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| Title: | Custody, Guardianship, and Power of Attorney |
| Policy #: | 80-VR-19 |
| Legal Reference: | ORC 3304.15 |
| Date: | January 23, 2017 |
| Approved: | Kevin L. Miller, Executive Director  |
| Origin: | Bureau of Vocational Rehabilitation and Bureau of Services for the Visually Impaired |
| Supersedes: | 80-VR-19 (05/16/16) |
| History: | VRP-0380 (12-31-06) |
| Review date: | Annually on or before January 23 rd |

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code (ORC) §3304.15 which establishes the power and authority of the Opportunities for Ohioans with Disabilities (OOD) and its executive director to develop all necessary rules and policy in furtherance of its statutory duties.

II. PURPOSE

The purpose of this policy is to provide guidelines for custody, guardianship, and power of attorney to ensure that OOD communicates within the legal bounds of the law in accordance with appropriate federal (e.g. Code of Federal Regulations [CFR]) and state law (i.e. Ohio Revised Code, Ohio Administrative Code) governor directives and executive orders, other governing agency (e.g. DAS, OBM) policy or guidance, and/or executive director expectations.

III. APPLICABILITY

This policy applies to VR Staff and VR Contractors.

IV. DEFINITIONS

Refer to “Vocational Rehabilitation Definitions” (80-VR-99.A).

Custody - the immediate charge, care and control of a thing or person, but not the final, absolute control of ownership which is generally done by court order, but does not divest the person in custody of his/her legal rights (e.g. parent/child relationship).

Legal Guardian – a person lawfully invested with the power, and charged with the duty, of taking care of the person and managing the property and rights of another person because the person is of minor age, or has a defect of understanding or self-control, or is considered incapable of administering his or her own affairs.

Power of Attorney (POA) – an instrument that conveys, in writing, one person’s desire to appoint another as his/her agent or attorney-in-fact, and conveys authority to perform certain specified acts or kinds of acts on behalf of the principal. If the POA is “durable” it remains in effect in the event the principal becomes incapacitated. Otherwise, a POA ends upon the death, revocation, or incapacitation of the principal.

V. POLICY

A. General

1. OOD shall provide various information to individuals and if applicable, their parent(s) or legal guardian(s) throughout the VR process as required by law (e.g. rights and duties). This information shall be provided in writing and when appropriate, in their native language or through an appropriate mode of communication.
2. The AWARE case file shall be updated with all conversations, recommendations, justifications, approvals and/or other actions taken in relation to this procedure. If supervisory or management approval is required during the VR process, the supervisor or manager shall document their approval in AWARE. If written approval is received from a supervisor or manager, it shall be added to AWARE.
3. VR Staff and VR Contractors should carefully read the rights as they are indicated in the actual legal document to ensure that courtesies beyond those outlined in the document are not extended.

B. Notification and Required Action

1. When VR Staff or VR Contractors are notified that a representative has been granted legal rights (e.g. guardianship, custody, power of attorney) over an individual or the individual has been emancipated, VR Staff or VR Contractor shall request a copy of the legal documentation establishing these rights.
 - a. This is not applicable if the eligible individual is a minor (i.e. under the age of 18) and the representative is a parent unless the parents are divorced and there is a question about who has authority to sign with or for the minor. In this case, VR Staff or VR Contractors shall request a copy of the divorce decree which will specify parental rights.
 - b. Once the legal documentation is obtained VR Staff or VR Contractor shall proceed as detailed below.
 - i. Review the documentation and if there are questions regarding the extent of rights awarded, written clarification shall be requested from the issuing entity.
 - ii. Follow all limitations in the documentation with regard to custody, guardianship or power of attorney.
 - a) Courtesies beyond what is granted in the order are not permitted.
 - c. If appropriate legal documentation cannot be provided, the individual must continue to sign all documentation and VR Staff or VR Contractors shall not recognize any person as having any rights over the individual.
 - i. The individual may complete and sign a "Consent to Obtain and Release" form (80-VR-01.01.E) I to allow VR Staff or VR Contractor to share information with an authorized representative.

- iii. At any point in the case that legal documentation is provided, VR Staff or VR Contractor shall follow requirements as outlined in the documentation. Legal documentation shall not be considered retroactive, therefore forms prior to the receipt of the legal document are not required to be re-signed.

C. Custody

1. Even with appropriate legal documentation for custody, the custodial representative has no legal right to exercise control over the individual and therefore he/she must continue to sign all documentation (e.g. VR application, forms).
 - a. There may be an exception to this if specifically stated in the legal documentation.
2. If there are any questions regarding the custody order, the VR Staff or VR Contractor shall contact the issuing entity for clarification.

D. Legal Guardianship

1. If appropriate legal documentation is provided for guardianship, the legal guardian has the legal authority to exercise control over the rights of the individual.
 - a. VR Staff or VR Contractor shall ensure courtesies beyond those outlined in the legal documentation are not extended.

E. Power of Attorney (POA)

1. If appropriate legal documentation is provided for a POA, a representative has been granted the right to represent the individual. However, the individual must still participate in the vocational rehabilitation (VR) process.
 - a. A POA does not supersede the requirements for the individual to sign all documents and be present at all meetings.
 - b. If the individual provides different guidance than the POA, efforts should be taken to work with both parties to determine the principal's intent. A POA has authority to make decisions for the participant as specified in the POA until a revocation occurs.
 - i. County courts may use various terms interchangeably and therefore it is vital that any legal document, regardless of the status under which it is labeled, is carefully read to ensure that courtesies beyond those outlined in the legal document are not extended.
2. All rights granted shall be outlined in the POA and courtesies beyond what is outlined in the written document shall not be permitted.

F. Violation

An employee who violates this policy may be subject to discipline up to and including removal.

FORMS AND ATTACHMENTS

- N/A

RESOURCES

- www.ohiolegalservices.org

REVIEW

It is the responsibility of the Deputy Director, or designee, to annually review this policy, on or before, the date listed in the header and if applicable, make any necessary revisions. The Deputy Director or designee shall document the annual review as required in OOD Policy 10-ADM-01 "Policy and Procedure Development, Review, Dissemination and Acknowledgement".