Plan Ahead: Don’t Make Things Difficult for Those You Love

By Fred Nelson

It is important to plan ahead for your family and loved ones to help in illness or to deal with issues after your death. It is something that is often put off. The delay in planning ahead can make it difficult for those we love. The time to make plans is when we are healthy and thinking clearly about the future. It may be too late after a stroke, illness, or Alzheimer’s disease has affected our ability to make decisions.

If you have not made clear legal plans naming someone to make decisions for you in illness, it may be necessary for your family or friends to go to court to appoint a guardian to make these decisions. A court-appointed guardian can make decisions about your personal needs. A court-appointed conservator can make decisions about managing your money and property. Setting up a guardianship or conservatorship takes time and costs money.

If you have not made clear legal plans about what happens after your death, your spouse, partner, children, or friends may not have the ability to pay your funeral expenses. They may not inherit the property or money that you wanted them to have. In particular, not making legal plans may create problems if you are re-married, if you have children from different relationships, if you are unmarried and living with a partner, or want to leave things to specified family members, friends, or organizations.

If you want your partner or a friend to make decisions for you or to have your property after your death, you need to make legal plans for this to happen.

The best planning begins if you have first carefully thought through your needs and goals. Here are some things to consider as you make your plans.

Planning Ahead in Case I Can’t Make Decisions on My Own

- Make a health care/medical power of attorney appointment to name someone whom you want to make health care decisions for you when you are unable to do so.
- Make a general/financial power of attorney appointment to name someone whom you want to manage your finances for you when you are unable to do so.
- These financial decisions can include paying your bills, applying for assistance, and selling a property.
- Make a living will if you do not want to be kept alive with life-sustaining medical procedures should you be terminally ill.

Planning Ahead for After Death

- Make sure your spouse, partner, or the person you appointed as general/financial power of attorney has access to your legal documents and knowledge about your accounts, investments, and property.
- Make plans for long-term care should you need to go to a nursing home. Long-term care insurance is one option to consider.
- You can end or make a new power of attorney appointment or change your living will in the future if needed.

Decisions about burial and funeral:

- Do you have a plan for burial or cremation and your funeral? Have you pre-paid these costs? Planning and paying ahead means that your loved ones can focus on supporting each other.
- Do you have a plan for what happens to your property after you are gone? After you die, your will may need to be probated, depending on the property and amount of money that you have. Probate is the court action to carry out the directions in your will. Trusts do not need to go through probate. There are several kinds of trusts created for different reasons. You should review wills and trusts with an estate-planning attorney.

Review your plans regularly

If your spouse dies or there are changes in your family or relationships, you need to review your planning. You should regularly review your will, trust, or both to make sure it is correct.
Renters Insurance Can Protect What’s Important to You

By Lisa Gavin

A re you protected if a disaster strikes the property that you rent? Disasters can happen at any time and without warning. Fires, tornadoes, and severe storms are some of the disasters that can put your rental home or apartment at risk. Where will you go if a disaster happens and your home is unsafe to live in? What if the disaster destroys your furniture and other personal items? Many people think that their landlord or their landlord’s insurance will help them. In a disaster situation, this is usually not the case.

The landlord will often have hazard insurance on the property. This policy usually covers the building, but not the personal property inside. The landlord’s insurance policy will pay the landlord if the building is damaged and needs repairs. However, it will not pay for the tenant to replace his or her personal property. It will not pay for the tenant to find another place to live while repairs are made.

Tenants need to have renters insurance to protect themselves in this situation. Renters insurance can replace furniture, clothes, and other property damaged by the disaster. If you should have to move out for a few days while the rental unit is repaired or cleaned, renters insurance may pay to put you up in temporary housing. Renters insurance can also pay for any damage that you accidentally cause to the apartment such as from a cooking fire or an overfilled bathtub.

Many tenants believe that they do not need renters insurance because disasters will not happen to them. Sadly, disasters happen almost every day. Tenants do not believe that their personal property or furniture are worth anything. However, it is expensive if you have to replace everything you own at one time. Tenants often believe that renters insurance is expensive. In reality, it can be more affordable than you think. The National Association of Insurance Commissioners found that the average cost of renters insurance in Iowa is $184 a year or $15 a month.

You will need to discuss renters insurance with your insurance agent. Different policies will cover different things. Usually, the more protection you have, the more expensive the policy will be. You can sometimes receive a discount if you have more than one policy (auto, renters insurance) with the same company. You will need to speak to your insurance agent to get the coverage that you want at a price that you can afford.

Rental insurance will usually cover damage caused by fire, tornado, or other disasters, as well as theft and other non-disaster related damages. It will not cover damage caused by a flood. If you want protection from a flood, you will need to buy flood insurance. Not everyone needs flood insurance. It depends on how likely your rental home is to flood. You can also discuss this with your insurance agent. A word of warning: Even though it is a good idea to have renters insurance, it may be illegal for a landlord to force you to have renters insurance. The Iowa Uniform Residential Landlord Tenant Act says that any lease provision that shifts liability from landlord to tenant is illegal. Sometimes, landlords will try to force tenants to buy more expensive insurance than they need. In part, this is so the landlord won’t be liable for costs for issues that may be more linked to problems with the building than to disasters.

If you have legal problems related to a disaster, don’t go it alone. Call an attorney!
• Iowa Legal Aid provides help to low-income Iowans.
• To apply for help from Iowa Legal Aid:
  • apply online at IowaLegalAid.org
  • call 800-532-1275
  • Iowans age 60 and over, call 800-992-8161
• If Iowa Legal Aid cannot help, you can look for an attorney on “Find A Lawyer” on the Iowa State Bar Association website at iowabar.org. A private attorney there can talk with you for a fee of $25 for 30 minutes of legal advice.

You can download Iowa Legal Aid’s disaster relief app by searching “Iowa Legal Aid” in your app store.

Lisa Gavin is a staff attorney in Iowa Legal Aid’s Cedar Rapids Regional Office and is a member of the Iowa Legal Aid Disaster Project.

Plan Ahead continued from Page 1

They still meet your needs. When new plans are notarized, destroy out-of-date planning documents. Just writing in changes on your old documents will not work. You need to follow legal rules to make the changes. Talk to an attorney for help with making the changes.

This article includes some basic information about planning ahead. Planning for the possibility of long-term care or passing resources on to your loved ones can be complicated. Planning ahead is based on your specific goals, property, resources, relationships, health, and so forth. Do not base your plans on what someone else has done; that person’s situation may be much different than yours.

In illness or death, you will not be in a position to correct your planning. The best planning occurs with an attorney who practices in the area of estate planning and also understands the Medicaid rules.

Contact Iowa Legal Aid or the Legal Hotline for Older Iowans for more information about these planning issues.
• Iowa Legal Aid provides help to low-income Iowans.
• To apply for help from Iowa Legal Aid:
  • call 800-532-1275
  • Iowans age 60 and over, call 800-992-8161

OR
• apply online at IowaLegalAid.org
• If Iowa Legal Aid cannot help, you can look for an attorney on “Find A Lawyer” on the Iowa State Bar Association website at iowabar.org. A private attorney there can talk with you for a fee of $25 for 30 minutes of legal advice.

Fred Nelson is a staff attorney with Iowa Legal Aid’s Cedar Rapids Regional Office and is a member of the Iowa Legal Aid Disaster Project.

The information in this newsletter was correct as of the date it was printed. The laws may have changed. DO NOT ASSUME THAT THE INFORMATION IS CORRECT AFTER THE DATE PRINTED ON THE FIRST PAGE.

You should see a lawyer to get complete, correct, and up-to-date legal advice. Do not rely on the general information in this newsletter for your specific case. If you need a lawyer but can’t afford one, contact Iowa Legal Aid. You may be able to get free legal help. Call or write Iowa Legal Aid, or apply on line at iowalegalaid.org.

AS YOU READ THIS NEWSLETTER, REMEMBER IT IS NOT A SUBSTITUTE FOR LEGAL ADVICE.
Discrimination Against Families? Occupancy Standards & the Fair Housing Act

By Lorraine Gaynor

The Fair Housing Act makes it illegal to discriminate in the rental of a home. Specifically, landlords cannot discriminate based on race, color, religion, national origin, sex, or familial status. Familial status means families with children under 18. It can also mean a pregnant person in the household.

What are occupancy standards? Are there limits to how standards can be used?

Occupancy standards are rules about how many people can live in a rental unit, or how many people there can be per bedroom. Occupancy standards can sometimes have a bigger negative impact on families with children. These families find it difficult to find housing that will house their entire family.

Examples of familial status discrimination

1) A family with three young kids rents an apartment. They have a month-to-month lease. The kids play outside every evening in the yard. They play tag and ride their bikes up and down the sidewalk. The kids also sometimes make noise in the house. The landlord gives the tenants a 30-day notice of termination. The notice states that the reason for terminating the lease is because their kids are making too much noise and playing around outside. Or, maybe the landlord just gives a notice of termination without stating any reason. The family suspects that it is because the landlord doesn’t like that their kids are sometimes noisy and play outside.

This eviction is likely illegal discrimination based on familial status. As long as the kids are just “being kids”—playing and sometimes being loud in their unit and not, for example, vandalizing the property—it is illegal for the landlord to terminate their lease.

2) A single mom wants to rent a one-bedroom unit with her three-year-old daughter. The landlord refuses to rent to them, saying that a parent can’t share a bedroom with her child.

This action is likely illegal discrimination based on familial status. An occupancy limit of two people per bedroom would be reasonable under the law. Here, the landlord is more restrictive by saying that a parent and a child (two people) cannot share a bedroom. When a landlord is treating a family with children in a way that is more restrictive than HUD or a reasonable local housing code, this may be a Fair Housing Act violation.

What can you do if you think you’ve been discriminated against based on familial status?

There are at least three things you can do if you think you have been discriminated against based on your familial status:

1) Contact the Iowa Civil Rights Commission and file a housing complaint. To file a housing complaint, contact the housing intake officer at the Commission at 515-242-5556 or 800-457-4416.

2) Contact HUD and file a housing complaint. You can file fair housing complaints with HUD by telephone (800-669-9777), mail, or online at portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint.

3) Contact an attorney.

• Iowa Legal Aid provides help to low-income Iowans.

• To apply for help from Iowa Legal Aid: apply online at IowaLegalAid.org OR call 800-532-1275. Iowans age 60 and over, call 800-992-8161.

• If Iowa Legal Aid cannot help, you can look for an attorney on “Find A Lawyer” on the Iowa State Bar Association website at IowaBar.org. A private attorney there can talk with you for a fee of $25 for 30 minutes of legal advice.

Apply Online for Help from Iowa Legal Aid

People wanting help from Iowa Legal Aid can apply online. You will find the Apply Online for Help link in a yellow box on the right side of website pages at IowaLegalAid.org.

Iowa Legal Aid staff will review the request for assistance within a day or two and call the applicant. If the matter is urgent or involves a short deadline, DO NOT APPLY ONLINE. Call 800-332-1275 to apply for help. Offices are open from 8:30 am to 4:30 pm (emergencies taken when open).

Telephone intakes: Regular telephone intake hours are Monday through Friday from 9 to 11 am and 1:30 to 3:30 pm, except Thursday afternoons.
Iowa has a rich agricultural history. Indeed, farming has been a large part of many Iowans’ lives over many generations. Over the last 40 years, Iowa Legal Aid has worked to serve the needs of Iowa’s rural and farming communities through different projects.

The 1980s to the 2000s: The Farm Project

In the mid-1980s, Iowa Legal Aid’s Farm Project provided legal assistance to farmers in financial trouble. The Farm Project was launched in response to the farm crisis. Many factors caused the farm crisis. Land and commodity prices were falling, and many farms were held on under-secured loans. Several droughts led many small farmers to lose both their homes and their farming operations.

Farm Project attorneys helped farmers resolve their problems with the Farm Service Agency, local banks, insurance companies, the Farm Credit System, suppliers, and other creditors. The attorneys represented farmers in farm-debt mediations. These mediations were a new protection required for farmers, who were often at the mercy of their creditors and the creditor’s attorneys. The Farm Project’s attorneys helped farmers restructure their debts. The assistance allowed the farmers to continue their farming operations. The attorneys also represented clients with foreclosures and repossessions in state and federal courts and administrative agencies. When farming operations could not be protected, the Farm Project’s attorneys helped clients keep their homes and equity in their property.

The state of Iowa and the Iowa Executive Council undertook the entire Farm Project. This funding came after economic and natural disasters devastated low-income farmers in the 1980s and 1990s, and was the first time the state provided funding to Iowa Legal Aid.

Since the Farm Project started, the number of small farmers in Iowa has shrunk. The constantly changing farm economy contributed to the population decline. The Farm Project worked with many other organizations. These include the Iowa Attorney General, the Iowa Mediation Service, Prairie/Fire Rural Action, and others. All of these organizations worked together to protect the rights of low-income farmers during the economic disaster. The Farm Project ended in 2005. However, Iowa Legal Aid continues to provide services to farmers with debt and other critical legal problems.

The 1970s to Today: The Farmworker Project

Iowa Legal Aid’s Farmworker Project currently provides services to workers employed in agricultural jobs in Iowa. A grant from the national Legal Services Corporation (LSC) provides funding for the Farmworker Project.

Farmworker Project staff log a lot of time every year doing outreach to farmworkers throughout the state of Iowa. The Farmworker Project serves clients who, in the past year, have worked in various types of agricultural work including crops, livestock, poultry, egg farms, and landscaping. The Farmworker Project can also serve family members of people who work in those jobs.

The Farmworker Project began several decades ago. The Project has been focused mostly on migrant and seasonal farmworkers for most of this time. Many Iowa farmworkers are migrant and seasonal workers. They are vulnerable to exploitation by their employer or crew leader. They often live in rural areas and are isolated from the community due to housing locations, transportation issues, and language barriers.

A large part of the Farmworker Project is intensive, targeted outreach to areas where farmworkers live and work. The Farmworker Project provides workers with a variety of outreach materials. This material includes a calendar with information on their legal rights and responsibilities. The calendar also allows them to keep track of the hours they worked in case a dispute arises over their wages.

In recent years, LSC has determined that Iowa’s farmworker population has shifted. This change resulted in more of Iowa Legal Aid’s LSC funding being dedicated to serving farmworkers. The pool of farmworkers now includes migrant and seasonal farmworkers and also year-round farmworkers.

Of course, farmworkers often have the same kinds of legal problems that many other low-income Iowans experience: issues with family law, consumer protection, and more. However, sometimes farmworkers have significant legal issues tied to their employment as farmworkers. Some of the typical legal problems many farmworkers encounter are:

• getting paid the right amount
• getting paid on time
• not getting compensated for the correct amount of time worked
• improper paycheck deductions
• problems with crew leader (farm-labor contractors)
• problems with housing conditions
• problems obtaining public benefits including food stamps
• problems with federal income taxes
• problems transferring public benefits between states
• problems with discrimination based on race or national origin
• immigration
• trafficking

Iowa Legal Aid will continue its dedication to serving the most vulnerable members of our rural and agricultural communities, as it has over the past 40 years.

If you are a low-income farmer or farmworker and have legal problems, you should consult an attorney.

• Iowa Legal Aid provides help to low-income Iowans.
• To apply for help from Iowa Legal Aid: apply online at iowalegalaid.org OR call 800-532-1275
• Iowans age 60 and over, call 800-992-8161
• If Iowa Legal Aid cannot help, you can look for an attorney on “Find A Lawyer” on the Iowa State Bar Association website at iowablar.org. A private attorney there can talk with you for a fee of $25 for 30 minutes of legal advice.

Jessica Taylor is the managing attorney of Iowa Legal Aid’s Farmworker Project. Scott Hartsook is the managing attorney of Iowa Legal Aid’s Legal Hotline for Older Iowans.

In celebration of Iowa Legal Aid’s 40th anniversary, each 2017 issue of the Equal Justice Journal includes articles that recognize the program’s 40 Years of Seeking Justice and Improving Lives.

The first quarter issue of the Equal Justice Journal was a commemorative 40th anniversary issue. If you would like to receive a copy of that issue, please contact Arlys Kness at Iowa Legal Aid, 1111 9th Street, Suite 230, Des Moines, Iowa 50314.
Changes to Unemployment Benefits Law

By Alisa Diehl

Lossing a job can be devastating. Unemployment benefits can help workers get by until they find a new job. Qualifying for unemployment benefits can be complicated. This article talks about how unemployment law works. It also addresses three changes this year to unemployment benefits law in Iowa, effective July 1.

How do unemployment benefits work?
To understand the changes in the law, it is important to understand how unemployment benefits work. Many people who have earned a certain amount of money at a job are entitled to unemployment benefits if they lose that job.

The actual benefit amount depends on two factors: how much you earned at the job you lost, and the number of dependents.

If someone loses a job for a reason that is the employer’s fault, that person is disqualified from receiving benefits. For example, if someone loses a job because that person voluntarily quits, he/she is usually disqualified. However, if someone quits because of something that the employer does, the employee might not be disqualified. Also, a quit must be voluntary. Voluntary means that you quit on purpose.

Fired employees who commit misconduct are generally disqualified from receiving benefits. Misconduct usually means something you did on purpose against the employer’s interest. It does not include genuine mistakes, or even just being bad at your job.

If I am working two jobs at the same time, can I get unemployment benefits for one job if I am disqualified from the other?
The first significant change in the law affects people who have two jobs at the same time. Before July 1, if someone worked more than one job and lost both of them, he/she could get unemployment for one job even if he/she was disqualified from the other. Now, if you are disqualified from benefits for one job, you can’t get benefits for the second job either until earning ten times the weekly benefit amount.

The weekly benefit amount is the amount of benefits a person gets for one week of total unemployment.

The disqualification for benefits happens even if you were a model employee at the other job. For example, consider someone who was working a part-time job and a full-time job, but voluntarily quit the part-time job because he/she has family or school obligations. If that person is laid off from his/her full-time job before earning 10 times the weekly benefit amount, he/she will not be eligible for unemployment benefits.

Can I get unemployment benefits if I am arrested for something I did not do, and later released after the charges are dismissed?
The second significant change in the law disqualifies someone for benefits if the job is lost because that person was in jail or prison. However, if all of these things are true, benefits are allowed:

• you notify your employer before missing work;
• the criminal charges are dismissed, or you are found not guilty;
• you reported to work within two days of your release; and
• the employer refuses to allow you to return to work.

If you are arrested and put in jail or prison for something you didn’t do, you can protect your rights to benefits. Make sure you notify your employer as soon as possible. Make sure you report to work within two days of your release from incarceration. Keep as many records of all of these things as you can.

What is a benefit year? How much do I need to earn to get additional years of unemployment benefits?
The final important change in the law requires people to earn more money to receive benefits in the next benefit year. A benefit year begins the day a person files a claim for unemployment benefits. Before July 1, a person had to earn $250 during the benefit year. If he/she didn’t, the employee could not get benefits in the next benefit year. However, the new law that took effect on July 1 changed that amount to eight times the weekly benefit amount. So now, an employee should earn eight times the weekly benefit amount during that benefit year to earn benefits in the next benefit year.

If you have a problem getting unemployment benefits, you should talk to an attorney.
• Iowa Legal Aid provides help to low-income Iowans.
• To apply for help from Iowa Legal Aid:
  • apply online at iowalegalaid.org
  • call 800-532-1275
  • Iowans age 60 and over, call 800-992-9161
• If Iowa Legal Aid cannot help, you can look for an attorney on “Find A Lawyer” on the Iowa State Bar Association website at iowalaw.org. A private attorney there can talk with you for a fee of $25 for 30 minutes of legal advice.

Alisa Diehl is a staff attorney in Iowa Legal Aid’s Cedar Rapids Regional Office.

Show Me the Money!

By Cathy Reynolds

As Iowa Legal Aid celebrates its 40th anniversary, our staff members reflect on our accomplishments across four decades. We can talk about how Iowa Legal Aid has grown to serve low-income residents of each of Iowa’s 99 counties. We can look at the various projects that have addressed the special problems low-income people have faced over time. These projects include the Foreclosure Defense Project, Health and Law Project, Legal Hotline for Older Iowans, Low-Income Taxpayer Clinic, Farm Project and more. However, none of these successes would have been possible without the grants Iowa Legal Aid has received from a variety of funders over the years.

The current Iowa Legal Aid was first organized in 1977 as Legal Services Corporation of Iowa. At that time, the organization had one primary funding source: the federal Legal Services Corporation. Since that time, Iowa Legal Aid’s funding base has grown much larger. For example, in 1993 Iowa Legal Aid had 30 funding sources. In 2016, this had increased three times to 90 funding sources. Increases in funding have come from partnerships with United Way organizations, foundations and businesses as well as grants from local, state, and federal governments and individual donations.

In August 2015, the Legal Services Corporation visited Iowa Legal Aid. This visit was to review how well Iowa Legal Aid runs its program. In its final report, the review team stated: “Iowa Legal Aid makes impressive efforts to maintain and expand its base of funding, in an effort to increase the quality and quantity of services to eligible clients. Iowa Legal Aid’s resource development efforts are highly professional, well-coordinated, and consistent with the program’s mission.”

In 2017 and beyond, Iowa Legal Aid will continue its efforts to increase and maintain its funding. A broad funding base ensures that future generations of low-income Iowans can access the justice system, meet their basic needs, and protect their fundamental rights.

Cathy Reynolds is a development associate in Iowa Legal Aid’s Cedar Rapids Regional Office.
Guardianship of Adult Children

By Rob Poggenklass

Parents of children with disabilities are often told that a guardianship is needed when the children turn 18. However, is a guardianship always needed? If it is, how is it established?

Do I need to get a guardianship?

A guardian is needed for people whose decision-making ability is so poor that they are dangerous to themselves. A guardian is also required for people unable to make any decisions. Maybe this is because their disability doesn’t let them communicate what they want or need.

Many people with mental disabilities do not need a guardian. They make medical decisions and decisions about things like where to live themselves. Or, they can make these decisions with the help of relatives, friends, or professional caregivers. That is called supported decision-making. If a person can make safe decisions with the help of others, a guardian is not needed.

Guardianship takes away the right to make decisions. It should only be done when necessary. Even when it is necessary, it should be limited as much as possible to only cover those decisions that the disabled person cannot make.

What is a limited guardianship?

Matter of Guardianship of Hedlin, a 1995 Iowa Supreme Court case, addresses limited guardianships. The Court said that, even when a guardianship might be needed, it should be limited only to what is necessary.

For example, maybe someone can’t manage medications or manage his/her financial affairs. However, he/she is capable of making good decisions about where she will live and with whom she will spend time. A court should only take away the disabled person’s decision-making rights for those things he/she cannot make good decisions about, like the medication or financial affairs. A court should not take away decision-making rights for things the individual can make good decisions about, like where to live or with whom to spend time.

How is a guardianship set up?

If parents believe that a guardian is needed, the parents should start the process a few months before the child turns 18. That way, a guardianship can be available when the parents no longer have the legal right to make decisions for the child.

The parents should contact an attorney who knows about guardianship cases. The attorney will file a written petition with the court. The petition will state why a guardian is needed. The petition will be served on the adult child. Served on means given to the adult child in a formal way under the law, often by the sheriff or private process server.

An attorney will be appointed to represent the adult child, and a hearing will be held.

What do I have to do to put in a protective order petition?

The petition must provide some details of the abuse. It is not enough to just write that someone sexually abused the person. At least some details of when, where, and what happened are necessary. The person filing for the protection order can ask that all court documents be sealed. That means the public can’t read those documents. However, any actual court orders are public records and cannot be sealed. If the court orders it, address and location information can be removed from the order.

Sexual abuse is defined as:

- a sex act done against a person by force or against their will;
- a sex act done against a person where the abused consents to the act after the threat of violence;
- a sex act done against a person while the person is under the influence of a sleep-inducing drug or the person is unconscious;
- a sex act done against a person with a mental defect or incapacity who cannot give legal consent;
- a sex act done against a person by someone who is related to that person;
- a sex act done against a child; and
- enticing, coercing, or soliciting a minor to do a sex act where the act will be filmed or recorded.

What are the differences between a sexual abuse protective order and domestic abuse protective order?

There are at least two major differences between sexual abuse protection orders and domestic abuse protection orders. The first is that the person filing does not have to prove a domestic or family relationship with the abuser to receive a sexual abuse protection order. A domestic abuse protection order requires providing the relationship.

The second difference is that a sexual abuse protection order can be filed to protect a child from abuse. Normally, domestic abuse protection orders cannot be granted on behalf of a child, unless the child is a victim of dating violence or abused by her/his own domestic partner. Sexual abuse protection orders can be used more widely to protect children since they are not limited to situations where there is a relationship.

Like domestic abuse protection orders, there is no filing fee for a sexual abuse protection order. Also, the district court can order the abuser to pay the attorney fees and court costs of the person filing.

What happens after I file for a sexual abuse protective order?

When the petition is filed, the district court can enter a temporary protection order to protect the person filing. A hearing will be set between 5 and 15 days after the petition is filed.

At the hearing, the person filing must prove that it is more likely than not that sexual abuse occurred. This standard requires less proof than in a criminal trial. However, the person filing must tell the court about the abuse with enough detail for the judge to believe the events occurred. The description can be done by testifying (telling the judge) about what happened. There may have also been witnesses to the abuse, and they can testify as well. The person filing will also want to provide evidence including pictures, videos, audio recordings, and written documents.

The judge will decide if a guardian is needed and who should be the guardian. The judge should also decide whether the guardianship should be limited. To show a guardianship is needed, the guardian must prove that the adult child cannot make decisions to provide for his or her safety. The court must also consider alternatives to guardianship, such as supportive decision-making.

- Iowa Legal Aid provides help to low-income Iowans.
- To apply for help with Iowa Legal Aid:
  - apply online at IowaLegalAid.org
  - call 800-532-1275
- If Iowa Legal Aid cannot help, you can look for an attorney on “Find A Lawyer” on the Iowa State Bar Association website at IowaBar.org. A private attorney there can talk with you for a fee of $25 for 30 minutes of legal advice.

Additional materials about substitute decision making can be found on Iowa Legal Aid’s website at: IowaLegalAid.org/search?q=substitute+decision+making

Rob Poggenklass is a staff attorney in Iowa Legal Aid's Central Iowa Regional Office in Des Moines.

The Equal Justice Journal

Third Quarter 2017
What Can Parents Do When a Child is Not Having Success at School?

By Jan Rutledge

Several years ago, I represented a student whose grandmother asked Iowa Legal Aid for help. Neither of the child’s parents was available to care for him, so he lived with his grandmother. The grandmother had tried various ways to get better programming for her grandson. She felt she was not having much of an effect by herself. At an Individualized Education Program (IEP) meeting at the school, the principal insisted the boy be placed in a separate program for students with intellectual disabilities. This boy did not have an intellectual disability: He had attention problems and serious difficulty with reading.

On the child’s behalf, I asked the school to put the child in regular classes and provide an aide to read material to the student. The discussion went on for a while, and then the school counselor (who had been quiet most of the time) spoke up. He said with or without an aide, nothing was going to work out well for this student unless he began having some success in school. Everyone was silent for a moment. Then the discussion changed to how this child could have success in school.

I was grateful to that school counselor for putting things in a way that made sense to everyone. Of course, parents want their children to succeed in school, and so do the teachers, counselors, and administrators. Sometimes, though, parents don’t know what they can do or how to approach the problem. Here are some effective tools to help children be more successful in school.

When a child has a disability and needs a different type of instruction

If the child has a disability and needs a different type of instruction, the child may qualify for extra help under an Individualized Education Program (IEP). The Individuals with Disabilities Education Act (IDEA) is a federal law that provides important rights for families with a child who qualifies for services. The State of Iowa has a duty to find students in need of services. Under the IDEA, a child is entitled to a free appropriate public education, in the least restrictive environment. If possible, the child should be educated in the general education program—not in separate rooms or programs. If the parents do not agree with how the school is handling the issue for their child, they have a right to a hearing. If the parents don’t agree with the decision made at that hearing, they could also appeal that decision and have it reviewed by the district court.

TIP: Parents can ask that a child be evaluated for special education. The school has to complete the assessment within 90 days.

When a child has a disability but does not need different instruction

If a child has a disability but does not need a different instruction, the child may qualify for special help under a different law, the Rehabilitation Act of 1973, especially under Section 504 of that Act. A 504 Plan can be worked out to enable a child with disabilities to succeed in school. For example, a child whose disability makes her walk slowly and as a result is late to classes should not be punished for being tardy. Similarly, a child who misses a lot of school because of illness should not be punished. Section 504 prohibits discrimination against persons with disabilities in federally funded programs. It also says that a federally funded program has to make reasonable accommodations for persons with disabilities. That is, even if the school would usually punish someone for being late to class too often or missing too much school, the school should make an exception for disability-related behavior. There is also an appeal process for disputes about Section 504, and the district court can also review that decision.

TIP: If disability-related behavior causes problems for your child, it is important to let the school staff know about the disability. It is helpful to have a doctor write a letter to help the school understand how the disability affects the child’s performance.

When a child is afraid to go to school because of bullying

Sometimes students are afraid to go to school because of bullying. Sometimes children can hurt each other or take each other’s property. Those are both concerning behaviors. However, under Iowa’s rules, bullying is something more than just conflicts between students. To be considered bullying, the behavior must be aggressive and include:

• An imbalance of power: Kids who bully use their power—such as physical strength, access to embarrassing information, or popularity—to control or harm others. Power imbalances can change over time and in different situations, even if they involve the same students.
• Repetition: Bullying behaviors happen more than once or have the potential to occur more than once.

In addition, the bullying behavior is based on a characteristic of the victim: age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical attributes, physical or mental ability or disability, ancestry, political party preference, political belief, socioeconomic status, or familial status.

School staff members should take reports of bullying seriously. The Iowa Department of Education requires all incidents that meet one or more of the standards below to be reported to the department:

• conduct placed the student in reasonable fear of harm to the student’s person or property;
• conduct had a substantially detrimental effect on the student’s physical or mental health;
• conduct had the effect of substantially interfering with the student’s academic performance, or;
• conduct had the effect of substantially interfering with the student’s ability to participate in or benefit from services, activities, or privileges provided by a school.

TIP: If your child resists going to school or is suffering because of bullying, ask the school to give you a copy of the school district’s policy on bullying. That can help you prepare to meet with the school staff and request that they take steps to stop the bullying and protect your child.

Parents can advocate for their children

Parents can effectively advocate for their children. When meeting with school staff members, parents don’t have to wait for a counselor to ask the question. You can ask:

What can be done so that my child can have more success in school? In addition, parents or caregivers can call Iowa Legal Aid for help with education problems.

The story about the boy and his grandmother had a nice ending. The school kept the boy in regular classes with special assistance in a resource room, and an aide read written material to him. Months later, his grandmother wrote me a letter that her grandson had done so well in school that he made the honor roll.

Jan Rutledge is the managing attorney of Iowa Legal Aid’s Iowa City Regional Office.
New Protection Order Law for Survivors of Sexual Abuse

By Kelsey Deabler

A new Iowa law took effect July 1 to help victims of sexual abuse. Survivors of sexual abuse can now ask the court for a civil protection order against their abuser without the need to start a criminal case.

You may be familiar with the domestic abuse protection-order law. Domestic abuse and sexual abuse protection orders work in similar ways but have some differences, too.

How do I file for a sexual abuse protective order?

To get a sexual abuse protection order, the abused person must fill out a form asking the court to enter a protection order. This form is called a petition. The petition must include specific information. The Clerk of Court in the county courthouse has a form available to complete.

The petition must list a mailing address for the person filing it. However, the address can be a post office box, a shelter or other organization, or a friend or family member’s mailing address.

LOW-INCOME READERS OF THE EQUAL JUSTICE JOURNAL

If you have a question about something you read in this newsletter, call THE EJJ HOTLINE at 800-992-8161. When your call is answered, tell the receptionist you want The EJJ Hotline. Your call will be transferred to a staff member who will assist you in getting your questions answered.

Iowa Legal Aid helps low-income Iowans

Did you know...after calling what looked like a local number for “legal aid” in the phone book, some Iowans got return calls from somewhere in Kentucky?

Don't be misled...

- Iowa Legal Aid provides FREE legal assistance to those who qualify.
- Iowa Legal Aid helps low-income Iowans with civil legal problems including:
  - Domestic violence
  - Housing
  - Public benefit programs

The intake number for Iowa Legal Aid is 800-532-1275 (se habla español)

Iowans age 60 and over, call Iowa Legal Aid's Legal Hotline for Older Iowans at 800-992-8161

Visit us online at IowaLegalAid.org

Continued on Page 6