

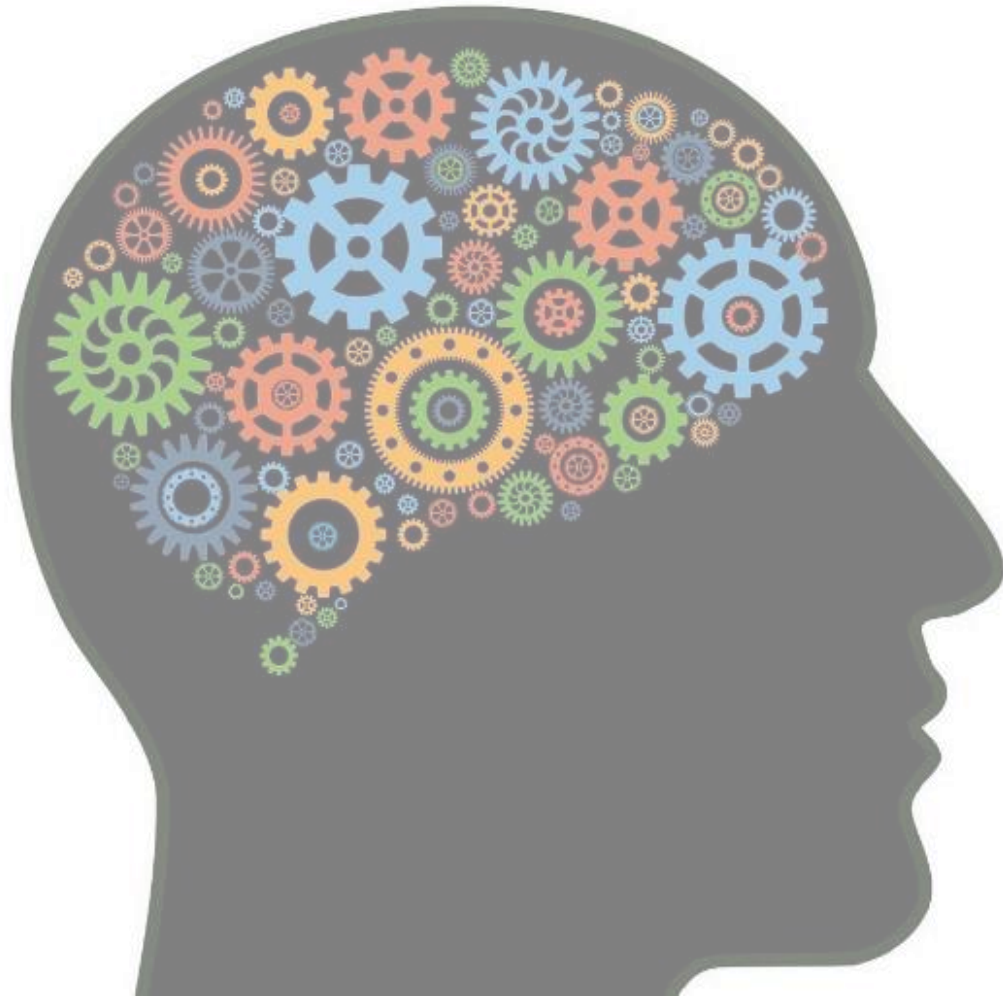



The Spectrum of Decision-Making Options in Virginia: Supported Decision-Making to Guardianship & Everything In Between



Presented by Sara D. Thompson,
Supported Decision-Making Community Resource Consultant Lead





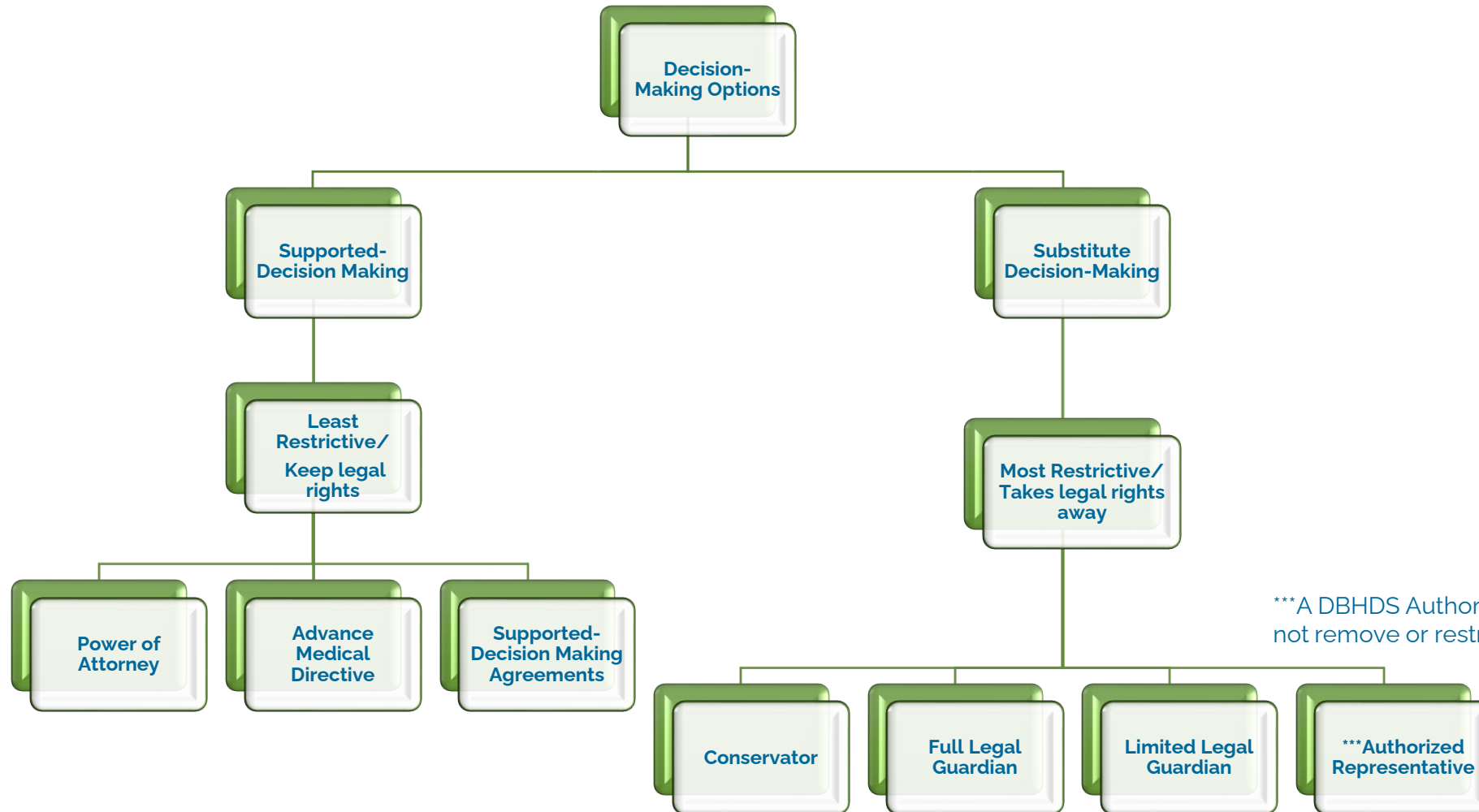
- The 3 C's
 - Supported vs. Substitute Decision-Making
 - Different Types of Decision-Making
 - Decision-Making Compatibility
 - Codes, Regulations, & Resources
- 

1. Capacity

2. Competency - the ability to do something successfully or well, such as making important decisions, typically does not change based on time and/or situations, determined by a judge

3. Consent





***A DBHDS Authorized Representative does not remove or restrict a person's legal rights



Supported Decision-Making:

- Individual (Decision Maker) keeps ALL rights
- Individual (Decision Maker) makes ALL final decisions
- Increases the individual's feelings of self-determination
- Decreases the risk of abuse and exploitation
- Can reduce the need for restrictive alternatives (i.e., legal guardianship)



Substitute Decision-Making:

- Individual loses their rights
- Someone else makes decisions FOR the individual
- Can take away an individual's sense of self-determination
- Does NOT prevent the risk of abuse or exploitation
- Restrictive



SDM:

Supported Decision-Making - a concept or practice
(There are no “Supported Decision-Makers.”)

Substitute Decision-Maker - a person appointed to make decisions for someone else (NOT the same as Supported Decision-Making!)



Supported Decision-Making - “decision-making model in which an individual makes decisions with the support of trusted individuals”
(American Bar Association)

4 Principles for Supported Decision-Making in Virginia:

1. Presumed capacity
2. Least restrictive option, and maximize an individual's autonomy and independence
3. Always take into consideration an individual's expressed personal preferences
4. Dignity of Risk

SELF DETERMINATION

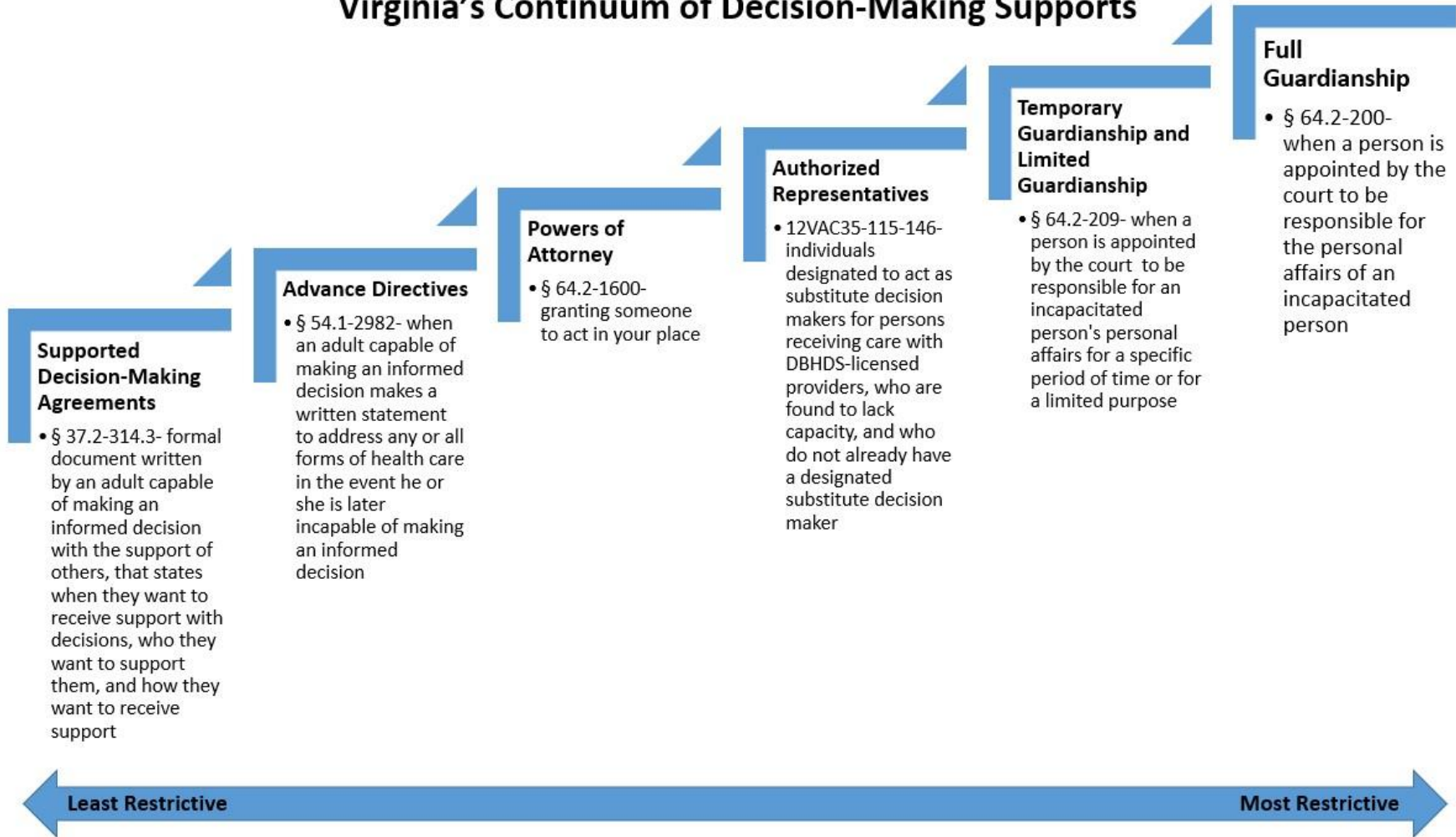




- Learn and understand how the individual best takes in information (understands, learns)
- Learn and understand how the individual communicates
- Be clear about what you know and do not know
- Ensure the individual has the information needed to make an informed decision



Virginia's Continuum of Decision-Making Supports



Supported Decision-Making Agreement - The formal process of documenting who an individual wants to support them, in what areas of life, and how they want to be supported.

Comprised of:

- Decision Maker (Principal)
 - Supporter(s)
 - Facilitator (optional)
- 

Decision Maker- the person making the Supported Decision-Making Agreement

Must be: at least 18 years old, have an intellectual or developmental disability, and be able to legally make your own decisions

Supporter(s)- the person/people the Decision Maker asks to support them in their SDMA, Supporters agree to help

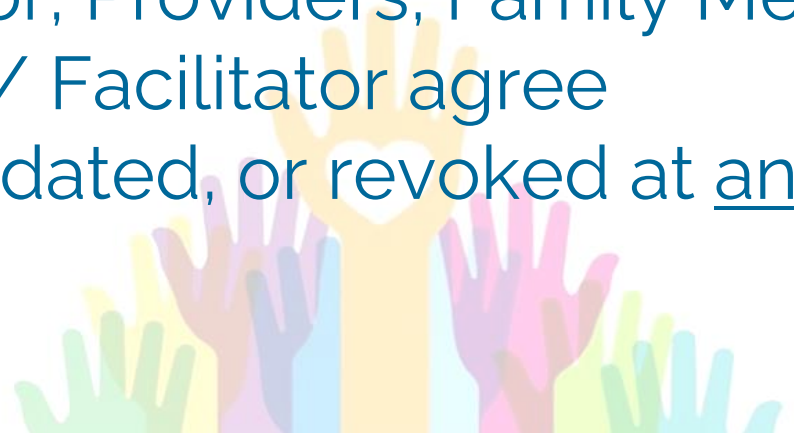
Facilitator (optional)- the person the Decision Maker asks to make sure Supporters to what they agree to, can be a Supporter or can be someone else



Who can have one?

- Anyone 18 years or older with a diagnosis of DD (including ID)
- Cannot have a legal guardian

How is one created?

- Conversations and discovery with trusted people
 - Support Coordinator, Providers, Family Members, etc.
 - Ensure Supporters/ Facilitator agree
 - Can be created, updated, or revoked at any time.
- 

Power of Attorney - a document that identifies a person or multiple people (agents) someone selects to help make decisions about their care or different parts of their life when they are not able to do so

Who can have one?

- Anyone 18 years or older who has legal competency at the time it was created

How is one created?

- Free - online templates ([disAbility Law Center of Virginia](#))
 - Paying a lawyer to create one
- 

Advance Medical Directive - a formal document that states what medical and/or psychiatric care someone wants in various situations, including end of life decisions (living will)

Who can have one?

- Anyone 18 years or older who has legal competency at the time it was created

How is one created?

- With a medical or healthcare professional
 - Using online templates ([disAbility Law Center of Virginia](#))
- 

Representative Payee or Fiduciary - someone who handles and oversees someone's finances

Who can have one?

- Anyone 18 years or older

How is one created?

- Representative Payee - Social Security Administration
 - Fiduciary - Lawyer, Private companies
- 

Legal Authorized Representative vs. DBHDS Authorized Representative

Authorized Representative - someone permitted to consent to treatment, services, participation in human research, or agree to the release of information on behalf of another person

Who can have one?

- Anyone 18 years or older
- Can be deemed to lack capacity or choose to have one, even if you maintain capacity

How is one created?

- Capacity Evaluation
 - Through each entity/ provider
- 

Limited Legal Guardian - someone appointed by the court to make decisions for someone else only for specific topics or life areas, can be temporary

Full Legal Guardian - someone appointed by the court to make all decisions for someone else once the court has found them to be legally incompetent, can be temporary

Who can have one?

- Anyone 18 years or older
- Must be deemed to be legally incompetent

How is one created?

- Petitioning the local circuit court
- *Public Guardianship Program (DARS)

Individuals with ID/DD

Conservator - a person appointed by the court to handle all financial matters for someone else, can be limited, can be temporary

Who can have one?

- Anyone 18 years or older
- Must be deemed to be legally incompetent

How is one created?

- Petitioning the local circuit court
 - *Public Guardianship Program (DARS)
- 



Decision-Making Option	Compatible With	Not Compatible With
Supported Decision-Making Agreement	Power of Attorney, Advance Medical Directive, DBHDS Authorized Representative, Representative Payee/ Fiduciary	Legal Guardian*, Conservator*
Power of Attorney	Supported Decision-Making Agreement, Advance Medical Directive, DBHDS Authorized Representative, Representative Payee/ Fiduciary	Legal Guardian, Conservator
Advance Medical Directive	Supported Decision-Making Agreement, DBHDS Authorized Representative, Representative Payee/ Fiduciary, Power of Attorney*, Legal Guardian**, Conservator**	None (if created when individual still had legal competency or capacity)





Decision-Making Option	Compatible With	Not Compatible With
DBHDS Authorized Representative	Supported Decision-Making Agreement, Advance Medical Directive, Power of Attorney, Representative Payee/ Fiduciary, Conservator	Limited Legal Guardian, Full Legal Guardian
Representative Payee/ Fiduciary	Supported Decision-Making Agreement, Advance Medical Directive, Power of Attorney, DBHDS Authorized Representative, Limited Legal Guardian, Full Legal Guardian	Conservator
Conservator	Limited Legal Guardian, Full Legal Guardian, Power of Attorney, DBHDS Authorized Representative, Advance Medical Directive*	Supported Decision-Making Agreement, Representative Payee/ Fiduciary





Decision-Making Option	Compatible With	Not Compatible With
Limited Legal Guardian	Conservator, Representative Payee/ Fiduciary, Advance Medical Directive*, DBHDS Authorized Representative**	Supported Decision-Making Agreement, Power of Attorney
Full Legal Guardian	Conservator, Representative Payee/ Fiduciary, Advance Medical Directive*, DBHDS Authorized Representative**	Supported Decision-Making Agreement, Power of Attorney

Find a printable version of the Decision-Making Options Compatibility Chart [here](#).





§ 54.1-2983.2. Capacity; required determinations.

- “Every adult shall be presumed to be capable of making an informed decision unless he is determined to be incapable of making an informed decision...”

12VAC35-115-70. Participation in decision making and consent.

- “...each individual has a right to participate meaningfully in decisions regarding all aspects of services affecting him.”



12VAC35-115-70(A)(4) “**Be accompanied**, except during forensic evaluations, **by a person or persons whom the individual trusts to support** and represent him when he participates in services planning, assessments, evaluations, including discussions and **evaluations of the individual's capacity to consent**, and discharge planning.”



dbhds.virginia.gov

Virginia Department of Behavioral Health & Developmental Services

Home Getting Help Offices About DBHDS Contact Us

DEVELOPMENTAL SERVICES

- Early Intervention for Infants and Toddlers
- Office of Integrated Health
- Developmental Disability Service System
- Individual and Family Support Program (IFSP)
- Intermediate Care Facilities for Individuals with Developmental Disabilities (ICF/IID)
- Housing
- Employment
- Waiver Services
- My Life My Community

Support Coordination/Case Management
Resources
Supported Decision-Making
Victims of Eugenics Sterilization Compensation Program
Provider Development
Public Guardianship for Individuals with Intellectual and Developmental Disabilities
Centralized Training For Providers
Crisis Services
COVID - 19

<https://dbhds.virginia.gov/supported-decision-making-supported-decision-making-agreements/>



Supported Decision-Making and Supported Decision-Making Agreements

Virginia now formally recognizes Supported Decision-Making Agreements as an alternative to more restrictive, substitute decision-making options, such as legal guardianships. Supported Decision Making Agreements are a way for adults with developmental disabilities living in Virginia to document when they want to receive support with making decisions, how they want to receive support, and who they want to help them. Supported Decision-Making Agreements give individuals with developmental disabilities the ability to receive support with making various choices in their lives, while also retaining all of their rights, including the right to make their own decisions.

For questions regarding Supported Decision-Making and/or Supported Decision-Making Agreements please contact Sara Thompson at Sara.Thompson@dbhds.virginia.gov.

Virginia's Supported Decision-Making Agreement template and Supplemental Documents/ Acuerdo para la toma de decisiones con apoyo del Estado de Virginia - Plantilla

English
Español

Making My Own Decisions- It's My Right!

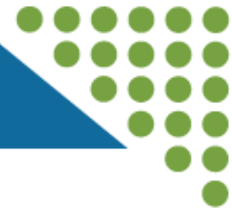
Everyone has the right to meaningfully participate in making decisions about their life. Human Rights Regulations say that anyone who has capacity (can take in information, make a decision using that information, and then communicate their decision to others) can consent (agree) to services, treatment, or research, or agree for others to see and/or get information about them. Even if you have capacity, you still might want help with making some decisions and that is okay. If you have questions about your right to make decisions or about your other rights, please see information on the Office of Human Rights' website by clicking [here](#).

Training Videos and Documents

- Supported Decision-Making and Supported Decision-Making Agreements: An Overview Trainings (June 2022)
- Supported Decision-Making and Supported Decision-Making Agreements: The Details Trainings (August 2022)
- PEATC Series 3 Discovery Tools and the Virginia Supported Decision-Making Agreement template (January- February 2023)

To get more help with decision-making options and supported decision-making agreements click on these resources:

- American Civil Liberties Union (ACLU)
- Disability Law Center of Virginia
- National Resource Center for Supported Decision Making
- Parent Educational Advocacy Training Center (PEATC)
- The Arc of Northern Virginia
- The Arc of Virginia
- Virginia Department of Education
- Virginia WINGS booklet



'SEE THE PERSON, NOT THE LABEL.'

Temple Grandin







Sara D. Thompson,

Supported Decision-Making Community Resource Consultant Lead

Phone: 804-869-0591

Email: Sara.Thompson@dbhds.virginia.gov



Human Rights

12VAC35-115-70. Participation in decision making and consent.

12VAC35-115-145. Determination of capacity to give consent or authorization.

12VAC35-115-146. Authorized representatives.



Supported Decision-Making Agreements

§ 37.2-314.3. Powers and duties of the Department related to supported decision-making agreements; report.

Health Care Decisions Act

Article 8. Health Care Decisions Act.

§ 54.1-2983.2. Capacity; required determinations.



Guardianship

Part D. Guardianship of Incapacitated Persons.

§ 64.2-2019. Duties and powers of guardian.

Power of Attorney

Chapter 16. Uniform Power of Attorney Act





DBHDS Office of Human Rights

DBHDS Supported Decision-Making

Parent Educational Advocacy Training Center (PEATC)

Partnership for People with Disabilities

Person Centered Thinking Training

Virginia WINGS booklet





disAbility Law Center of Virginia

Decision-Making Resources page

Do It Yourself Power of Attorney (medical)

Do It Yourself Advance Medical Directive

Information on Financial Power of Attorneys

Information on Educational Power of Attorneys

