§ 1754. Hearing and trial

1. Upon a petition for the appointment of a guardian of a person who is intellectually disabled or person who is developmentally disabled eighteen years of age or older, the court shall conduct a hearing at which such person shall have the right to jury trial. The right to a jury trial shall be deemed waived by failure to make a demand therefor. The court may in its discretion dispense with a hearing for the appointment of a guardian, and may in its discretion appoint a guardian ad litem, or the mental hygiene legal service if such person is a resident of a mental hygiene facility as defined in subdivision (a) of section 47.01 of the mental hygiene law, to recommend whether the appointment of a guardian as proposed in the application is in the best interest of the person who is intellectually disabled or person who is developmentally disabled, provided however, that such application has been made by:

(a) both parents or the survivor; or

(b) one parent and the consent of the other parent; or

(c) any interested party and the consent of each parent.

2. When it shall appear to the satisfaction of the court that a parent or parents not joining in or consenting to the application have abandoned the person who is intellectually disabled or person who is developmentally disabled or are not otherwise required to receive notice, the court may dispense with such parent's consent in determining the need to conduct a hearing for a person under the age of eighteen. However, if the consent of both parents or the surviving parent is dispensed with by the court, a hearing shall be held on the application.

3. If a hearing is conducted, the person who is intellectually disabled or person who is developmentally disabled shall be present unless it shall appear to the satisfaction of the court on the certification of the certifying physician that the person who is intellectually disabled or person who is developmentally disabled is medically incapable of being present to the extent that attendance is likely to result in physical harm to such person who is intellectually disabled or person who is developmentally disabled, or under such other

circumstances which the court finds would not be in the best interest of the person who is intellectually disabled or person who is developmentally disabled.

4. If either a hearing is dispensed with pursuant to subdivisions one and two of this section or the person who is intellectually disabled or person who is developmentally disabled is not present at the hearing pursuant to subdivision three of this section, the court may appoint a guardian ad litem if no mental hygiene legal service attorney is authorized to act on behalf of the person who is intellectually disabled or person who is developmentally disabled. The guardian ad litem or mental hygiene legal service attorney, if appointed, shall personally interview the person who is intellectually disabled or person who is developmentally disabled and shall submit a written report to the court.

5. If, upon conclusion of such hearing or jury trial or if none be held upon the application, the court is satisfied that the best interests of the person who is intellectually disabled or person who is developmentally disabled will be promoted by the appointment of a guardian of the person or property, or both, it shall make a decree naming such person or persons to serve as such guardians.