




Title:	<b>Custody, Guardianship, and Power of Attorney</b>
Policy #:	<b>80-VR-19</b>
Legal Reference:	ORC 3304.15
Effective Date:	January 21, 2019
Approved:	Kevin L. Miller, Executive Director 
Origin:	Bureau of Vocational Rehabilitation and Bureau of Services for the Visually Impaired
Supersedes:	80-VR-19 (01/23/17)
History:	80-VR-19 (05/16/16), VRP-0380 (12-31-06)
Review/ Implementation	Begin Review – 08/03//20 Implement Revisions By – 02/01/21

**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 information to individuals and, if applicable, his/her parent or legal guardian throughout the Vocational Rehabilitation (VR) process as required by law (e.g. rights and duties). This information shall be provided, in writing, and when appropriate, in the individual’s native language or through an appropriate mode of communication.
2. AWARE shall be updated with pertinent conversations, recommendations, justifications, approvals, and/or other actions taken in relation to this procedure.
  - a. If supervisory or management approval is required during the VR process, VR Staff or VR Contractor shall, via a “Custom Activity Due” in AWARE, request approval which shall include a written justification .
  - b. The supervisor or manager shall consider the VR Staff or VR Contractors’ justification and document his/her approval or denial within the “Activity Due” as detailed below.
    - i. If approval is based on the written justification, the supervisor/manager shall enter “Approved” in the “Comments” and change the activity status to “Completed.
    - ii. If approval is based on the written justification but additional conditions/requirements need to be addressed before VR Staff or VR Contractor can take action on the approval; the supervisor/manager shall enter “Approved with Conditions” and document the conditions/requirements in the “Comments” and change the activity status to “Completed”.
    - iii. If denied, the supervisor/manager does not agree with the justification, he/she shall enter the words “Request Denied,” and document the reason(s) for denial in the “Comments” and change the activity status to “Completed..
3. If any OOD Staff are a Certified Rehabilitation Counselor (CRC) and will be directly involved with an individual’s case, shall complete the “Professional Disclosure Statement” (80-VR-01.E).
  - a. VR Staff or VR Contractor who are not a Certified Rehabilitation Counselor (CRC) are exempt from this requirement.
  - b. Once completed, the “Professional Disclosure Statement” shall be reviewed and signed by the individual and, if applicable, his/her parent or legal guardian, and the CRC VR Staff or VR Contractor.
    - i. Once signed, the statement shall be scanned into the AWARE Participant Module, as a Case Note, with the category “Professional Disclosure Statement” and summary title “Signed.”

4. An applicant or eligible individual, regardless of any custody, guardianship, or power or attorney assignments, must be present for all VR related meetings, sign all required documents, and be available to participate in VR services.

#### 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 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 regards 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.
    - ii. At any point in the case that legal documentation is provided, VR Staff or VR Contractor shall follow requirements as outlined in the documentation.
      - a) 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 OOD's Division of Legal Services (DLS) for clarification.

## E. 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.

## F. 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.

## G. 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](http://www.ohiolegalservices.org)
- Consent to Obtain and Release (80-VR-01.01.E)

## FUNDING

Programs provided by the Opportunities for Ohioans with Disabilities are funded, in whole or in part, with federal grants awarded by the U.S. Department of Education (DOE) or the U.S. Department of Health and Human Services (HHS).

For purposes of the Vocational Rehabilitation (VR) Program, including Pre-Employment Transition Services (Pre-ETS), OOD received 78.7% of its funding through the DOE VR grant. In Federal fiscal year (FFY) 2018, OOD received \$100,336,097 in federal funds. Funds appropriated by the State covered 21.3 % of the total costs, or \$27,155,767. Of these federal funds, \$15,050,415 is set aside for Pre-ETS.

For purposes of the Supported Employment Program, the DOE VR grant funded 100% of the costs for the Supported Employment for Youth with a Disability Program. In FFY 2018, OOD received \$303,725. The grant also funded 95% of the Supported Employment Program (non-Youth). In FFY 2018, OOD received \$303,725 and the State appropriated funds paid the remaining 5% or \$33,747 of the total costs.

For purposes of the Independent Living Services for Older Individuals Who are Blind (OIB) Program, the federal grant received from DOE in FFY 2018 paid 90% of the total costs incurred under the program. In FFY 2018, OOD received \$1,174,400 in federal grant funds. Funds appropriated by the State paid 10% or \$130,489 of the total costs incurred under the OIB program.

For purposes of the Independent Living (IL) Program, the federal grant received from HHS paid 90% of the total costs incurred in FFY 2018. In FFY 2018, OOD received funding of \$632,411. Funds appropriated by the State paid 10% or \$70,268 of the total costs incurred under the IL Program.

## **REVIEW**

It is the responsibility of the Deputy Director, or designee, to 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 review as required in "Policy and Procedure Development, Review, Dissemination and Acknowledgement" (10-ADM-01).