

Your guardian guide

WHAT DOES
A GUARDIAN
DO FOR
YOU?



TOPIC OVERVIEW

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Bundesforum, IGfH and DIJuF

Why this brochure?

If parents are unable to carry the parental responsibility for their child, the child is provided with a guardian (Vormund) or a supplementary guardian (Ergänzungspfleger). The guardian will then have parental rights and becomes an important person in the lives of everyone involved. But many young people and adults do not even know what a guardian actually does, what his or her role is and what his or her tasks are. Therefore, in this brochure we provide answers to questions that are often asked by young people, parents or guardians.

Three things before we start:

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1. In this text we use the term “guardian” and we explicitly include individuals who identify as men, women and non-binary.

2

2. Sometimes there is a reference to a paragraph, i.e. an individual regulation in a specific law.

The texts of these paragraphs can be found in the German Civil Code (BGB) or in Book Eight of the Social Code (SGB VIII). You can find them, for example – in German – at

www.gesetze-im-internet.de.

3

3. If you read the law text, you will see that it refers to guardians and wards. A ward is a child or young person who has a guardian. In this brochure we will not use this term because it is antiquated and many people are not familiar with it.



What children and young adults should know:

Children have their own rights!

First and most important: All children have rights (UN Convention on the Rights of the Child)! If you have a guardian, your rights are even explicitly stipulated in the German Civil Code (§ 1788 BGB).

You have the right to

- develop to get on well with others and to be able to take responsibility for yourself,
- grow up in a violence-free environment
- stay in regular contact with your guardian
- be respected for who you are
- be able to participate in decisions, which affect your own life

Your guardian must stand up for your rights.



What is a guardian and what is a supplementary guardian?

As long as you are under 18 years old, there must be someone who takes responsibility for you and ensures that you are well. This is actually the job of the parents, but sometimes parents are unable to do this. In such a case, a court appoints another adult person to take responsibility for you. This person is called a guardian. The guardian is supposed to look after your welfare and also represent you legally. For example, he or she will make sure that you can live in a suitable residential group or with a foster family or in a supervised flat and will manage your finances until you are 18 years old.

Sometimes only a part of the parental responsibility is taken away, for example, to decide where their child should live. In this case, a so-called supplementary guardian comes in. He or she is only responsible for you in certain matters, e. g. deciding together with you where you can live. The supplementary guardian acts in addition to the parents.

Why is a guardian called “Vormund” in German, when “Mund” actually means “mouth”?

In former times, about 1000 years ago, most people in Germany lived on farms. At that time, every householder was obliged to protect the people on his farm, to provide for them, to settle disputes among them and to represent them in legal matters. This duty was called the “munt”. The people entrusted to the lord of the house were called “muntlings” because they were subject to his “munt” – not his mouth.

To this day, people therefore speak of a “Vormund” when someone takes over these duties instead of the parents for a child – the so-called “ward”. Today, not only men but also women and non-binary persons are appointed as guardians.

Who should get a guardian?

In the early days, it was mostly children whose parents had died – orphans, in other words – who were given a guardian. Today, there are also many other possible reasons why someone is given a guardian: Sometimes parents are very ill and have to hand over the parental responsibility for their child. Or parents are not taking care of their child or are beating and abusing it. In cases like this the Family Court can take away the entire parental responsibility or parts of it from the parents.

However, until the child turns 18, there must be someone standing up for the child's rights, deciding important matters with the child and signing documents for him or her. Therefore, the court then assigns this role to another person, namely the guardian.

There are also special cases: Sometimes children or adolescents have sought refuge in Germany on their own. If you have fled to Germany alone, the Family Court determines that your parents' responsibility for you is suspended because they are too far away (§ 1674 BGB). Your guardian will then support you, for instance, with the authorities. He or she will help you to find out whether you are allowed to stay in Germany. If your parents also move to Germany, they will regain parental responsibility for you.



If you have sought refuge

The Federal Association of Unaccompanied Minor Refugees (Bundesfachverband unbegleitete minderjährige Flüchtlinge, BumF) offers valuable information on your rights in different languages at no cost on their website:

<https://b-umf.de/p/willkommen-in-deutschland>

You can also receive further guidance there.

A video explaining guardianship for young refugees on YouTube is called "What does a guardian do".

It is available in German here:

www.youtube.com/watch?v=GMzMhvmiC-8

You can also find it in Dari, Pashto, English, Arabic and Tigrinya.

Who can become a guardian?

Basically, any adult can be appointed guardian by the Family Court. Sometimes the court appoints grandparents, an adult brother or a foster mother as guardian. However, it is not always possible to find adults who already know you and want to become your guardian. For this reason, an adult from the Youth Welfare Office (Jugendamt) is often appointed as guardian. This is called an official guardian, because the person works in an office, i. e. in an authority. The guardian is then responsible for several children. Sometimes he or she also comes from a guardianship association. However, the guardian is always a specific adult person you can talk to.

This adult person takes personal responsibility for you and is there to represent your best interests. Therefore, it is important that guardians are truly independent. That is why, for example, the head of the Youth Welfare Office is not allowed to regulate what the guardian has to do.

Can I choose my guardian?

The Family Court decides who will be your guardian. It must consider your will (§ 1778 BGB). You can therefore make a suggestion if you already know which adult person you want to be your guardian. You can also say so if it is important to you that it should be a man or a woman, for example.

NON-BINARY
WOULD ALSO
BE GREAT



If the Family Court decides that a staff member of the Youth Welfare Office will be your guardian, the Youth Welfare Office decides which person that should be. The law says that your opinion should be heard. Sometimes, however, there are no or only a few choices because, for example, there are only two people in the Youth Welfare Office who are guardians and one of them does not have time for a new child.

If you are not getting along with your guardian, you can ask the Youth Welfare Office or the Family Court to appoint someone else as your guardian. They will then have to consider whether this is possible. Or you can turn to an external complaints office for child and youth welfare, a so-called Ombuds Office, which will then provide you with advice.



Ombudspersons are there for you!

Ombudspersons can advise you in case of a conflict with the Youth Welfare Office, the residential group or the guardian! The Federal Ombuds Network provides a nationwide overview of Ombuds Offices on its website. If there is no Ombuds Office in your region, you can contact the office of the Federal Network directly on the German website:

<https://ombudschaft-jugendhilfe.de/ombudsstellen>



What does the guardian decide?

If you are attending school, the teacher can decide what you should learn there – whether you should read or do maths, for example – even though your parents are still responsible for your upbringing. It is similar with the guardian: The law says that the caregivers in residential groups or the foster parents can decide on matters of everyday life (§ 1797 BGB). For example, when homework has to be done or whether someone can go out or to the club.

However, the guardian remains responsible for you and therefore decides on everything that is fundamentally important in your life. For example, he or she will make sure that you find a home that is suitable for you in a residential group or in a foster family. Or she decides which school you attend. The guardian also signs the education contract or a consent for an operation, if necessary. She also has a say in your contacts with your parents.



Do I have a say in all of this?

Yes, of course! The guardian must involve you in all decisions that are important for you and discuss them with you (§ 1790 BGB). You have a right to this (§ 1788 BGB)! Therefore he / she has to get to know you and you have to get to know him / her. That is why you also have the right to regular contact with him / her.

In many situations, the guardian will visit you at home to discuss important issues with you in person. Or you can arrange to meet at another place. However, if you prefer not to meet your guardian at home, or if you do not want him or her to come to school, for example, you can of course tell him or her that. You can also agree to talk on the phone or meet online.



If you have the feeling that your guardian is not including you in decisions that are important to you, you can insist on this. The older and more independent you have become, the more the guardian must take your views into account. If you do not agree, the guardian should try to come to an agreement with you (§ 1790 par. 2 BGB).

What if I can't come to an agreement with my guardian?

Parents do not always decide the same way as the child wants them to. It is the same with a guardian. You can try to convince him or her of your point of view and your needs. However, if your guardian makes a decision that you do not agree with in a matter that is important to you, he / she should explain his / her reasons well.



However, if you have the impression that your guardian is not showing enough interest in your wishes and points of view and is not dealing with them, you can try to find someone who can help clarify the situation. This could be someone from your foster family, from the residential group or from the Youth Welfare Office – or the Ombuds Office, as described on page 9.

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If you are not at peace with your guardian, a trusted person can also help you to appeal to the Family Court. The court has to hear you and you can also ask for someone else to be appointed as your guardian. You can also make your own suggestions as to who that should be.

Why can't my social worker at the Youth Welfare Office be my guardian?

If you are living in a residential group or a foster family, you know that there is also a person in the Youth Welfare Office who is responsible for you as a social worker. They will talk to you about the support plans and decide which support and care you will be given by the Youth Welfare Office. Maybe you think it would be easier if this person were also your guardian. But that is not possible.

The guardian is supposed to be responsible for you alone. Social workers are not only there for you, but also for your parents and the residential group or your foster family. Moreover, if the head of the Youth Welfare Office instructs the social worker to do something, then he/she has to follow the instructions. A guardian should be someone who stands by your side and can claim what you are entitled to and what you have a right to.

Can my foster parents or my caregiver from the residential group actually be my guardian?

Your foster parents can become your guardians if they already know you well. They can propose this to the Family Court. Your opinion also counts: you may want your foster parents to also be your guardians. However, it can also be that you are not sure, because sometimes it is good to have someone from outside the family. Sometimes it might be tough for you to say what you think about it. But that is your right. So talk about it with an adult you trust.

A caregiver from your residential group usually cannot become your guardian. This is because the guardian is supposed to represent your interests even if there are conflicts with the institution to which your residential group belongs. However, this is not easy for a caregiver because he/she is employed by the institution and has to follow their instructions.

How do I actually get to know my guardian?

If the court appoints a guardian for you, the person will get in touch with you so that you can get to know each other personally. The guardian will tell you how to reach him or her if you should need him or her.

And if that doesn't happen? Then you can ask your caregiver in the residential group, your foster parents or the social worker in the Youth Welfare Office. You can ask them to call your guardian or do it on your own to say that you want to meet him or her. That is your right!

Does the guardian ever spend time with me?

Your guardian should visit you regularly. This is also your right (§ 1788 BGB)! Many guardians also like to spend time with the children or adolescents. Maybe your guardian will take you out for an ice cream, meet you in a café, go for a walk or attend a sports event with you. If not, just ask! You will get to really know each other better.

You can also tell your guardian if it is important to you that he/she comes to a certain event, for example, to a graduation ceremony at school or to a conversation that is difficult for you. Of course, whether they can come also depends on whether they have time.



Can I turn to my guardian with my problems?

It can happen that you are not comfortable in your residential group, in your foster family or at your school. Or you want to see your parents, grandparents or siblings more often or less often. Or have more say in when you see them. Maybe you're afraid that your foster parents won't like it. Or you are being given medication and don't agree with it. If you are having difficulties like these, you can talk to your guardian. He or she can help you find a solution that is in your best interest.

How long will I keep my guardian?

It may be that the Family Court decides that your parents may regain parental responsibility for you. Then you no longer need a guardian and the Family Court will release him or her. If this is not the case, you would need a guardian until you are an adult, i. e. until you are 18 years old.

It can also happen that the person who is your guardian may be replaced. This may be because he or she no longer acts as your guardian. Also, if you move, you may have to get a new guardian. If you want to keep your guardian, tell him / her – you may find a solution.

If you want a new guardian, e. g. because you no longer get along well with your guardian, you can contact the Youth Welfare Office or the Family Court. Of course, you can also do this together with a trusted person. The court will then consider whether you can get a different guardian.

HANDLING
EVERYTHING?
BY YOURSELF?



And then?

Guardianship ends on your 18th birthday at the age of majority at the latest and you assume responsibility for yourself according to the law. However, many young people will still require support after their 18th birthday.

For example, you have the right to continue living in a Child and Youth Welfare facility if you want and are in need of it (§ 41 SGB VIII). If you want to apply for this, your guardian can support you before you are 18. Sometimes the guardian remains at your side as a contact person for a longer period of time, but it is now up to you to decide!

Even if you are no longer living in a residential group, you still have the right to counselling and support for a while (§ 41a SGB VIII). Specialists at the Youth Welfare Office – or your former guardian – will also help you if you want to claim other benefits (such as housing benefit or BAföG).



The transition to adulthood

The Careleaver Association provides a lot of helpful information on their website about the transition to adult life and your rights. You can contact the association for further questions but also for networking with other young people on this German website: <https://www.careleaver.de>

The German brochure “Durchblick. Information for your way out of Youth Welfare into adult life” can also be found on the German website:

<https://careleaver-online.de>

What parents should know:

Are we allowed to have a say in who becomes guardian for our child?

The decision on who becomes a child's guardian is very significant for the child's further development. Parents can, for example, specify in their wills who should take over guardianship if they should both die. But even if the child gets a guardian because the parents cannot carry the parental responsibility, the Family Court must take the parents' wishes into account. So if you as parents have a wish as to who should become guardian for your child, inform the Family Court. It may be that the court follows your request. However, the court also checks the suitability of the proposed person to take parental responsibility as guardian. And your child's wish also matters.

What does the guardian get to say about the contact arrangements?

In some cases, the Family Court has decided on contacts between you and your child – all parties must comply with this. If not, the guardian decides how often, when and where you can see your child. In doing so, he or she will take your child's wishes into account. But he or she must also take your wishes and those of the foster family or the institution into account when making his or her decision. The law states that the guardian should include the relationship with the parents in the interest of the child (§ 1790 BGB). It makes sense for the guardian to consult with you as well as with the caregivers or the foster family and the social worker at the Youth Welfare Office.

Will the guardian help me with any conflicts with the residential group or the foster family?

The guardian should ensure that your child can develop well and grow up without any risks. In addition, he or she is to represent your child's interests and rights before the authorities. If you as parents do not agree with the way your child is raised or treated in the residential group or in the foster family, contact the guardian and tell him / her about it. The guardian will then contact your child to find out how he or she is being treated.

If the guardian shares your opinion, he or she will try to improve the situation. If your child feels very uncomfortable in the residential group or the foster family, he or she will also check whether it would be better for your child to be settled elsewhere. You can also ask to take part in the conference on assistance planning for your child, e. g. if it is about a change of living group. Even if you do not have the parental responsibility of the child, the professionals at the Youth Welfare Office can invite you to attend. This is provided that your child also wants you to attend.

If you think the guardian is not taking good or sufficient care of your child, you can go to the Family Court and suggest that someone else takes over the guardianship. However, there must be strong reasons for the Family Court to decide to replace the guardian.



Does the guardian inform me about my child's everyday life and development?

The best way to find out how your child is doing is from your child itself, e. g. during visits, text messages or telephone calls. If you want to know more, you can also ask the guardian. He or she will then inform you about what your child is currently doing and how he or she is doing. You have a right to this information if the interests of the child do not conflict with it (§ 1790 BGB).

Can I make a complaint about the guardian?

If resolving conflicts with the guardian does not work, you can turn to the Family Court or to the management staff in the Youth Welfare Office or in the association. They will have to address your complaints. However, you can also contact an Ombuds Office, which can advise you and sometimes mediate in conflicts – what an Ombuds Office is, is explained on page 9.

FINDING
SOLUTIONS



What caregivers in institutions and residential groups should know:

What is the role of the guardian in assistance planning?

The guardian represents the interests of the child or young person, also with respect to the Youth Welfare Office. As holder of parental responsibility, he or she can claim youth welfare services to help raise the child. He or she takes part in the conference on assistance planning and applies for the services that he or she considers necessary for the child or young person. The guardian also has the right of choice, i. e. he or she chooses the residential group or the foster family with the child or the adolescent if there is more than one option.

PLANNING
THE FUTURE



What are the responsibilities of social services in the Youth Welfare Office?

The specialists Social Services (Soziale Dienste) within the Youth Welfare Office decide on the granting of youth welfare services which the guardian has applied for for the child. This may involve support for raising the child in a residential group or in a foster family, but also may involve additional support, e. g. support for a child living in a foster family. The social services advise and support in all issues of upbringing and foster care. It is their job to work towards ensuring that the foster parents or caregivers and the parents work together for the benefit of the child or young person.

The social services specialists also check whether the parenting conditions at the parents' home could be improved. They support the parents in either improving the circumstances at home so that the child can come back to them. Or – if this is not possible – they assist in ensuring that the parents can still have a good relationship with the child, insofar as the child also wishes to do so and it is in their best interests (§ 37 SGB VIII).

And if the guardian does not consent to the Youth Welfare Office?

If the specialists in the Social Services do not consider the youth welfare services the guardian applies for to be necessary and reject the application, he or she may appeal against this decision. The guardian can then also file a claim at the Administrative Court, if he or she considers the youth welfare services they applied for to be necessary for the child or young person.

Three joined forces have created this brochure.

The “Bundesforum Vormundschaft und Pflegschaft e.V.”, the “Internationale Gesellschaft für erzieherische Hilfen e.V.” (IGfH) and the “Deutsches Institut für Jugendhilfe und Familienrecht e.V.” (DIJuF) have jointly produced this new brochure edition. IGfH and DIJuF had published a first version, but it was somewhat outdated.

Why did we redesign it together? Because we have different perspectives on guardianship – and all perspectives are important. The Federal Forum looks particularly at the professionalism and representation of the interests of young people with regard to guardianship. The IGfH looks particularly at the importance of guardianship in the context of educational support, in residential groups and foster families. The DIJuF has an eye on the legal side – and is able to explain it very well. For all three of us, the cooperation between young people and all those involved in their upbringing is of great importance.



ALL SET?



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Bundesministerium
für Familie, Senioren, Frauen
und Jugend

CAN
MY AUNT
BE MY
GUARDIAN?

