VASFAA Conference 2017

Declaration of Independence: Custody v. Guardianship v. Ward of Court v. Dependency Overrides

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Agenda

- Premise of Federal Student Aid
- We will discuss dependency statuses and documentation for…
  - Custody
  - Legal Guardianship
  - Ward of Court
- …and what we can do when our students don't fit neatly into any of these categories.

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Premise of Federal Student Aid

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Parental Responsibility for Education

- From the Application and Verification Guide of the Federal Student Aid Hanbook – page 23.

STEP THREE: DEPENDENCY STATUS

Purpose: The law governing the FSA programs is based on the premise that the family is the first source of the student's support, and the law provides several criteria that decide if the student is considered independent of his parents for aid eligibility. Note that a student reaching the age of 18 or 21 or living apart from his parents does not affect his dependency status. For the 2017–2018 year, a student who meets any of the following criteria from HEA Sec. 480(d) is independent; he

Custody

Virginia's Definition

- Code of Virginia 16.1-228
  - "Legal custody" means (i) a legal status created by court order which vests in a custodian the right to have physical custody of the child, to determine and redetermine where and with whom he shall live, the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by court order of joint custody as defined in § 20-107.2.

Virginia's Definition

- Who determines custody?
  - Juvenile & Domestic Relations Court
  - Found in Chapter 11 of Title 16.1 "Courts Not of Record" in the Code of Virginia
- When may custody be granted?
  - When a child is in need of services, during a divorce, or when allegations of abuse or neglect are being investigated.
- For how long?
  - Varies – best advice is to read the court order, but know that it is usually temporary

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Sample

court not of record

terminology

parental rights retained

CUSTODY/VISITATION ORDER

COMMONWEALTH OF VIRGINIA Case No.: [redacted]

Roanoke City Juvenile and Domestic Relations District Court

VIEWED ORIGINAL

In re: [redacted] DOB: [redacted] JUL 22 2015

BY:

The above-named child has been brought before this Court upon the filing of a written petition concerning custody/visitation; and proper notice has been given to all proper and necessary parties; the parties have been informed by this Court of their right to representation by a lawyer and the contents of the petition filed in this Court. All provisions of the Juvenile and Domestic Relations District Court law, and amendments thereto, have been duly complied with in assuming jurisdiction of the child.

Having considered all relevant and material evidence, I find that the child is within the jurisdiction of this Court and the Juvenile and Domestic Relations District Court law, and if committed to a local board of social services or public welfare, it has been further found that reasonable efforts;

a. _____ have been made; _____ have not been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child.

b. _____ have been made; _____ have not been made to reunite the child with his/her parents, guardian or other person standing in loco parentis to the child.

I also made my determination in accordance with the standards set forth in Va. Code § 20-124.1 through § 20-124.5.

I hereby ORDER that: Legal custody of the said child is granted to the maternal grandmother, [redacted] by agreement of the parties.

It is a requirement as a condition of this Order, that each party intending a change of address shall give thirty days' advance written notice of such change of address to the Court and other party.

The notice shall contain the child's full name, the case number of this case, the party's new telephone number and new street address and, if different, the party's new mailing address. The notice shall be mailed by first-class or delivered to this Court and to the other party.

Access to the academic, medical, hospital or health records of the child shall not be denied to either parent unless otherwise ordered above.

DATE: 10/25/05 JUDGE: [redacted]

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Legal Guardianship

ED's Criteria

- From page 28 of the Application and Verification Guide of the Federal Student Aid Handbook:

Emancipation and legal guardianship (54 and 55). Students are independent if they are, or were upon reaching the age of majority, emancipated minors (released from control of their parent or guardian) or in legal guardianship, both as adjudicated by a court of competent jurisdiction in the state of the students' legal residence at the time of the adjudication. While the basis for emancipation can vary by state, the emancipation must be determined by a court, not by an attorney. Students in legal guardianship to their parents—for instance, if they are disabled adults and under their parents' care—are not independent for Title IV program purposes by this criterion and would answer "No" to Question 55.

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FAFSA to the rescue...

55. Does someone other than your parent or stepparent have legal guardianship of you, as determined by a court in your state of legal residence? **See Notes page 10.**

The definition of legal guardianship does not include your parents, even if they were appointed by a court to be your guardians. You are also not considered a legal guardian of yourself.

Answer "**Yes**" if you can provide a copy of a court's decision that as of today you are an emancipated minor or are in legal guardianship. Also answer "**Yes**" if you can provide a copy of a court's decision that you were an emancipated minor or were in legal guardianship immediately before you reached the age of being an adult in your state. The court must be located in your state of legal residence at the time the court's decision was issued.

Answer "**No**" if you are still a minor and the court decision is no longer in effect or the court decision was not in effect at the time you became an adult. Also answer "**No**" and contact your school if custody was awarded by the courts and the court papers say "custody" (not "guardianship").

The financial aid administrator at your college may require you to provide proof that you were an emancipated minor or in legal guardianship.

Virginia's Definition

- Code of Virginia 64.2-2000
  - "Guardianship" means a person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence.

Virginia's Definition

- Who determines guardianship?
  - Circuit Court – the Court of Record in Virginia
  - Found in Chapter 17 of Title 64.2 "Wills, Trusts, and Fiduciaries", Subtitle IV "Fiduciaries and Guardians", Part C "Guardianship of Minors" in the Code of Virginia
- When may guardianship be granted?
  - When it is necessary for the benefit and protection of the child. Guardians assume physical and legal custody of the child and all rights and responsible of "natural guardians" (Parents)
- For how long?
  - Permanent; and usually only terminates via death of the guardian, the child reaching the age of majority, or further court order.

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Sample

court of record

VIRGINIA:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

In Re: [redacted]
a minor child

Who?

duration

FINAL ORDER

THIS CAUSE came to be heard December 4, 2009, upon the Petition for Guardianship filed herein September 26, 2008; upon the Affidavit of [redacted] expressly consenting to the appointment of the Petitioners as guardians of [redacted] upon the Order of Publication entered August 7, 2009 directing [redacted] to appear on or before November 6, 2009 at 10:00 a.m. to do what is necessary to protect her interests; upon the Order of August 7, 2009 appointing the Petitioners temporary guardians of [redacted] upon the appearance of the Petitioners and their counsel, [redacted] and upon the evidence and argument of the Petitioners.

IT APPEARING TO THE COURT tha[redacted]has not responded or otherwise entered an appearance in this cause following entry of the August 7, 2009 Order of Publication;

IT FURTHER APPEARING TO THE COURT that the Petitioners are fit and proper persons to serve as permanent guardians of [redacted]

IT IS HEREBY ORDERED that Petitioners [redacted] be and hereby are appointed permanent guardians of [redacted]

ENTERED this 4th day of December, 2009.

terminology

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Ward of Court/Foster Care

Ward of the Court

- A student is a **ward of the court** if it has assumed legal custody of her. In some states the court may impose its authority over a juvenile who remains in the legal custody of her parents; such a student is not a ward of the court. Also, incarceration of a student does not qualify her as a ward of the court. In some states the phrase “ward of the state” is used. This is considered the same as a ward of the court for dependency status as long as the student is a ward of the state **not** due to incarceration. – FSA Handbook

Ward (continued)

- Anytime since age of 13
- Even if living status has changed
- Intervention of the court is essential to provide treatment, rehabilitation, or services needed by the child
- Conduct presents a clear and substantial danger to child's life or health

Ward Documentation

- Ward of the court/ward of the state interchangeable likely will not see on court documentation
- Court order
- Letter from judge
- Temporary – may result in foster care

Foster Care

- Anytime since the age of 13
- Even if living status has changed
- Usually involves DSS, FAP, or other child welfare agency
- Concurrent Jurisdiction - District Court (Juvenile and Domestic Relations Court) and Circuit Court
- Guardian Ad Litem

Foster Care (continued)

- Licensed child-placing agency, children's residential facility, independent foster home, independent living plan
- Documentation
  - Court order
  - DSS letter
  - Foster care plan
  - Independent living agreement/plan (16 years old or older)

Dependency Override

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If no court documentation exists…

- …or if you have “custody” documentation might you be able to exercise PJ?
- HEA 479A give FAAs the authority to make adjustments on a “case-by-case” basis to the required data elements used to calculate an EFC given adequate documentation that supports the differentiation of a particular student’s special circumstance.
- Conversation with the student?

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Processing a Dependency Override

- If you find that a special circumstance exists – document, document, document.
- Reasons that do not warrant dependency overrides:
  - parent refusal to contribute
  - parents unwilling to provide information on the FAFSA or during verification
  - parents do not claim the student as a dependent on taxes
  - Student is self-sufficient.

Processing a Dependency Override

- Possible reasons:
  - abandonment of the parents
  - abusive family environment that threatens the student's health or safety
  - inability to locate parents
- Documentation:
  - third party familiar with the situation
  - teacher, counselor, clergy, government agency, court

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Suggested Sessions

- Determination of Homelessness – Today at 11:15

- Professional Judgement: WWYD, What would you do? – Tuesday at 3:15

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Contact Information

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