and right to their services and earnings, until a child is 18 years old. Parents have the right to make decisions about how and where the child will be brought up and what the child's relationship with other relatives will be.

In the past, this set of rights was called *custody*. However, Maine Courts now use the term *parental rights and responsibilities*. Parental rights and responsibilities include both where the children live and the right to make decisions about the children's upbringing.

Parental rights and responsibilities can be changed and given in full or part to other relatives or individuals through legal procedures.

The following chapters explain the different legal arrangements (*or custodial relationships*) and the strengths and weaknesses of each. In the appendix, you will find a chart that provides an overview of all the legal *custodial relationship* options. This may help you compare one option to another. We also explain how these options affect the child's education; there is also a chart that provides an overview in the appendix. Lastly, we assist you in finding legal information and advice.

CHAPTER 1



INFORMAL PLACEMENTS

Grandparent, Other Non Parent Relative Or Family Friend Caregivers

Biological or adoptive parents have full legal authority unless a Court terminates (ends) or amends (changes) their rights. Sometimes parents need to set up informal arrangements with family members or friends to care for their children without giving up any legal parental rights. Sometimes parents do not even set up an informal arrangement; it simply happens when the children are being taken care of by others. When we talk about *informal placements*, we are referring to this type of situation—where a grandparent or other non-parent relative or friend is caring for a child, without having been appointed a legal guardian by a Court.

Who Can Grant This Informal Arrangement?

In most situations only the children’s parents have the authority to ask friends or relatives to temporarily care for their children. But on occasion, neither parent makes a stated choice; another person just becomes the child’s day-to-day caregiver. In these situations, the parents still retain full parental rights and responsibilities.

Is Parental Consent Required?

Yes, parental consent is required. If the parent wants to take the child back into his or her care, the parent has a right to do this.

How Long Does This Arrangement Last?

Typically, this arrangement is indefinite until the parent wants the child returned to his or her care.

Do I Need A Lawyer?

No, since this is not a legal proceeding, it is not necessary to have a lawyer.

Can The Caregiver Get Financial Assistance?

Parents are still financially responsible. However, if the child is living with a *relative caregiver*, the child may be eligible for TANF (Temporary Assistance for Needy Families.)

The relative caregiver may or may not be included in the TANF household unit. The child may also be eligible for MaineCare. Food stamps may be available, based on the household's income. You can apply for MaineCare, TANF, and Food Stamps at your local Department of Health and Human Services office. To learn more about services available from DHHS and to find your local office, visit www.maine.gov/dhhs or contact them at 207-287-2826. For more information about financial assistance, see the *Resource Guide for Maine Grandfamilies* available from Families And Children Together (F.A.C.T.). You can get it online at www.mainekids-kin.org or by calling 1-866-298-0896.

What Happens If The Caregiver Dies?

Nothing happens, except that the child will go back to the birth or adoptive parents. At this point, the parents can make other arrangements if they still need someone to care for their child.

Are There Other Issues To Consider?

This informal arrangement does not give the child much legal stability. It allows the parents to end the arrangement (come and get the child) at any time. The caregiver may not be allowed to register the child in a different school district than where the parents live. The caregiver may not be allowed to give permission for some services. It can also place additional financial strain on the caregiver. For example, if the caregiver applies for child-only TANF, DHHS will probably seek child support from the parent. The parent may choose to end the arrangement rather than pay child support.

Power Of Attorney

A parent can give Power of Attorney (POA) to another adult by writing a letter stating so and having it notarized. Having POA allows that adult to make some parental decisions for the child. A POA is most often used to allow another adult to give permission for medical treatment (although a doctor or therapist is not required to accept it) or to make financial decisions. A school will not accept a POA for the purposes of enrollment or special education planning. The POA can be cancelled by the parent at any time. A POA cannot be given over the objections of the other parent, unless that parent's rights have been terminated or limited by a judge. *A sample form to appoint a POA is on page 36.*

When Is A Power Of Attorney Necessary?

Parents may ask another adult to have Power of Attorney for their children when they need someone else to take responsibility for their children for a short period of time. Usually a caregiver with a POA can get medical treatment for the children. Without the POA, the medical provider will need to try to reach the parent.

Example: The biological parent will be hospitalized for a short period of time. There is no one to take care of the children or make decisions for them. In this situation, it would be a good idea for the parents to give another adult the authority to make decisions on behalf of the children.

Who Grants A Power Of Attorney?

The birth or adoptive parents must sign the POA. It also should be signed in front of a notary public. Often people do not have it signed in front of a notary. Without the notary's signature it still may be accepted by medical providers, but is not legally binding.

How Long Does A Power Of Attorney Last?

A POA can last for 6 months. If the parents want the POA to last beyond 6 months, they must sign a new document every 6 months. Many medical providers will continue to accept an expired POA, but it is best practice to renew the POA every 6 months.

Do I Need A Lawyer To Get A Power Of Attorney?

You do not have to have a lawyer, you can draft a POA on your own. However, it may be useful to have a lawyer to ensure the POA is done correctly. In this case, the lawyer can sign as witness to your signature, instead of using a notary public.

What Legal Responsibilities Are The Parents Transferring?

By signing a standard POA, the parents are giving another adult the authority to make all decisions about the children, **except** for the following:

- Parents do not give away the right to decide if the child may be adopted.
- Parents do not give away the right to decide if the child may get married.
- Parents do not give away the right to decide if the child may sell or give away property.
- Parents do not give away their responsibilities as parents.

What Is The Procedure For A Power Of Attorney?

- ✓ Write a letter stating all of the rights to be transferred to the POA, the names of the children, and the effective date of the POA. Or, obtain a POA form and fill in the children's names and the effective dates. *A sample form is on page 36.*
- ✓ Sign the letter or form in front of a notary public.
- ✓ Leave the signed form or letter with the adult caring for the child.
- ✓ Send copies of the form or letter to the children's service care providers, such as doctor, school, and daycare.

How To Cancel A Power Of Attorney

If at any time the parents decide to cancel, or revoke, the POA before the 6 months are up, they should fill out a *Notice of Revocation of Power of Attorney*. After completing the form, the parents should give a copy to everyone who relied on the POA while it was in effect. *A sample of the form is on page 37.*

Can A Child's Court-Appointed Guardian Give A Power of Attorney?

Yes. The child's legal guardian can give a Power of Attorney by following the same steps under the previous section, *What Is The Procedure for A Power of Attorney*. In addition, the guardian must send a copy to the Probate Court that gave them the guardianship. The POA will not take effect until it is sent to the Court.

Is Financial Assistance Available?

Parents retain full financial responsibility for the child. However, if the child is living with a *relative caregiver*, the child may be eligible for TANF (Temporary Assistance for Needy Families.) The relative caregiver may or may not be included in the TANF household unit. The child may also be eligible for MaineCare. Food stamps may be available, based on the household's income. You can apply for MaineCare, TANF, and Food Stamps at your local Department of Health and Human Services office. To learn more about services available from DHHS and to find your local office, visit www.maine.gov/dhhs or contact them at 207-287-2826. For more information about financial assistance, see the *Resource Guide for Maine Grandfamilies* available from Families And Children Together (F.A.C.T.). You can get it online at www.mainekids-kin.org or by calling 1-866-298-0896.

What Happens If The Caregiver Dies?

Nothing happens, except that the child will go back to the birth or adoptive parents. At this point, the parents can make other arrangements if they still need someone to care for their child.

Are There Other Issues To Consider?

A Power of Attorney does not provide legal stability for the child. It allows the parents to end the POA (come and get the child) at any time. It may allow the caregiver to get some services for the child, particularly medical services. It can also place additional financial strain on the caregiver. For example, if the caregiver applies for child-only TANF, DHHS will probably seek child support from the parent. The parent may choose to end the arrangement rather than pay child support.

CHAPTER 2



THE PROBATE PROCESS: LEGAL GUARDIANSHIP AND ADOPTION

Probate Courts are courts that hear special cases, such as adoptions, name changes, guardianships, and adult protective proceedings. These Courts sit without a jury. There are 16 Probate Courts and judges in the State of Maine, one for each county. (*Probate Courts are listed in the appendix on page 34.*) The judges are part time and are elected. Probate Courts are often less formal than other Courts and often see people participate without lawyers representing them. Probate Court decisions may be appealed to the Maine Supreme Judicial Court.

In order to provide more legal stability for a child in their care, relative caregivers may want to consider legal guardianship or adoption. Both of these legal relationships are granted in Maine through the Probate Court. (An exception to this rule is a District Court Order of *Permanency Guardianship* for a child in DHHS custody, which differs from a *permanent guardianship*, see page 22). This chapter outlines guardianship and adoption, explaining the rights and responsibilities given to legal guardians and adoptive parents. We also explain the probate processes for guardianship and for adoption, so you will know what to expect and how to prepare for your upcoming case. To start the process, you should go to the Probate Court in the county where the child lives and get the appropriate forms.

There are guardianship and conservatorship issues for incapacitated adults that are not the subject of this handbook.

In the appendix, you will find the laws pertaining to legal guardianship on pages 43-49. There is also a list of Court forms on page 35, and a listing of Maine Probate Courts on page 34.

Legal Guardianship of Minors

Legal guardians take on most of the *parental rights and responsibilities* for a child (called a *ward*). The parents lose those rights. This means the guardian makes day-to-day decisions regarding the child. A guardian can request and accept medical treatment on a child's behalf, enroll the child in public school in the guardian's community, and provide for the child's general welfare. Parents still have the right to ask the Court to change or end the guardianship. The parents still have financial responsibility for the child and may even be ordered by the Court to pay child support. Legal guardians are not obligated to provide financial support for their wards from their own resources. The guardians certainly may, and usually do provide support. A judge may want to know if there is a plan for financial support of the child.

Grounds for Guardianship

A guardian or co-guardians may be appointed if one of the following criteria are met **and** it is in the child's best interest:

1. All parental rights and responsibilities of the parents have been terminated or suspended by a court order or other circumstances, or
2. The parents consent to the guardianship, or
3. An intolerable living situation exists (as proved by *clear and convincing* evidence) for the child in the parent's home, or
4. A *de facto* guardian (*see page 43*) shows (by a *preponderance* of the evidence) that the parents have shown a lack of consistent participation in the child's life.

Clear and convincing and *preponderance* refer to levels of evidence needed for the Court to make a decision in favor of guardianship. It is important to remember that the court will not consider the best interests of the child unless parental unfitness is established first.

Who Proposes the Guardian?

The guardian may be self-proposed, proposed by one or both of the parents, or proposed by DHHS. If the child is 14 years or older, he or she must consent to the person who is seeking guardianship, and may be allowed to propose a guardianship.

Who Can Grant A Guardianship?

The County Probate Court where the child is living is the only court with the authority to grant a legal guardianship in Maine. The Court can order a full guardianship, meaning the guardian has all the parental rights and responsibilities, or it can order a *limited guardianship*. In a limited guardianship, the court order will clearly state the decisions that the guardian can make. For example, the Court can order a guardianship for medical decisions only. In a limited guardianship, the parents keep the parental rights and responsibilities for those decisions that the Court did not grant to the limited guardian. Typically, in cases with children, Courts order full, rather than limited, guardianships.

How Long Do Guardianships Last?

There are two types of guardianships. A temporary guardianship lasts up to six months, this can be useful for short-term situations. In some situations, a judge may grant a temporary

guardianship immediately and it will last until all parties can come to a hearing on permanent guardianship. This can give the child stability while awaiting a hearing. Typically, the person filing the case wants a permanent guardianship. A permanent guardianship lasts until:

- the child turns 18, is married, is adopted, or dies, or
- the guardian dies, or
- the guardian petitions the Court to resign, and following a hearing, the Court accepts the resignation, or
- the Court terminates the guardianship at the request of the parent, at the request of the child if 14 years old or older, or at the request of an interested person. The Court will schedule a hearing if one of these parties files a termination request.

It is clear that despite being called a permanent guardianship, it is not actually permanent and differs from a permanency guardianship, which exists under the District Court child protective proceedings (*see page 22*).

Do I Need A Lawyer To Get A Guardianship Order, Or Will The Court Appoint One For Me?

Although the Probate Court process may seem long or complex, in some situations, you may be able to handle it *pro se*. Pro se means that you are able to represent yourself and do not have to hire a lawyer. However, pro se representation is only recommended for uncontested cases where the birth or adoptive parents or current guardians are willing to consent. If you decide to represent yourself and not hire a lawyer, you will go through the same steps, as outlined on page 12.

If the parents sign the affidavit of consent and waiver, they are telling the Court that they agree with the guardianship, and they are giving up their right to notice of future Court action in the case. Both parents must agree, unless one has died or his or her parental rights have been terminated.

If one or both of the parents do not consent to the guardianship, the case is *contested*. If you have a contested case, you may want to try mediation before going to Court. Mediation may help you and the parents come to an agreement. Mediation may promote better communication, and is much less expensive than hiring a lawyer to represent you in Court. (*See page 28 for more information on mediation.*) If you do go to Court with a contested case, it would be wise to hire a lawyer.

If the proceeding is contested, the parents may be eligible for a court-appointed lawyer. The Court will appoint a lawyer to a parent if:

- 1) the parent contests the guardianship,
- 2) the guardianship is brought because either there is an intolerable living situation at the parent's home or there is a de facto guardian seeking legal guardianship, and
- 3) the parent is indigent (has very little income).

The Court may also appoint a lawyer for the person seeking guardianship, if they are indigent and the parents have a court-appointed lawyer. However, it is unusual for the Court to do this. The child may also get a court-appointed lawyer if the Court believes that the best interests of the child are not being represented. Any party may hire an attorney on their own to represent them in a guardianship case or seek a pro bono (volunteer) lawyer.

How Much Will The Guardianship Cost?

Filing the paperwork for a guardianship is not very expensive. Call your local Probate Court for the cost of petitions and filing fees (*See page 34*). If you have a low income and cannot afford the fees, you can ask the court clerk for a fee waiver application. Some judges may be concerned whether someone who cannot afford the fees has the resources to raise the child.

However, service costs on the parties may be expensive. You may have to hire a sheriff to serve the parents. If you have a low income, you can file a form with the Probate Court asking for the sheriff service costs to be waived. If you do not know where the parents are, you can ask the court for an alternative service. You will have to pay for a notice in the newspaper for consecutive weeks. The Court cannot waive the publication fee, it is charged by the newspaper, not the Court. Finally, you may have to hire a lawyer to represent you in a contested case.

Probate Court Guardianship Process

This section describes the guardianship process. The steps may differ slightly from county to county, as well as the length of time it takes to finish the case.

1. Petition the Court

Go to the Probate Court in the county where the child lives and ask for a *Petition for Appointment of Guardian of Minor*. Before filling out the form, you should have a guardian in mind. You can propose yourself as the guardian or another person who you think is qualified. The proposed guardian has to sign an *Acceptance of Appointment by Guardian of Minor*. If the child is 14 years or older, make sure that the child agrees to the guardianship (or change in guardian) and signs the petition in the section for the teen to sign. Other forms that the proposed guardian may need to file:

- *Child Custody Affidavit*
- *Statement of Public Assistance*
- *Affidavit of Consent* and *Waiver of Notice* form
- *Child Support Affidavit* (in some cases where the parents agree)
- *Affidavit on Petition for Appointment of Guardian of Minor Alleging Intolerable Living Situation* (if this situation applies)

2. File the Petition

Once you have filled out the petition and other necessary forms, bring them back to the Probate Court with the necessary fees.

3. Notification

State law requires that you notify the following people about the guardianship:

- The minor child if he or she is 14 years or older,
- Both parents of the minor child,
- The person who has cared for the child for the 60 days prior to filing, if that caregiver is not the parent, and
- Any other person as directed by the Probate Court Judge.

You will need the names and addresses of each of these people. If the person agrees to the guardianship, they can sign a written waiver saying that they do not need to be notified of any future court dates. The Court requires either the waiver or proof of notification for each of these people. If you do not know the address of any of the people listed above, you will need to publish the notice in a newspaper. You must file a motion with the Court asking permission to serve a person by publication in a newspaper. Ask the Court for a *Service by Publication* motion form, which you can fill out and file. Ask the Court for guidance regarding where and what to publish.

4. Guardian Ad Litem

The Court or a party may feel that a guardian ad litem (GAL) should be appointed. The Court can order that a GAL be involved. The costs of a GAL are usually paid by people involved in the case, but may be paid by the Probate Court. A grandfamily that has an income may be ordered to pay this cost.

A guardian ad litem (GAL) is a third person (often a lawyer) who is appointed by the probate judge to recommend to the Court what he or she believes is in the child's best interests. The GAL will interview the child, the child's parents, the proposed guardian, and others who are involved with the child (for example, teachers, counselors, doctors, child care workers, family friends, or relatives). The GAL must consider several factors when determining what is in the best interests of the child. The GAL must also inform the Court of the child's preference.

The GAL should write a recommendation report and send it to the parties and the Court. The GAL should also be at the Court hearing to testify (*see #6 below*). Although the GAL makes recommendations to the Court, the judge will make the final decision.

Finally, the GAL should also advocate for services that the child is entitled to but is not receiving.

5. Conference

If the guardianship is contested, you will need a formal court hearing. First, the Court will schedule a pretrial conference. At this conference the judge will discuss the following: issues the Court needs to decide, witnesses, exhibits, entitlement to a lawyer, and length of trial.

6. Hearing and Decision

At the hearing, the Court will consider the evidence that is presented and will make its decision based upon the reasons for the guardianship (such as intolerable living situation or de facto guardian) and what is in the child's best interests.

The Court will order guardianship if it finds that:

- ✓ the facts support a guardianship,
- ✓ the legal standards have been met, and
- ✓ a guardianship would be in the best interests of the child.

If one of these factors is missing, the Court will deny the guardianship.

Note: Procedures can be different in each Court. The clerk at the Probate Court where you are filing will be able to tell you the procedures of that Court.

Court Reports

Once the guardian is actually appointed, the Court may ask you to file annual reports. The Court is looking for a descriptive statement of how the child is doing in the guardians' care. Check with the Court in your area to find out if an annual report is requested or required.

What If The Child Needs a New Guardian?

If a new guardian needs to be appointed, a new petition for guardianship must be filed with the Probate Court. That new proposed guardian must file an acceptance of appointment of guardian. Also, the current guardian must either file a notice of resignation or someone must file a notice requesting that the current guardian be removed or the guardianship be terminated. A parent, a new guardian, a child who is 14 years old or older, or an interested person can file the notice of removal/termination. The Court will then schedule a hearing on the new petition.

Are There Other Issues To Consider?

A guardianship can give the child more stability; however, it might be threatening to the parents if they do not fully agree with the guardianship order.

It is usually best to try to get agreement to the guardianship. Consider which options will meet the child's best interests and be agreeable to all parties - full guardianship or limited, temporary guardianship or permanent. Remember that *permanent guardianship* is not really permanent, it can change and can be ended (*see below*).

Try your best to have an honest dialogue with parents and present all issues to the judge. Later, if there is a contested termination of the guardianship, it may be helpful that all the key issues were documented during the Court process.

Can the Terms of a Guardianship be Changed? (Modification)

Once a guardianship is in place, you can still change the guardianship order by *modifying* it. A guardian or parent will need to ask the Court for a change. The Court will schedule a hearing on the request for modification.

For example, you could ask to change a *limited guardianship* to a *full guardianship*. Or, within a *limited guardianship*, you could change the scope of the guardian's decision-making powers by adding or deleting items. You can also add a co-guardian.

What Happens If The Guardian Dies?

If there is only one guardian, then the child will return to the biological parents. A guardian may petition the Court to name a co-guardian so that the guardianship does not end if one of the co-guardians dies. Another option is for families to plan for a specific person to petition for guardianship in the event the current guardian dies.

Termination of Guardianship (Ending The Guardianship)

Legal guardianship can end for various reasons. For example, a temporary guardianship automatically terminates after six months. A permanent guardianship automatically terminates once the child becomes 18 years old or is married or adopted, or if the guardian dies. The Probate Court may terminate a guardianship earlier if it is in the best interest of the child.

An interested person can petition the Court to remove the guardian, or the guardian can file a resignation with the Court. If the parent files for termination of guardianship, the Court may terminate the guardianship unless the judge finds the parent is unfit and it is in the child's best interest to remain in guardianship. The person who files the petition has the burden to prove to the Court that the termination is in the child's best interest, unless the guardianship was in place prior to September 2005. In this case, the guardian has to prove that the guardianship should not be terminated. The Court will schedule a hearing. The guardianship will stay in place until the Court approves the termination or resignation.

When a child turns 18, and becomes a legal adult, the guardianship will end. If you feel that the child is unable to care for themselves because of a mental or physical disability, you can petition the Court to grant another guardianship. This would be a petition to become a guardian of an incapacitated adult. This is a different process. (For more information, you can contact the Maine Department of Health and Human Services, Office of Elder Services at 1-800-262-2232 or visit their website, maine.gov/dhhs/beas/)

Can Parents Visit With Their Children?

Usually, there is no written agreement for visitation and the guardian can decide whether to allow it and under what circumstances. A guardian may want a visitation schedule included in the guardianship order if there is substantial tension with the parents regarding visits. A visitation schedule can reduce arguments about whether or how often visits happen, and can still allow the guardian to cancel visits if necessary for the child's health and safety. Some Probate Courts do not include a visitation schedule in their orders. In that case, the guardian and parent can agree in writing to a schedule, realizing that it is not court-ordered. Another alternative for parents and guardians is to hire a mediator to help them reach agreement.

Can The Guardian Get Financial Assistance?

Financial assistance may be available for the minor child. Parents are still financially responsible. However, if the child is living with a *relative caregiver*, the child may be eligible for TANF (Temporary Assistance for Needy Families.) The relative caregiver may or may not be included in the TANF household unit. The child may also be eligible for MaineCare. Food stamps may be available, based on the household's income. You can apply for MaineCare, TANF, and Food Stamps at your local Department of Health and Human Services office. To learn more about services available from DHHS and to find your local office, visit www.maine.gov/dhhs or contact them at 207-287-2826. For more information about financial assistance, see the *Resource Guide for Maine Grandfamilies* available from Families And Children Together (F.A.C.T.). You can get it online at www.mainekids-kin.org or by calling 1-866-298-0896.

Adoption

An individual person, married couple, or unmarried couple (including gay or lesbian couples) may petition the Probate Court for an adoption. The parental rights of living parents must first be terminated (ended). Adoptive parents have all the rights and responsibilities that the biological parents once had.

Who Can Grant Adoptions?

In Maine, only the Probate Court can grant adoptions.

How Long Does An Adoption Last?

Adoptions are permanent and irrevocable.

Do I Need A Lawyer?

The process can be very complicated. Usually the person seeking an adoption needs a lawyer. Biological parents who do not consent to the adoption have the right to get court-appointed lawyers.

Pro se representation (representing yourself) is recommended only for uncontested cases where the birth parents are willing to give up their parental rights. Before deciding to represent yourself, you may want to consult a lawyer to learn about the legal issues involved in your case. You will go through the process outlined below, whether you have a lawyer or not.

How Much Will The Adoption Cost?

Adoption can be very expensive, particularly if you need a home study or a lawyer. However, if you adopt the child directly from DHHS custody, then DHHS will pay for the home study. You may also be able to get *adoption assistance*, which will cover some legal fees. Some Probate Courts may waive the home study if the adoptive parent is a blood relative (*see section 4 on page 17*). Ask the Probate Court staff in your county about this and cost of filing fees, petitions, fingerprinting fees, and background checks on each adopting parent.

See *Probate Court Contact Information* in the appendix on page 34.

Probate Court Adoption Process:

1. Petition the Probate Court

Any married couple, unmarried couple (including gay or lesbian couples), or individual may petition the Probate Court with a request to adopt a person, and to change that person's name. Get all the forms you will need from the probate clerk in the county where the child lives. (*See the Appendix for list of forms on page 35.*)

2. Get consent

The Probate Court must receive written consent to the adoption from:

- ✓ the person being adopted if that individual is 14 years or older, and
- ✓ the living biological parents of the person being adopted, and

- ✓ any person or agency who has legal parental rights and responsibilities or guardianship of the person being adopted.

A person's or agency's lack of consent may be overruled by a judge if the consent was withheld unreasonably. The persons trying to adopt must prove to the judge that the lack of consent is unreasonable.

The biological parents do not have to consent if:

- The person being adopted is older than 18, or
- The biological parents' parental rights and responsibilities have been voluntarily terminated or terminated by a court order.

3. If Parental Consent Is Not Given

If the parents are not consenting to the adoption, or they cannot be located, the petitioner needs to first petition (ask) the Probate Court to terminate parental rights. The *Termination of Parental Rights* is a separate process. All interested parties must be notified and the Court must hold a formal hearing. The judge will make a decision based on clear and convincing evidence. Before the child can be adopted, there must be a termination of parental rights.

4. Home Study

The state requires a home study for all adoptions, unless the petitioner is a blood relative or a step-parent. DHHS or a licensed adoption agency must do the home study. This is an investigation into whether the proposed home and family are suitable for the child. The home study can be very expensive. The Probate Court may waive this requirement if the petitioner is a blood relative of the child. However, some Probate Courts will not waive this requirement for anyone. (*A list of licensed adoption agencies can be found in the Appendix on page 42.*)

5. Background Check

Fingerprinting and State Bureau of Investigation (SBI) background checks are required for all adoptions and the petitioner must pay for them.

6. Finalization

The Court will grant a final decree of adoption after all necessary written consents have been filed with the Court, or the parents' rights have been terminated. If required, the home study must be completed and filed. The petitioner must be a suitable adopting parent who wants to parent the child. The Court needs to decide that the adoption is in the child's best interests.

7. Appeal

Any party may appeal the final decree to the Supreme Judicial Court.

Are There Other Issues To Consider?

Of all the legal relationships we discuss here, adoption provides the most legal stability for the child. In an adoption, financial eligibility for services will be determined by the family income. This is sometimes different from guardianship and other custodial relationships, where eligibility may be based on the child's income separate from the family. If you adopt directly from DHHS custody, you may receive adoption assistance. (*See below*)

Can An Adopting Parent Get Financial Assistance?

Depending on your income and assets, you may be able to get Temporary Assistance For Needy Families (TANF), food stamps, MaineCare, or childcare vouchers. Eligibility is based on the entire family unit. For more information about assistance, see Resource Guide for Maine Grandfamilies from Families And Children Together (F.A.C.T.). You can get it online at www.mainekids-kin.org or by calling 1-866-298-0896. If you are adopting through DHHS, you may be able to get adoption assistance. Ask the caseworker or contact Adoptive and Foster Families of Maine at 1-800-833-9786 about the rules and how to apply.

CHAPTER 3



PLACEMENT THROUGH DHHS CHILD PROTECTIVE SERVICES

The Maine Department of Health and Human Services (DHHS) provides services to protect children from abuse or neglect. Everyday, many people call DHHS with reports of possible abuse or neglect. DHHS considers all reports and decides which need follow up and possible investigation. If DHHS has concerns, usually they will help the parents make changes to keep their children safe.

Sometimes DHHS will develop a safety plan requiring the parents to place the children with a relative and DHHS will not take custody of the children. In this case, the caregiver may want to strengthen his or her legal authority. Discuss your options with the DHHS worker. You may need to get Power of Attorney or go through the guardianship process in Probate Court. (*See those sections of this guide*)

Other times, DHHS will petition the Maine District Court for custody of the children. If the Court decides to give custody to DHHS, they will try to place the child with a relative. The goal of DHHS is to find a permanent home (called permanency) for the child. First they will try to safely reunify the child with parent(s). This is called reunification. If this cannot happen in a timely manner, DHHS may work towards adoption or permanency guardianship for the child. This section explains the process to make a decision regarding custody and permanency.

It is important to note that there are situations when DHHS cannot or will not help a child who is in danger of being harmed. It is possible for any three adults to file a petition in District Court seeking placement of the child in DHHS custody or in another adult's custody. You will want to consult a lawyer if you are considering this option. More information about this process is available from Kids Legal, you can contact them at 1-866-624-7787 or at www.kidslegal.org.

DHHS Placement

DHHS must get a court order to remove the child from the parent's home. However, once taking custody, DHHS has the rights of a parent including choosing where the child will live (placement). The priority of DHHS is to place the child with a family member, or possibly a

close family friend, until the child can be reunified with their parents, this is called kinship care. DHHS decides the rights and responsibilities of the kinship caregiver. Usually responsibilities of placement include:

- ✓ giving daily care
- ✓ getting medical care
- ✓ signing school forms

Children in DHHS custody are called *foster children*, or less commonly, *wards of the state*.

If a child is already in my care, can I get DHHS to take custody?

Typically, the answer is no. DHHS only takes custody when a child is *at risk of abuse or neglect*, and is not safe with the parent or caregiver. The child's caregiver can request a voluntary agreement with DHHS for temporary DHHS placement (up to 180 days) where staying in the caregiver's home may be harmful to the child (for example, the child is at risk of entering the juvenile justice system).

How Long Do DHHS Placements Last?

DHHS placements may last up to 15-18 months, though sometimes it is longer.

Do I Need A Lawyer?

If you are a foster parent or another adult caring for a child placed by DHHS, you probably do not need a lawyer. If you want to become an *intervenor* (*see next section*), you should consult a lawyer.

Each parent of the child will have a lawyer. If the parents are unable to afford a lawyer, the Court will appoint one for them. Children will have a guardian ad litem (GAL). In some cases, a child can get a lawyer, as well as, a GAL.

Can I Go To Court Hearings?

Yes. In fact, if DHHS has custody and places the child with you, you have the right to be told of hearings and to speak at hearings. Anyone with a significant relationship to the child (relative, counselor, caregiver, etc.) can request to be recognized as a participant. A relative caregiver is automatically considered a participant. You must show the Court that you have a *substantial relationship* or *substantial interest* in the child's well-being and it is in the child's best interests for you to participate. The Court must allow your request unless it finds *good cause* not to do so. As a *participant*, you may have the right to be heard in Court, but not the right to present or cross-examine witnesses, present evidence, or have access to court documents. You can request *participant status* at the hearing.

Sometimes family members will ask to *intervene* in the child protective court case. If you are an *intervenor*, you are a party to the case, just like DHHS and the parents. You have to file a motion with the Court requesting intervenor status in the child protective case. You must show that your rights may be adversely affected, unless you are given intervenor status in the case. This is the most difficult standard to meet. If granted, you have the same procedural rights as other parties to the case. You can speak at hearings, present or cross-examine witnesses, present evidence, and see court documents. These are complex procedures, and it is recommended that you consult with a lawyer.

The Maine DHHS Placement Process

1. Investigation:

When DHHS gets a report of possible child neglect or abuse, they may send a caseworker to the child's home, if the case meets the criteria for an investigation. The caseworker will investigate whether the child is abused or neglected and whether the child is safe in the home. If DHHS finds that there is abuse or neglect, DHHS may ask the parents to agree to a *safety plan*. The plan may include services to the family while the children remain in the home, or it may require the children to live with someone else. If the caseworker and the parents do not agree to a plan, and the caseworker feels the child is in jeopardy, the caseworker will file a *Child Protection Petition* with the District Court. This petition asks the judge to order a plan to protect the child. DHHS has the authority to ask law enforcement to remove a child from the parent's care for a maximum of 6 hours without going to Court to get an order. This is called a *6 hour hold*.

2. The Preliminary Protection Order (P.P.O.):

When the caseworker files the Child Protection Petition, they may also ask the judge for a PPO. This is based on DHHS's belief that the child is in *immediate risk of serious harm*. If the judge agrees, the PPO will order DHHS to remove the child from the harmful or dangerous situation and place them with another adult, possibly a family member. DHHS can get a PPO from the Court without notifying the parents. Parents can challenge the PPO by asking for a hearing, which must be scheduled within 10 days. (*See below*)

3. Summary Preliminary Hearing (C-1 Hearing):

Once a PPO is signed, the Court will set a hearing date, usually within 10 days, to decide whether the PPO will continue or not. This hearing is sometimes called a *C-1 hearing*. DHHS must present to the Court:

- Its plan to reunify the child with the parents, if the child has been removed, or
- Its plan to avoid removing the child from the home, if the child has not been removed, or
- Its decision not to provide reunification services to the family, if it has made such a decision.

Each parent will be represented by a lawyer. A guardian at litem (GAL) will be present for the children. The GAL is assigned to look out for the best interests of the children. DHHS must prove that there is *immediate risk of serious harm* in order to continue with the PPO. This is not the end of the case. This is a temporary ruling. The Court must still rule on the original Child Protection Petition alleging abuse or neglect.

4. Jeopardy Hearing (C-2 Hearing):

The next step in the Court process is the jeopardy hearing — sometimes called the *C-2 Hearing*. Here the Court will rule on the original Child Protection Petition.

This comes after the judge has ruled on the PPO. If DHHS has not asked for a PPO, this jeopardy hearing will be the first court hearing. At this stage, the judge decides if jeopardy exists. That is, will the child be in circumstances that may be harmful to the child's health or welfare if returned to the parents? If the judge decides there is jeopardy, the judge will also decide what must be done to protect the child. This may include taking the child from the home and placing them with a relative, in a treatment center, or with a foster family. A judge's jeopardy order must be given within 120 days of when the child protective petition was filed.

5. Reunification:

DHHS must try to reunify the child with his or her parents. This means DHHS must set up visitation between the child and parents, which may be supervised. DHHS must also arrange for and provide needed services to the child and parents, such as individual counseling, parent training, family therapy, etc. Reunification Services must also assure that the child is protected from any harm.

6. Post Jeopardy Hearings:

The Court must review the jeopardy order every 6 months until child turns 18 or achieves *permanency*. The parents can ask for a court review of the order at any time. If the child is placed in foster care, the Court must hold a hearing called a *permanency plan hearing* within 12 months of the placement. The permanency plan will state whether the child will be reunited with his or her parents. If the child will not be returned to his or her parents, then the plan must include other long-term arrangements, such as: termination of parental rights and responsibilities, adoption, permanency guardianship, placement with a relative, or emancipation (through a court order, a young person 16 or 17 years old is allowed the responsibilities of an adult.)

As stated earlier, the priority is to safely return the child to the parent within the legal time frame. If this is not possible, the Court must explore other permanency options. DHHS may seek termination of parental rights (TPR) which will allow the child to be adopted. (*See section 7 below*) This is often considered to be the best option, because adoption offers the most legal stability for the child. (*More information on adoption is on page 16*) However, terminating parental rights may not always be in the child's best interests. For example, it may not be appropriate to terminate the parental rights of a 16 year old who is not going to return to her parents' home but does not want the parent relationship severed.

If adoption is not in the best interests of the child, the District Court will consider other options, including a *permanency guardianship* or a guardianship of a minor. The guardian's rights and responsibilities are similar whether they have permanency guardianship through District Court or guardianship of a minor through Probate Court. *Permanency guardianship* may offer more financial support than guardianship through Probate Court. It may also include a visitation order.

Someone who wants to provide a long-term commitment to a child, should discuss the permanency options with the child's caseworker. Different responsibilities and

financial obligations apply to the different permanency options. DHHS has booklets about adoptions and permanency guardianship to help people make decisions. It may be helpful to talk with a lawyer before making these decisions.

7. Petition to Terminate Parental Rights and Responsibilities:

If DHHS decides not to reunify the child with the biological parents, it must decide whether to file a *Petition To Terminate Parental Rights* (TPR). If DHHS wants to seek termination of parental rights, the caseworker will file a request with the Court to *cease reunification*. By doing so, the caseworker is asking that DHHS no longer be required to provide services to the parent to help the parents reunify with the child. The TPR petition asks the Court to end any rights that the biological parent still has. In order to end the parental rights, a judge must decide that it is in the best interest of the child. If the judge grants the petition, the biological parents, and sometimes the extended family as well, are not allowed to visit with the child or be involved in the child's life. DHHS can also ask the Court for a *cease reunification order* without petitioning for a TPR. In this case, DHHS does not have to provide reunification services to the family, but is not requesting to terminate the parent-child relationship.

Are There Other Issues To Consider?

DHHS placement does not necessarily provide legal stability in the relative caregiver's home while the child is in foster care. DHHS, as the legal guardian, may need to move the child to a new placement. Hopefully, the placement leads to stability through DHHS's permanency plan. DHHS process often requires sharing responsibilities with other family and professionals. It can often be confusing, so it is important to ask the caseworker your questions. The safety and best interests of the child are to be considered by all parties involved in a DHHS child protective case.

What Happens If The Caregiver Dies?

If the kinship caregiver of a child in DHHS custody dies, DHHS will make another placement. If the only guardian with a permanency guardianship dies, the Court may appoint a new guardian.

Is Financial Assistance Available?

Relative caregivers who accept a DHHS placement are eligible for foster care payments. Caregivers who are licensed foster parents receive full payments; caregivers who are not licensed receive reduced payments. An adult who adopts a child directly from DHHS custody, or obtains a permanency guardianship of a child in DHHS custody, may be eligible for financial assistance. DHHS determines eligibility for this assistance, not the Court.

For more information regarding these payments please contact the Maine DHHS caseworker. You may also want to call Adoptive and Foster Families of Maine at 1-800-833-9786 about meeting licensing, adoption, or permanency guardianship requirements and the assistance available through these programs. You may also want to review the *Resource Guide for Maine Grandfamilies* from Families And Children Together (F.A.C.T.), you can get it online at www.mainekids-kin.org or by calling at 1-866-298-0896.

CHAPTER 4



CUSTODIAL ARRANGEMENTS AND EDUCATIONAL ISSUES

The different custodial arrangements give caregivers different rights and responsibilities when dealing with the child's educational issues. At the time of printing, legislation was pending to change the rights of caregivers who do not have guardianship. Visit www.mainekids-kin.org or call us at 1-866-298-0896 for up-to-date information.

Parents (biological and adoptive) have various rights and responsibilities regarding their children's education. Some of these rights and responsibilities are passed on to the caregivers in other arrangements described in the earlier sections. This can get very complicated. Guardians, fosters parents, and other caregivers often become confused about what they can and cannot do regarding the child's education.

The following sections discuss school laws and how they relate to grandfamilies. In the appendix, on page 40, you will find a table to compare various legal relationships and the rights and responsibilities of the caregivers regarding education.

Residency Requirements for School Enrollment

Students are legal residents of the school district where their parent or legal guardian with custody lives (even if the student doesn't live with them). There are some exceptions. The student may get an exception if the student lives in the school district and:

- is in DHHS custody,
- emancipated by the District Court,
- 18 years old or
- married

If the student is not living with a parent or legal guardian and does not meet the criteria listed above, the superintendent of the school district where the student is currently living may grant an exemption based on the following criteria:

- it is impossible or impractical for the student to live with either parent

- the student is not living with someone in that school district for the sole purpose of going to that school
- it is in the student's best interest to attend school in the school district where they are currently living

To get this exemption, send a letter to the superintendent explaining the student's situation and ask that the student be allowed to enroll in that school district. Sometimes it is helpful to discuss the situation with a guidance counselor before approaching the superintendent.

Sometimes the superintendent will make a *superintendents agreement* with the superintendent of the school district where the student would be expected to go.

Finally, if a student is staying with you temporarily, the student may be considered a homeless student. In that case, the student can attend the school where the student is living or the school they attended before coming to live with you. Each school district has a School Homeless Liaison to ensure that homeless children are enrolled in school and receive the educational services for which they are entitled. For more information about School Homeless Liaisons, contact *Keeping Maine's Children Connected* at 207-822-0172 or at www.maine.gov/education/speced/kmcc/index.htm.

Educational Disruption

Reducing educational disruptions for a student is important. If a student is moving between school districts, consider requesting a residency exception to keep the child in the same school district, especially if the move may only be temporary. To help a child make a smooth transition, contact the school's guidance department. If you want additional assistance, contact the school liaison. You can find your school liaison through *Keeping Maine's Children Connected* at 207-822-0172 or at www.maine.gov/education/speced/kmcc/index.htm.

Students who experience *education disruption* are defined as students who have 10 or more school absences in a row because of a change in placement. This includes absences due to foster care, unplanned hospitalization, detention at a youth development center, homelessness, or similar situations. The student may enroll in a new school (sometimes temporarily) as a result. In this case, the new school must appoint a staff member to ensure that the school records (including grades, academic materials, and credits) from the former school are obtained within 5 school days after the student enrolls in the new school. There must be a *school work recognition plan* for the new (and often temporary) school placement. The plan must be developed within 10 school days. This plan must be in writing and outline how the student will complete work for credit to meet the student's goals. If the student is a junior or senior in high school, the plan must include how and when the decision will be made as to whether the student has met the requirements for a diploma.

Truancy

The adult responsible for a student of compulsory school age (ages 7-16) must ensure that the child attends a school program (public school, private school, or home school). This is true regardless of the adult's legal relationship with the child. Truancy means the child is *too often* absent from school without an excuse. *Too often* is defined according to age. Children who are at least 7 years old, but not yet in 7th grade, are truant if they have 5 unexcused absences in a row or 7 total unexcused absences in a school year. These children may also be found to

experience *educational neglect* resulting in a report to DHHS child protective services. Children in 7th - 12th grade, and not yet 17 years old, they are truant if they have 7 unexcused absences in a row or 10 total unexcused absences in one school year. The school must work with the student and caregiver to reduce the student's truancy. Contact Kids Legal for more information at www.kidslegal.org or 1-866-624-7787.

Discipline

Sometimes a school will temporarily not allow a child to attend because of a child's behavior. This is called a *suspension*. If a school plans to suspend a student for more than 10 school days for disciplinary reasons, the student has a right to a hearing before the school board. This is treated as an expulsion hearing, and the student can have an attorney represent him or her. If a school board expels a student, it is for an indefinite period of time and it applies to every Maine public school district. A student can ask for another school board hearing to argue that they should be allowed to return to school. At that hearing, the student will need to show that he or she is not likely to repeat the behavior that resulted in the expulsion. A child who is in special education should not be kept out of school for behavior related to the child's disabilities. Parents or guardians with a child in this situation should request a meeting to make sure the child's *Individual Education Program (IEP)* is meeting the child's needs. (See next section)

Special Education

Children with disabilities may receive special education services under the *Individuals with Disabilities Education Act (IDEA)*. The school must identify eligible students and develop an appropriate plan, called an *Individual Education Program (IEP)*. Parents and legal guardians are members of the school's team process to develop the plan. You have decision-making authority regarding special educational issues only if you are one of the following:

- the child's biological or adoptive parent,
- the child's legal guardian,
- the child's licensed foster parent or
- appointed as the child's *surrogate parent*

If you do have this decision-making authority, the school system must respond to you as if you were the parent.

Children in DHHS custody must have a surrogate parent who is not the DHHS caseworker or any other state employee. A licensed foster parent is automatically the surrogate parent. If a child is placed with you by DHHS and you are not a licensed foster parent you must ask to be appointed as the *surrogate parent*. You can do this by asking either:

- the District Court to name you as the surrogate parent in the child's protective case order, or
- the school district's special education director or the Maine Department of Education to appoint you.

For additional information and resources about special education, you can contact:

- **Maine Parent Federation:** 1-800-870-7746 or www.mpf.org
- **Southern Maine Parent Awareness (York County):**
1-800-564-9696 or www.somepa.org

- **Learning Disabilities Association of Maine:** 1-877-208-4029 or www.ldame.org
- **Disabilities Rights Center:** 1-800-452-1948 or www.drcme.org

Legal Guardians and School

Since legal guardians are court-appointed to care for the child, guardians take over all rights and responsibilities relating to the child’s education. This is true for both temporary and permanent guardianships through Probate Court and for permanency guardianship through District Court. The child is a resident of the school district where the legal guardian resides. This means the child can enroll in that school district.

The legal guardian has full authority to sign all school forms, permission slips, and sick notes.

Legal guardians have a right to be notified when the child is disciplined, including suspension, and expulsion. The child has a right to a lawyer and legal due process in all expulsion hearings.

Guardians have the right to access the child’s educational records, as granted by the *Federal Education Rights and Privacy Act (FERPA)*.

Maine Department Of Health And Human Services (Maine DHHS) and School

Children in DHHS custody are considered residents of the school district in which they are placed by DHHS. This means that the children can enroll in the school district where they reside with a foster family, an adult relative, or any other adult or treatment center where DHHS placed them.

Each year DHHS signs a *blanket* form that authorizes all permission slips for the school year. The caregiver or foster parent then signs each individual slip for the specific activities.

DHHS has the right to be notified if the student is going to be suspended or expelled. DHHS will then notify the foster parent or caregiver. If the child is a special education student, the surrogate parent has the right to be notified of any disciplinary issues.

DHHS has full access to educational records, however it does not have any decision making authority as a normal parent would.

Informal Placements and School (with or without Power of Attorney)

If the relative caregiver has the child without a court order, the child is not automatically permitted to attend the school where the caregiver lives, unless the parent lives in the same school district. See page 24 for more information on residency requirements.

In informal arrangements, the relative caregiver does not have the authority to sign school forms, notes, or permission slips. Only the child’s parents have the authority to sign.

The caregiver does not have the right to be informed of the child’s discipline, suspension, or expulsion issues. However, the school will usually notify the adult. The child is entitled to a lawyer and due process in all expulsion hearings.

The caregiver does not have the right to access the child’s educational records.

CHAPTER 5



HELPFUL RESOURCES

Finding a Lawyer

The Maine Bar Association referral service is one way to find a lawyer. You may want to also look in the yellow pages, ask friends, or call Families And Children Together's Maine Kids-Kin program for a list of lawyers who practice this kind of law. Lawyers often have specialties and someone who was great for a criminal case may not have experience in guardianship cases. Find a lawyer experienced and skilled in addressing your particular legal issues.

Remember, hiring lawyers are like hiring car mechanics, hairdressers, or doctors. You expect quality and respect. Ask about their experience. Find out about payment terms. If the terms will be a hardship, some lawyers may be willing to discuss payment plans or provide a more limited service.

See "Attorneys and Their Fees" in the Appendix on page 33.

Working with a Lawyer

A lawyer is helpful in two ways. One is to advise you in the best strategy to reach your goals and the other is to represent you in the legal challenges ahead. Often people assume they cannot afford a lawyer, but you may be able to work out an affordable plan or be eligible for free or reduced cost legal services. Even a one-time consultation with a lawyer may be of great benefit. The law is complex and a consultation may provide direction for the best strategy.

In cases that may result in the parents having fewer rights, such as contested guardianship, adoption, and child protective hearings, parents have the right to representation by a lawyer and can request one at the Court's expense if they cannot afford one. Other parties such as guardians who do not have lawyers are at a great disadvantage if they are involved in a legal case where the opposing side has a lawyer.

Considering Mediation

Mediation is a good option to consider in a contested guardianship case, and is much less expensive than hiring a lawyer. A mediator may help you and the parents resolve disagreements regarding guardianship before going to court. During mediation, all parties meet with a mediator (a neutral person) in a private and confidential setting. The mediator listens to the concerns of each party, and then helps to develop a solution that works for everyone. Remember, the mediator is not a judge, and does not decide who is right or wrong.

WHERE TO FIND FREE AND LOW COST LEGAL INFORMATION

Your Probate Court or District Court

The staff at the Court can answer your questions regarding what forms you need to complete, as well as answer some of your questions about the Court process.

Maine Kids-Kin, a program of Families And Children Together

1-866-298-0896 or **www.mainekids-kin.org**

Maine Kids-Kin provides information and support to extended family members who are stepping in to care for a relative's child(ren). The family member may be a grandparent, aunt, uncle, sibling, cousin or good friend of the family. The children may be in the relative's care, or the relatives may be working towards that goal. Staff can provide general information about the legal process and referrals to legal services.

Pine Tree Legal Assistance

www.ptla.org

Pine Tree Legal Assistance provides free legal services in areas of housing, family law, social services, benefits, education, healthcare, etc. It also provides access to legal and self-help information, including information on how to complete guardianship forms.

Maine Equal Justice Partners

www.mejp.org

Maine Equal Justice Partners is a resource for legal information for low-income Mainers. It advocates for improved systems in healthcare, income supports, food assistance, employment, education, and training.

York County Community Action - Access to Justice Advocacy Program

1-800-644-4202 ext. 30 or **www.yccac.org/legal-advocacy.html**

The Access to Justice Advocacy Program provides assistance to low-income individuals in York County representing themselves in family law matters. They help people understand the legal system, court procedures and help complete court paperwork.

HelpMELaw

www.helpmelaw.org

HelpMELaw provides information about different laws and courts in Maine, links to helpful organizations, and self-help legal direction.

janus.state.me.us/legis/statutes

This is a site to read Maine laws. Once you reach the site, Title 18-A Article V gives laws related to guardianship. Title 18-A Article IX give laws related to adoption. Title 22 Chapter 1071 gives laws related to DHHS child protection.

The Maine Department of Health and Human Services

www.maine.gov/dhhs or 207-624-6600

The Maine Department of Human Services (DHHS) has many online resources including information about their programs, and downloadable publications including information about elder services, child welfare, and MaineCare.

The Maine Department of Education

www.maine.gov/education/speced or 1-888-577-6690

Maine Department of Education has online information about special education.

Maine Children's Alliance

www.mekids.org or 1-866-621-0758

Maine Children's Alliance is the home of the child welfare ombudsman. This is a resource for families concerned about Maine DHHS involvement with their children.

American Bar Association

www.abanet.org/child/kinshipcare.shtml

American Bar Association website on kinship care.

Maine Bar Association

www.mainebar.org

Maine Bar Association website offers referral and legal information pamphlets.

Legal Services for the Elderly

1-800-750-5353 or www.mainelse.org

For low income seniors over the age of 60, Legal Services for the Elderly may refer them to a reduced cost lawyer for some kinds of questions related to caring for a child.

WHERE TO FIND FREE AND LOW COST LEGAL ASSISTANCE

The Maine Volunteer Lawyers Project

1-800-442-4293 or www.vlp.org

The Maine Volunteer Lawyers Project (VLP) refers some low-income people to private attorneys for representation on a variety of civil legal issues and assists pro se clients on family law matters. Grandfamilies who are low-income and have the children in their care may be eligible for information, consultations, or representation through the collaboration of Maine Kids-Kin and VLP. Contact Maine Kids-Kin to see if you are eligible for a referral to VLP. If you are eligible, VLP will then consider whether you meet their guidelines for service.

Your County Probate Court

It is possible for low-income relatives to petition the Probate Court for a court-appointed lawyer. The Court is not required to appoint a lawyer for guardians or potential guardians, but it is possible.

Kids Legal

1-866-624-7787 or **www.kidslegal.org**

Kids Legal is a statewide project within Pine Tree Legal Assistance. Kids Legal specializes in providing legal services addressing the needs of low-income Maine children. With offices in Portland and Bangor, they provide direct representation, consultations, and group trainings in areas such as education, housing, public benefits, and family law matters.

Maine Bar Association Information and Referral Service

1-800-860-1460 or **www.mainebar.org**

This service costs \$25 for the name of a lawyer who has agreed to consult with you for a half hour only, at no extra cost. For any time over a half-hour, the lawyer may charge his or her regular fee.

The Cumberland Legal Aid Clinic

1-877-780-2252 or **www.maine.gov/education/programs-centers/clac.html**

The Cumberland Legal Aid Clinic is a small legal service provider for low income clients. Clients are represented by third year law students at the University of Maine School of Law. The students are licensed by the state and federal courts and practice under the supervision of fully-licensed attorney faculty members.

Disabilities Rights Center

1-800-452-1948 or **www.drcme.org**

The Disabilities Rights Center helps families to advocate for children with disabilities by providing information on rights, services, complaint procedures, and strategies. They also provide information through published materials and their website.

MEDIATION SERVICES

Community Mediation Services

1-800-381-0609 or **www.communitymediationservices.org**

Community Mediation Services provides free or low-cost mediation for families throughout the State of Maine.

Penquis Dispute Resolution Center

1-888-497-3500

Penquis Dispute Resolution Center provides free mediation services to residents of Penobscot, Piscataquis, Hancock, Waldo, and Washington Counties.

OTHER LEGAL ISSUES TO CONSIDER

Are there other parts to legal custody?

You may gain some stability in the context of a divorce, a protection from abuse order, or other court case in which the District or Superior Court decides who gets custody of a child. If the court decides that placing the child with either parent will put the child in jeopardy, the court can award custody to another person.

What if I want to visit my grandchild who is in the parent's custody?

There is also a special part of Maine law that allows grandparents to petition the District or Superior Court where the child lives for visitation rights. In some situations when grandparents have established a relationship with the child (or have tried to establish one), or if one of the child's parents has died, the court can grant visitation rights to grandparents if that is in the best interest of the child.

Will my relationship with the child impact the government assistance I can receive?

Taking care of children may change your eligibility for government assistance. You should consider this when determining which legal relationship is best for you. Refer to the sections on financial assistance for each option in Chapters 1, 2, and 3. For more information about assistance, see *Resource Guide for Maine Grandfamilies* from Families And Children Together (F.A.C.T.). You can get it online at www.mainekids-kin.org or by calling 1-866-298-0896.

ATTORNEYS AND THEIR FEES: WHAT YOU SHOULD KNOW

Stick to the Facts

Almost any issue that moves you to seek legal advice is likely to affect you emotionally, and it's natural for you to want an attorney to understand how you feel. It will be easier for an attorney to assist you, however, if you focus on facts more than feelings.

Present it in Print

Bring any documents that pertain to your problem (such as contracts, citations, deeds, will, e-mails, letters, or photographs) to your first meeting.

Don't Leave Things Out

Your attorney needs to see the situation from every side in order to determine how the law can serve you best. Your information will be held in strict confidence. Attorneys are bound by the same code of confidentiality as clergy and doctors, and without your consent, an attorney cannot reveal anything that you say as part of a professional relationship, even in a first meeting, before you have actually made a decision to retain the attorney. No Court or other authority can force the attorney to violate that confidence. Good or bad, flattering or unflattering, tell the truth and don't leave out any relevant facts about yourself or the problem.

Ask Questions

If you don't understand something, ask. It's also ok to ask about an attorney's professional education, background, and familiarity with the kind of problem you are presenting.

Discuss fees and payments

Legal fees pay for your attorney's time and professional experience, as well as for the business expenses of a legal practice—trained support staff, specialized computer systems, office equipment, law books and references, communication services, postage, supplies, rent, travel, insurance, professional fees, and more. Discuss both the ways you will be charged and the way you will be billed. If you think you will have difficulty paying what the attorney asks, say so. If it doesn't put your welfare or the attorney's ethical obligations in jeopardy, you may be able to arrange for the attorney to do part of the project (called "unbundled law"), and do the rest yourself, called *pro se*. You may also be able to arrange a payment plan. At the end of your first meeting, ask the attorney to send you a letter stating the rates and fee arrangements you have agreed to, so there will be no question later on.

Lastly, to keep your costs down:

- | | |
|-------------------------|---|
| Be Clear | Know what outcome you want. |
| Be Informed | Make sure you understand how your attorney plans to assist you. |
| Be Prepared | Have contact information for everyone involved written down. |
| Be Business-Like | Focus on the facts. |
| Be Brief | Avoid unnecessary phone calls. |

This information is from the Maine Bar Association.

PROBATE COURT CONTACT INFORMATION

| County | Address | Contact Information |
|---------------------|--|--|
| Androscoggin | 2 Turner Street Auburn, ME 04210 | 782-0281 |
| Aroostook | 26 Court Street, Suite 103 Houlton, ME 04730 | 532-1502 www.arostook.me.us/probate.html |
| Cumberland | 142 Federal Street, Suite 125 Portland, ME 04112 | 871-8382 www.cumberlandcounty.org/Probate/index.htm |
| Franklin | 38 Main Street Farmington, ME 04938 | 778-5888 |
| Hancock | 60 State Street Ellsworth, ME 04605 | 667-8434 www.co.hancock.me.us |
| Kennebec | 95 State Street Augusta, ME 04330 | 622-7558 www.kennebeccounty.org |
| Knox | 62 Union Street Rockland, ME 04841 | 594-0427 knoxcounty.midcoast.com/departments/probate.html |
| Lincoln | 32 High Street P.O. Box 249 Wiscasset, ME 04578 | 882-7392 |
| Oxford | 26 Western Avenue P.O. Box 179 South Paris, ME 04281 | 743-6671 www.oxfordcounty.org/probate.php |
| Penobscot | 97 Hammond Street Bangor, ME 04401 | 942-8769 |
| Piscataquis | 159 East Main Street Dover-Foxcroft, ME 04426 | 564-2431 www.piscataquis.us |
| Sagadahoc | 752 High Street P.O. Box 246 Bath, ME 04530 | 443-8218 www.sagcounty.com/sag_probate.html |
| Somerset | 41 Court Street Skowhegan, ME 04976 | 474-3322 www.somersetcounty-me.org |
| Waldo | 39A Spring Street P.O. Box 323 Belfast, ME 04915 | 338-2780 www.waldocountyme.gov/rop/ |
| Washington | P.O. Box 297 Machias, ME 04654 | 255-6591 www.washingtoncountymaine.com/probate/ |
| York | P.O. Box 399 45 Kennebec Road Alfred, ME 04002 | 324-1577 |

LIST OF PROBATE COURT FORMS

Guardianship Forms

- Petition for Appointment of Guardian of Minor, PP-101
- Acceptance of Appointment by Guardian of Minor, PP-103
- Joined Petitions: Appointment of Conservator and Guardian of Minor, PP-105
- Affidavit of Petitioner for Appointment of Guardian of Minor Alleging Intolerable Living Situations, PP-107 (**must be notarized**)
- Child Custody Affidavit, PP-109 (**must be notarized**)
- Consent Affidavit and Waiver of Notice of Hearing 18-A MRSA §5-204
- Guardianship of a Minor, Child Support
- Statement Concerning Public Assistance

Termination of Guardianship Forms

- Petition for: (Check Where Appropriate), PP-302
 - () Termination of Guardianship
 - () Removal of Guardian
 - () Resignation of Guardian

Termination of Parental Rights Form

- Petition for Termination of Parental Rights, A-9

Adoption Forms

- Petition for Adoption and Change of Name, A-1
- Consent of Other Than Parent, A-5
- Child Custody Affidavit, A-7
- Confidential Statement to Accompany Petition for Adoption, A-8
- Petition for Termination of Parental Rights, A-9 (Separate process that involves service, presentation of evidence in a formal evidentiary hearing)
- Affidavit of Paternity, A-12
- Waiver of Notice by Putative Father or by Legal Father (Who is not the Biological Father) and Affidavit of Legal Father (Who is not the Biological Father), A-14
- Report of Disbursements, A-18
- Acknowledgement of Adoption Registry, A-22
- Additional Paperwork Needed for Adoptions
 - Copy of applicable marriage certificate and/or divorce judgment
 - Original birth certificate
 - Copies of all applicable District Court jeopardy orders, or termination of parental rights orders (if DHHS adoption)
 - Applicable Consents (A-4, A-4(O), Surrender & Release (A-16)
 - Background information of the child (medical history, etc.)
 - Home study, unless waived
 - Post-Placement Report

SAMPLE POWER OF ATTORNEY FORM

Power of Attorney

KNOW ALL PERSONS that I, _____, of _____, Maine, appoint _____ of _____, Maine, to be my lawful attorney-in-fact regarding my minor child[ren]:

_____ born on _____
_____ born on _____
_____ born on _____

I hereby grant to my attorney-in-fact, _____, all of my powers regarding the care and custody of the above-named children, except my power to consent to marriage or adoption of my minor child[ren] and my power to sell, transfer, convey or otherwise manage any real or personal property belonging to my minor child[ren].

I hereby intend that my attorney-in-fact have the same full authority as I have to consent to, or withhold consent to, any medical or other professional care, counsel, treatment or service to said minor child[ren] by a licensed or certified professional person or institution engaged in the practice of, or providing, a healing art.

The rights, power and authority herein granted shall remain in full force and effect for six months or until terminated by a written Revocation of Power of Attorney signed by me, whichever happens first. This Power of Attorney shall not be affected by my disability or incapacity. The authority herein granted to my attorney-in-fact, _____, is exercisable by him or her, notwithstanding my later disability or incapacity or later uncertainty as to whether I am dead or alive.

IN WITNESS WHEREOF I have hereunto set my signature this ____ day of _____, 20 __.

(Signature)

STATE OF MAINE

_____, ss.

Personally appeared the above named _____ and acknowledged the foregoing instrument to be his free act and deed.

Before me,

Notary Public/Attorney at Law

SAMPLE REVOCATION OF POWER OF ATTORNEY FORM

Notice of Revocation of Power Of Attorney

I, _____, of _____, Maine
hereby give notice that I have revoked, and do hereby revoke, the Power of Attorney
previously given to _____.

Dated: _____

Parent's Signature

Parent's Name

WITNESSES (Optional)

_____ Dated _____

_____ Dated _____

Comparing Options For Legal Relationships

| <i>Custodial Relationship</i> | <i>Authority</i> | <i>Length</i> | <i>Is Financial Assistance Available?</i> | <i>Do Birth Parents Keep Parental Rights and Responsibilities?</i> | <i>What If The Caretaker Dies?</i> | <i>Is Parental Consent Required?</i> | <i>Do I Need A Lawyer?</i> | <i>Issues To Think About</i> |
|---|---------------------------------------|---|--|---|--|--|---|--|
| Grandparent or other non-parent relative who is not a court-appointed guardian | Biological or Adoptive Parents | Indefinite until parent wants child returned to his or her care. | Parents retain financial responsibility. MaineCare, and TANF may be available for child, but not childcare vouchers. | Parents have full rights and responsibilities. | Child will be returned to parents unless others arrangements are made. | Required | Not necessary. | Does not provide legal stability. May not allow for some services because parents must consent or service requires guardianship. May be difficult to enroll child in school. |
| Power of Attorney | Notary Public or Attorney and Parents | Up to 6 months, or earlier if parent revokes it. Another POA should be signed if needed longer than 6 months. | Parents retain financial responsibility. MaineCare and TANF may be available for child, but not childcare vouchers. | Parents have full rights and responsibilities. | Nothing. Child already lives with parents or will be returned home. | Required | Not necessary though it may be useful to ensure it is written properly. | Does not provide legal stability, may not allow for some services that require guardianship. May be difficult to enroll child in school. |
| Adoption | Probate Court | Permanent and irrevocable. | TANF, MaineCare etc. based on eligibility of family unit. If adoption is through DHHS, there may be adoption assistance. | Birth parents have no rights or responsibilities. Child may or may not retain inheritance rights to the parents' estates. | The same as for any parent who dies. | Yes, by both birth parents or without consent if jeopardy is established and parental rights are terminated. | Yes, since the process is complicated. Non-consenting, indigent parents are entitled to court-appointed lawyers | Provides the best legal stability for child. Access to services and financial eligibility determined by family's income. |

| Custodial Relationship | Authority | Length | Is Financial Assistance Available? | Do Birth Parents Keep Parental Rights and Responsibilities? | What If The Caretaker Dies? | Is Parental Consent Required? | Do I Need A Lawyer? | Issues To Think About |
|---|------------------|---|---|---|--|--|---|--|
| Legal Guardian (Full or Limited) | Probate Court | Up to 6 months with temporary guardianship. Permanent guardianship lasts until the child is 18 years old, marries as a minor, the guardian resigns or dies before the child is 18, <i>or</i> the guardianship is terminated by the Court. | Parents retain financial responsibility and may be required to pay child support. MaineCare, childcare vouchers and TANF are available based on child's income. Relatives can apply for TANF as a caretaker relative and be included in the TANF household. | <u>Full Guardianships</u> Parental rights are suspended; however, parents may have financial responsibility. <u>Limited Guardianship</u> Parents keep rights as ordered by the Court. | If there is only one guardian, the child returns to the parents' custody. | Yes, by both parents or without consent if intolerable living situation is established or prospective guardian proves that he / she is the de facto guardian. | Not necessary, but helpful. It is difficult to succeed in a contested guardianship without one. Non-consenting indigent parents are entitled to court-appointed lawyers. Indigent guardians may request a court-appointed attorney. | Provides substantial legal stability for the child. Seeking agreement with parents before court proceedings may be very helpful. |
| DHHS | District Court | Child should have permanent plan within 15-18 months after placement in DHHS custody. Permanency plan can lead to reunification, emancipation, adoption, or permanency guardianship. | Adults who have children placed with them are eligible for foster care payment. Payments are reduced if adult does not have a foster home license. In permanency guardianship or adoption, there may be continued assistance after child leaves DHHS custody. | DHHS becomes the legal guardian and has a duty to work towards reunification with parents. If DHHS feels this is not working, they can petition the Court to cease reunification efforts and terminate birth parents' rights. | DHHS can place the child in another home. For permanency guardianship the case would return to Court. For adoption, it is the same as for any parent who dies. | No. DHHS must prove jeopardy if parents do not agree to jeopardy finding. Parents have a right to advocate for their position in Court and be represented by an attorney. Ultimately, the Court will decide. | Not usually necessary. Relatives who petition the Court for intervenor status may need a lawyer. Relatives working toward permanency guardianship may want to seek legal counsel regarding visitation and other issues. | DHHS acts as the child's guardian and makes decisions. Child will also have a guardian ad litem to help the Court and DHHS determine what is in the child's best interests. Until a court order for permanency, there is no legal stability for the child. |

Comparing Legal Relationships Within The Education System

| Custodial Relationship | What the Custodial Relationship Means | School Enrollment | School Forms Permission Slips Sick Notes | Discipline and Expulsion | Access to Educational Records | Special Education |
|--|---|--|---|---|---|---|
| Birth Parents | Birth parents are the guardians of the child with full rights and responsibilities in educational issues, unless otherwise ordered by the Court. | The student enrolls in the school district where his/her parent with primary residence resides unless the student is 18, emancipated or in DHHS custody. In this case the student enrolls where he or she lives. | Birth parents have full authority to sign all forms, slips and school notes, unless otherwise ordered by the Court. | Birth parents have a right to be informed of the student's discipline, unless otherwise ordered by the Court. | Birth parents have full access to educational records, unless otherwise ordered by the Court. | Birth parents have full right and responsibilities on behalf of special education students, unless otherwise ordered by the Court. |
| Grandparent / Non-Parent Relative or Family Friend who is not the court-appointed guardians | Child is being cared for by relative or friends who have not been legally appointed as guardians. Parents retain full legal rights and responsibilities. | Child is actually a resident of the school district where the parents or guardians with legal custody live. It is possible, to attend school where the student lives, but the school superintendent decides whether to allow it. | No authority to sign school forms, notes or permission slips. | Sometimes the school will notify the adult of the student's discipline. The law does not require it though. | No access to educational records. | For homeless students, the relative or friend would need to be appointed as a surrogate parent if the parent is unavailable. For other students the parents have the right to participate in the special education process. |
| Power of Attorney | A parent can give Power of Attorney (POA) to another adult by writing a letter stating so and having it notarized. A POA is most often used in financial or medical situations. A POA is not sufficient authority for educational issues. | POA is not sufficient authority for enrolling a child in school. The child is actually a resident of the school district where the parents or guardians with legal custody live. It is possible to attend school where the student lives, but the school superintendent decides whether to allow it. | POA is not sufficient authority for signing school forms, notes or permission slips. | Sometimes the school will notify the adult of the student's discipline. The law does not require it though. | POA does not grant access to educational records. | POA is not sufficient authority for special education issues. For homeless students, the relative or friend would need to be appointed as a surrogate parent if the parent is unavailable. For other students the parents have the right to participate in the special education process. |

Comparing Legal Relationships Within The Education System

| Custodial Relationship | What the Custodial Relationship Means | School Enrollment | School Forms Permission Slips Sick Notes | Discipline and Expulsion | Access to Educational Records | Special Education |
|-------------------------|---|---|--|--|---|---|
| Legal Guardians | Legal guardians are court-appointed and take over all parental rights and responsibilities during the period guardianship is ordered. This applies to permanent or temporary guardians. | The student enrolls in the school district where the legal guardian resides. | The legal guardian has full authority to sign all forms, slips and school notes. | The legal guardian has a right to be informed of the student's discipline. | Legal guardians have full access to educational records. | Legal guardians have full rights and responsibilities on behalf of special education students. |
| Adoptive Parents | Adoptive parents take over all parental rights and responsibilities from the birth parents permanently through a Probate Court order. | The student enrolls in the school district where the adoptive parent resides. | Adoptive parents have full authority to sign all forms, slips and school notes. | Adoptive parents have a right to be informed of the student's discipline. | Adoptive parents have full access to educational records. | The adoptive parents have full rights and responsibilities on behalf of special education students. |
| DHHS | DHHS has custody of child and the state is the legal guardian. | The student enrolls in the school district where he/she is placed by DHHS. | Each year DHHS signs a "blanket" form, authorizing all permission slips for the school year to be signed by the caretaker. | DHHS will be notified of the student's discipline. It is up to DHHS to then notify the adult the child is placed with. | DHHS has full access to educational records. | DHHS has no authority for special education issues. If the child is in a foster home, then the foster parent is considered the surrogate parent. If not, then a surrogate parent needs to be appointed by the Court or the Maine Department of Education. |

AGENCIES LICENSED IN MAINE TO PROVIDE HOME STUDIES (LICENSED ADOPTION AGENCIES)

| Agency | Contact Information |
|--|--|
| Families And Children Together (F.A.C.T.) | 304 Hancock Street, Suite 2B Bangor, ME 04401 941-2347 www.familiesandchildren.org |
| Good Samaritan Agency | 100 Ridgewood Drive Bangor, ME 04401 942-7211 1-800-249-2811 |
| International Adoption Services Center | 432 Water Street P.O. Box 56 Gardiner, ME 04345 582-8842 1-888-682-3678 |
| Maine Adoption Placement Agency (MAPS) <i>Only the Bangor and Portland Offices conduct home studies.</i> | 181 State Street Bangor, ME 04401 941-9500 100 Brickhill Avenue South Portland, ME 04106 775-4101 www.maps-worldwide.org |
| Maine Children's Home For Little Wanderers | 93 Silver Street Waterville, ME 04901 873-6350 www.mainechildrenshome.org |
| St. Andres Home, Inc. | 283 Elm Street Biddeford, ME 04005 282-3351 www.standrehome.org |
| Maine Department of Health and Human Services (DHHS) | Central Office Bureau of Child & Family Services 221 State Street Augusta, ME 04333 287-5060 |

The Maine Department of Health and Human Services (DHHS) and all of the private adoption agencies have their own adoption process and requirements before the adoption can be finalized. For any questions about those requirements, please contact the licensed agency.

MAINE LAW REGARDING GUARDIANSHIP OF A MINOR

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Title 18-A, Article 5, Protection of Persons under Disability and Their Property

Article 5: Protection of Persons under Disability and Their Property

Part 1: GENERAL PROVISIONS

§5-101. Definitions and use of terms

Unless otherwise apparent from the context, in this Code: [1979, c. 540, §1 (new).]

(1) "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause except minority to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person;

[1979, c. 540, §1 (new).]

(1-A) The "best interest of the child" is determined according to this subsection.

(a) In determining the best interest of the child the court shall consider the following factors:

- (1) The wishes of the party or parties as to custody;
- (2) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference;
- (3) The child's primary caregiver;
- (4) The bonding and attachment between each party and the child;
- (5) The interaction and interrelationship of the child with a party or parties, siblings and any other person who may significantly affect the child's best interest;
- (6) The child's adjustment to home, school and community;
- (7) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (8) The permanence, as a family unit, of the existing or proposed home;
- (9) The mental and physical health of all individuals involved;
- (10) The child's cultural background;
- (11) The capacity and disposition of the parties to give the child love, affection and guidance and to continue educating and raising the child in the child's culture and religion or creed, if any;
- (12) The effect on the child of the actions of an abuser if related to domestic violence that has occurred between the parents or other parties; and
- (13) All other factors having a reasonable bearing on the physical and psychological well-being of the child. [2005, c. 371, §1 (new).]

(b) The court may not consider any one of the factors set out in paragraph (a) to the exclusion of all others; [2005, c. 371, §1 (new).]

(1-B) "De facto guardian" means an individual with whom, within the 24 months immediately preceding the filing of a petition under section 5-204, subsection (d), a child has resided for the following applicable period and during which period there has been a demonstrated lack of consistent participation by the parent or legal custodian:

(a) If the child at the time of filing the petition is under 3 years of age, 6 months or more, which need not be consecutive; or [2005, c. 371, §1 (new).]

(b) If the child at the time of filing the petition is at least 3 years of age, 12 months or more, which need not be consecutive. [2005, c. 371, §1 (new).]

"De facto guardian" does not include an individual who has a guardian's powers delegated to the individual by a

MAINE LAW REGARDING GUARDIANSHIP OF A MINOR

parent or guardian of a child under section 5-104, adopts a child under Article 9 or has a child placed in the individual's care under Title 22, chapter 1071; [2005, c. 371, §1 (new).]

(1-C) "Demonstrated lack of consistent participation" means refusal or failure to comply with the duties imposed upon a parent by the parent-child relationship, including but not limited to providing the child necessary food, clothing, shelter, health care, education, a nurturing and consistent relationship and other care and control necessary for the child's physical, mental and emotional health and development.

In determining whether there has been a demonstrated lack of consistent participation in the child's life by the parent or legal custodian, the court shall consider at least the following factors:

(a) The intent of the parent, parents or legal custodian in placing the child with the person petitioning as a de facto guardian; [2005, c. 371, §1 (new).]

(b) The amount of involvement the parent, parents or legal custodian had with the child during the parent's, parents' or legal custodian's absence; [2005, c. 371, §1 (new).]

(c) The facts and circumstances of the parent's, parents' or legal custodian's absence; [2005, c. 371, §1 (new).]

(d) The parent's, parents' or legal custodian's refusal to comply with conditions for retaining custody set forth in any previous court orders; and [2005, c. 371, §1 (new).]

(e) Whether the nonconsenting parent, parents or legal custodian was previously prevented from participating in the child's life as a result of domestic violence or child abuse or neglect. [2005, c. 371, §1 (new).]

Serving as a member of the United States Armed Forces may not be considered demonstration of lack of consistent participation;

[2005, c. 371, §1 (new).]

(2) A "protective proceeding" is a proceeding under the provisions of section 5-401 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief;

[1979, c. 540, §1 (new).]

(3) A "protected person" is a minor or other person for whom a conservator has been appointed or other protective order has been made; [1979, c. 540, §1 (new).]

(4) A "ward" is a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

[1979, c. 540, §1 (new).]

PL 1979, Ch. 540, §1 (NEW).

PL 2005, Ch. 371, §1 (AMD).

§5-102. Jurisdiction of subject matter; consolidation of proceedings

(a) The court has exclusive jurisdiction over guardianship proceedings and has jurisdiction over protective proceedings to the extent provided in section 5-402.

[1979, c. 540, §1 (new).]

(b) When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

[1979, c. 540, §1 (new).]

PL 1979, Ch. 540, §1 (NEW).

§5-103. Facility of payment or delivery

Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding \$5,000 per year, by paying or delivering the money or property to (1) the minor, if married; (2) any person having the care and custody of the minor with whom the minor resides; (3) a guardian of the minor; or (4) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor. This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a

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conservator of the estate of the minor are pending. Persons who pay or deliver money or property in accordance with the provisions of this section are not responsible for actions taken by another after payment or delivery. The persons, other than the minor or any financial institution under (4) above, receiving money or property for a minor, are obligated to apply the money to the support and education of the minor, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums must be preserved for future support of the minor and any balance not so used and any property received for the minor must be turned over to the minor when the minor attains majority. Prior to distribution, the custodian of the money or property shall account to the court and the minor. [1991, c. 641, §1 (amd).]

PL 1979, Ch. 540, §1 (NEW).

PL 1991, Ch. 641, §1 (AMD).

§5-104. Delegation of powers by parent or guardian

(a) A parent or guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding 6 months, any of that parent's or guardian's powers regarding care, custody or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward. A delegation by a court appointed guardian becomes effective only when the power of attorney is filed with the court. [1997, c. 455, §7 (new).]

(b) Notwithstanding subsection (a), unless otherwise stated in the power of attorney, if the parent or guardian is a member of the National Guard or Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a power of attorney that would otherwise expire is automatically extended until 30 days after the parent or guardian is no longer under those active duty orders or until an order of the court so provides.

This subsection applies only if the parent or guardian's service is in support of:

(1) An operational mission for which members of the reserve components have been ordered to active duty without their consent; or [1997, c. 455, §7 (new).]

(2) Forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress. [1997, c. 455, §7 (new).]

[2003, c. 583, §2 (amd).]

PL 1979, Ch. 540, §1 (NEW).

PL 1979, Ch. 690, §17 (AMD).

PL 1997, Ch. 455, §7 (RPR).

PL 2003, Ch. 583, §2 (AMD).

§5-105. Limited guardianships

In any case in which a guardian can be appointed by the court, the judge may appoint a limited guardian with fewer than all of the legal powers and duties of a guardian. The specific duties and powers of a limited guardian shall be enumerated in the decree or court order. A person for whom a limited guardian has been appointed retains all legal and civil rights except those which have been suspended by the decree or order. [1979, c. 540, §1 (new).]

PL 1979, Ch. 540, §1 (NEW).

Part 2: GUARDIANS OF MINORS

§5-201. Status of guardian of minor; general

A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward. This section does not apply to permanency guardians appointed in District Court child protective proceedings. If a minor has a permanency guardian, the court may not appoint another guardian without leave of the District Court in which the child protective proceeding is pending. [2005, c. 372, §1 (amd).]

PL 1979, Ch. 540, §1 (NEW).

PL 2005, Ch. 372, §1 (AMD).

§5-202. Testamentary appointment of guardian of minor

The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under section 5-203, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated, if before acceptance, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority. This

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State recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile. Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having his care, or to his nearest adult relation. [1979, c. 540, § 1 (new).]

PL 1979, Ch. 540, §1 (NEW).

§5-203. Objection by minor of 14 or older to testamentary appointment

A minor of 14 or more years may prevent an appointment of his testamentary guardian from becoming effective, or may cause a previously accepted appointment to terminate, by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within 30 days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee, or any other suitable person. [1979, c. 540, § 1 (new).]

PL 1979, Ch. 540, §1 (NEW).

§5-204. Court appointment of guardian of minor; conditions for appointment

The court may appoint a guardian or coguardians for an unmarried minor if: [1995, c. 623, §1 (rpr).]

(a) All parental rights of custody have been terminated or suspended by circumstance or prior court order; [1995, c. 623, §1 (new).]

(b) Each living parent whose parental rights and responsibilities have not been terminated or the person who is the legal custodian of the unmarried minor consents to the guardianship and the court finds that the consent creates a condition that is in the best interest of the child; [2005, c. 371, §2 (amd).]

(c) The person or persons whose consent is required under subsection (b) do not consent, but the court finds by clear and convincing evidence that the person or persons have failed to respond to proper notice or a living situation has been created that is at least temporarily intolerable for the child even though the living situation does not rise to the level of jeopardy required for the final termination of parental rights, and that the proposed guardian will provide a living situation that is in the best interest of the child; or [2005, c. 371, §2 (amd).]

(d) The person or persons whose consent is required under subsection (b) do not consent, but the court finds by a preponderance of the evidence that there is a de facto guardian and a demonstrated lack of consistent participation by the nonconsenting parent or legal custodian of the unmarried minor. The court may appoint the de facto guardian as guardian if the appointment is in the best interest of the child. [2005, c. 371, §2 (new).]

A guardian appointed by will as provided in section 5-202 whose appointment has not been prevented or nullified under section 5-203 has priority over any guardian who may be appointed by the court but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding. [1995, c. 623, §1 (new).]

If a proceeding is brought under subsection (c) or subsection (d), the nonconsenting parent or legal custodian is entitled to court-appointed legal counsel if indigent. In a contested action, the court may also appoint counsel for any indigent de facto guardian, guardian or petitioner when a parent or legal custodian has counsel. [2005, c. 371, §2 (amd).]

If a proceeding is brought under subsection (b), subsection (c) or subsection (d), the court may order a parent to pay child support in accordance with Title 19-A, Part 3. When the Department of Health and Human Services provides child support enforcement services, the Commissioner of Health and Human Services may designate employees of the department who are not attorneys to represent the department in court if a hearing is held. The commissioner shall ensure that appropriate training is provided to all employees who are designated to represent the department under this paragraph. [2005, c. 371, §2 (amd).]

If the court appoints a limited guardian, the court shall specify the duties and powers of the guardian, as required in section 5-105, and the parental rights and responsibilities retained by the parent of the minor. [1995, c. 623, §1 (new).]

PL 1979, Ch. 540, §1 (NEW).

PL 1995, Ch. 623, §1 (RPR).

PL 1999, Ch. 46, §1 (AMD).

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PL 2001, Ch. 554, §2 (AMD).
PL 2003, Ch. 689, §B6,7 (REV).
PL 2005, Ch. 371, §2 (AMD).

§5-205. Court appointment of guardian of minor; venue

The venue for guardianship proceedings for a minor is in the place where the minor resides or is present. [1979, c. 540, § 1 (new).]
PL 1979, Ch. 540, §1 (NEW).

§5-206. Court appointment of guardian of minor; qualifications; priority of minor's nominee

The court may appoint as guardian any person, or as coguardians more than one person, whose appointment is in the best interest of the minor. The court shall set forth in the order of appointment the basis for determining that the appointment is in the best interest of the minor. The court shall appoint a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interest of the minor. The court may not appoint a guardian for a minor child who will be removed from this State for the purpose of adoption. [2005, c. 371, §3 (amd).]

PL 1979, Ch. 540, §1 (NEW).
PL 1993, Ch. 686, §13 (AFF).
PL 1993, Ch. 686, §2 (AMD).
PL 2005, Ch. 371, §3 (AMD).

§5-207. Court appointment of guardian of minor; procedure

(a) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by court rule under section 1-401 to:

- (1) The minor, if he is 14 or more years of age; [1979, c. 540, §1 (new).]
- (2) The person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and [1979, c. 540, §1 (new).]
- (3) Any living parent of the minor. [1979, c. 540, §1 (new).]

[1979, c. 540, §1 (new).]

(b) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 5-204 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.

[1979, c. 540, §1 (new).]

(c) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian may not last longer than 6 months, except as provided in subsection (c-1).

Notice of hearing on the petition for the appointment of a temporary guardian must be served as provided under subsection (a), except that the notice must be given at least 5 days before the hearing, and notice need not be given to any person whose address and present whereabouts are unknown and can not be ascertained by due diligence. Upon a showing of good cause, the court may waive service of the notice of hearing on any person, other than the minor, if the minor is at least 14 years of age.

[2003, c. 583, §3 (amd).]

(c-1) If one of the parents of a minor is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a temporary guardianship that would otherwise expire is automatically extended until 30 days after the parent is no longer under those active duty orders or until an order of the court so provides. This subsection applies only if the parent's service is in support of:

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(1) An operational mission for which members of the reserve components have been ordered to active duty without their consent; or [2003, c. 583, §4 (new).]

(2) Forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress. [2003, c. 583, §4 (new).]
[2003, c. 583, §4 (new).]

(d) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen years of age or older.

[1979, c. 540, §1 (new).]

PL 1979, Ch. 540, §1 (NEW).

PL 1999, Ch. 303, §1 (AMD).

PL 2003, Ch. 583, §3,4 (AMD).

§5-208. Consent to service by acceptance of appointment; notice

By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian, or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner. Letters of guardianship must indicate whether the guardian was appointed by will or by court order. [1979, c. 540, § 1 (new).]

PL 1979, Ch. 540, §1 (NEW).

§5-209. Powers and duties of guardian of minor

A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of a minor and unemancipated child, except that a guardian is not legally obligated to provide from the guardian's own funds for the ward and is not liable to 3rd persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties. [1993, c. 349, §40 (rpr).]

(a) The guardian must take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

[1991, c. 719, §1 (amd).]

(b) The guardian may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. The guardian also may receive money or property of the ward paid or delivered by virtue of section 5-103. Any sums so received must be applied to the ward's current needs for support, care and education. The guardian must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case excess must be paid over at least annually to the conservator. Sums so received by the guardian may not be used for compensation for the guardian's services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. If there is no conservator, the excess funds must be turned over to the minor when the minor attains majority. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

[1993, c. 349, §41 (rpr).]

(c) The guardian is empowered to facilitate the ward's education, social or other activities and to give or withhold consents or approvals related to medical, health or other professional care, counsel, treatment or service for the ward. The guardian is empowered to withhold or withdraw life-sustaining treatment as set forth in section 5-312, subsection (a), paragraph (3). A guardian is not liable by reason of such giving or withholding of consent for injury to the ward resulting from the negligence or acts of 3rd persons unless it would have been illegal for a parent to have so given or withheld consent. A guardian may consent to the marriage or adoption of the ward.

[1995, c. 378, Pt. B, §1 (amd).]

(d) A guardian must report the condition of the ward and the ward's estate that has been subject to that guardian's possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule. If the guardian has received any funds pursuant to section 5-103, the guardian shall account to the court and the minor regarding how the funds were expended prior to the termination of that person's responsibilities as guardian.

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[1993, c. 349, §41 (rpr).]

PL 1979, Ch. 540, §1 (NEW).

PL 1991, Ch. 641, §2,3 (AMD).

PL 1991, Ch. 719, §1 (AMD).

PL 1993, Ch. 349, §40,41 (AMD).

PL 1995, Ch. 378, §B1 (AMD).

§5-210. Termination of appointment of guardian; general

A guardian's authority and responsibility terminates upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts, nor his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. [1979, c. 540, § 1 (new).]

PL 1979, Ch. 540, §1 (NEW).

§5-211. Proceedings subsequent to appointment; venue

(a) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

[1979, c. 540, §1 (new).]

(b) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian must be sent to the court in which acceptance of appointment is filed.

[2005, c. 371, §4 (amd).]

PL 1979, Ch. 540, §1 (NEW).

PL 2005, Ch. 371, §4 (AMD).

§5-212. Resignation or removal proceedings

(a) Any person interested in the welfare of a ward, or the ward, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

[1979, c. 540, §1 (new).]

(b) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

[1979, c. 540, §1 (new).]

(c) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age.

[1979, c. 540, §1 (new).]

(d) The court may not terminate the guardianship in the absence of the guardian's consent unless the court finds by a preponderance of the evidence that the termination is in the best interest of the ward. The petitioner has the burden of showing by a preponderance of the evidence that termination of the guardianship is in the best interest of the ward. If the court does not terminate the guardianship, the court may dismiss subsequent petitions for termination of the guardianship unless there has been a substantial change of circumstances.

[2005, c. 371, §5 (amd).]

(e) In a contested action, the court may appoint counsel for any indigent guardian or petitioner.

[2005, c. 371, §6 (new).]

PL 1979, Ch. 540, §1 (NEW).

PL 1995, Ch. 623, §2 (NEW).

PL 2005, Ch. 371, §5,6 (AMD).

GLOSSARY OF TERMS AND PHRASES

Adoptee: The minor child who is being adopted.

Best Interest of the Child (BIC): The Court considers a number of factors (as listed in the law) while making decisions regarding parental rights and responsibilities. The primary goal is to ensure the safety and well-being of the child.

Birth Parent: The birth/biological parent of a child.

Child Care Vouchers: Vouchers are funded by the federal Child Care Development Fund and state funds. The program is designed to help eligible families afford childcare while caretakers are at work.

Contested: One or both of the parties involved in a legal case do not agree to the action (for example, the adoption or guardianship of their natural child).

Custodial Relationship: The relationship between the child and an adult who has full or part parental rights and responsibilities over the child. This relationship can happen through: a DHHS placement; a Power of Attorney; a temporary, informal arrangement with a non-parent relative; or court action such as adoption or guardianship.

Due Process: A person's right to know what legal action is being taken against him or her, to hear the evidence, to confront witnesses, and to be heard.

Expulsion: A very serious punishment that forces the removal of a student from classes and does not allow the student to be on the school property. A student may be expelled for: being deliberately disobedient, disorderly and violent; having a gun or other weapon on school grounds; or for the possession, selling, giving away, or being under the influence of drugs. Students with special education plans have some protections when faced with expulsion.

Federal Education Rights and Privacy Act (FERPA): This federal law ensures that a child's school records are kept private.

Final Decree: A final decision made by a Court, which can usually be appealed.

Grandfamilies: Families headed by an extended family member: grandparent, aunt, uncle, sibling or other relative, or friend of the family.

Guardian: The legal/permanent guardians of a child are normally the child's parents. However, sometimes another person becomes legal guardian in place of a child's parent. Legal guardians have most of the rights and responsibilities that a parent would have toward a child. They can request and accept medical treatment on a child's behalf, enroll the child in public school in the guardian's community, and provide for the general welfare of the child.

Subsidized: A guardianship subsidy, paid by DHHS from federal funds, is available for permanency guardians who have *special needs* children placed with directly from DHHS custody.

Temporary: Court ordered, temporary guardians will receive the same amount of rights and responsibilities concerning the child as a legal/permanent guardian does. However, these guardianships only last for up to 6 months.

Guardian ad Litem (GAL): A person appointed by the Court to “protect and promote the best interests” of a child. The GAL interviews the child, the parents, and others involved with the child. Then the GAL files a report with the Court, recommending what they believe to be in the child’s best interest.

Indigent: A person in such extreme poverty that he or she is lacking the necessities of life.

Kinship Care: Grandparents, aunts, uncles, siblings, and other non-parent relatives who are raising children.

Legal Stability: Refers to a situation where the caregiver can fully provide for and protect the child long term.

MaineCare: (*formerly known as Medicaid*) MaineCare provides health insurance benefits to specific groups or categories of low-income people. Children qualify at higher income levels.

Notary Public: A person who can be a witness when you sign papers that have to be “sworn to” or “notarized” (i.e. an affidavit). When a court form calls for this, go to your “notary,” (a bank or law office, or the court clerk) to find a person who can watch you sign the form.

Permanency Plan: A plan created and told to the Court that states the long term plan for a child in foster care. DHHS presents this plan to the Court in a child protective case.

Permanent and Irrevocable: Refers to the length of the adoption relationship. Unlike a guardianship, an adoption cannot be terminated. It is considered permanent and irrevocable, because after the Court has finalized the adoption, it cannot be altered.

Pro Se: Representing yourself in Court without a lawyer.

Rights and Responsibilities: A Court will decide who has the *rights and responsibilities* of a child. These may include, but are not limited to, where the child will be living, under what conditions another parent may visit the child, and who is allowed to make any major decisions regarding the child’s life, such as their education, health, and religion.

Termination of Parental Rights and Responsibilities (TPR): To end a parent’s rights, a judge must decide that the child is in jeopardy and that the best interests of the child are being served. If the judge grants the TPR petition, the parent loses all parental legal rights and responsibilities.

Surrogate Parent: Someone who is acting in place of the birth or adoptive parent. This role is specific only to special education situations if a parent or guardian cannot participate.

Suspension: A temporary prohibition from going to school and receiving education services. A child is usually suspended for: being deliberately disobedient, disorderly or violent; having a gun or other weapon on school grounds; or for the possession, selling, giving away, or being under the influence of drugs. Students with special education plans may have some additional procedural protections.

Temporary Assistance for Needy Families (TANF): The TANF program provides cash assistance to low income children and/or families.

