

2012

INDIVIDUAL RIGHTS SELF DIRECTED STUDY AND TEST

1. Read all material. You may decide you want to print it and keep it as reference material.
2. Take the test at the end of the material. Use the answer sheet to record your answers. Do not record your answers on the test itself.
3. Complete the answer sheet.
4. Return the answer sheet to: Quality Assurance Manager, Knox County Board of Developmental Disabilities, 11700 Upper Gilchrist Road, Mount Vernon, Ohio 43050.
5. If you have questions, contact the Quality Assurance Manager at (740) 393-5713.
6. You will receive a certificate for two hours credit for Individual Rights Training.

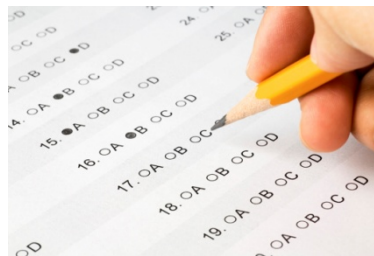
INDIVIDUAL RIGHTS TRAINING
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COMPLETION TIME: TWO HOURS
KNOX COUNTY BOARD OF DEVELOPMENTAL DISABILITIES
QUALITY ASSURANCE DEPARTMENT

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Section 2

1. TEST



Individual Rights Training

INFORMED CONSENT means that an individual willingly agrees to participate in an activity,

AFTER being advised of both the **risks** and the **benefits**.

We talk a lot about informed consent when it relates to medical procedures but do we think about informed consent for decisions that are made every day.



Think about this: Do we always ensure that the people we serve understand what it is, that they are being asked for their participation?

A little history....of laws and rights for individuals with disabilities.

July 26th 2010 was the 20th anniversary of the Americans with Disabilities Act (ADA) which was signed by President George H. Bush.

The Individuals with Disabilities Education Act (IDEA) is the federal law that ensures children with disabilities receive a fair and appropriate education.

“Children with disabilities should be learning the same things as non-disabled children.....living a full life, raising families, being a part of their community.” –Thomas Hehir, Director of Special Education, US Department of Education



When we talk about human rights, we are often talking about basic respect and dignity that everyone should receive. Do you think that people with developmental disabilities have the same rights?



Ohio Revised Code 5123:62 – The Bill of Rights for People with Developmental Disabilities

The rights of persons with mental retardation or a developmental disability include, but are not limited to, the following: legal language/*people first language*

A. The right to be treated at all times with courtesy and respect and with full recognition of their dignity and individuality;

I have the right to be treated nicely at all times and as an individual.



- B. The right to an appropriate, safe and sanitary living environment that complies with local, state and federal standards and recognizes the persons' need for privacy and independence;

I have the right to a safe, clean home. If it is a licensed home, it will be checked every year by the state and local fire department. I have the right to be alone with my family and friends.



- C. The right to food adequate to meet accepted standards of nutrition;
I have the right to get meals that are healthful and good for me.



- D. The right to practice the religion of their choice or to abstain from the practice of religion:

I have the right to go to the church of my choice, or not to go to church at all.



- E. The right of timely access to appropriate medical or dental treatment.



I have the right to go to a doctor or dentist when I need to, as soon as I need to.



- F. The right of access to necessary ancillary services, including, but not limited to: occupational therapy, physical therapy, speech therapy and behavior modification and other psychological services;

I have the right to get people to help me with the way I talk, walk or do things with my hands. I



have the right to get people to help me with the way I act or the way I feel.



- G. The right to receive treatment and care in the least intrusive manner;

I have the right to accept assistance and training without it being forced upon me.



- H. The right to privacy, including both periods of privacy and places of privacy:

I have the right to have some time to myself and a place to go to be by myself.



- I. The right to communicate freely with persons of their choice in any reasonable manner they choose;

I have the right to use the telephone, write letters or talk with anyone I want about any subject I want to discuss in a responsible way.



- J. The right to ownership and use of personal possessions so as to maintain individuality and personal dignity;

I have the right to keep things of my own that I choose to have.



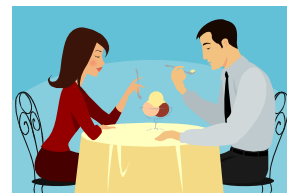
- K. The right to social interaction with members of either sex;

I have the right to socialize and be friends with both men and women.



- L. The right of access to opportunities that enable individuals to develop their full human potential;

I have the right to join activities or do things that will help me grow to be the best person I can be.



- M. The right to pursue vocational opportunities that will promote and enhance economic independence;

I have the right to have a job and make money.



- N. The right to be treated equally as citizens under the law;

I have the right to be treated like everyone else under the law.

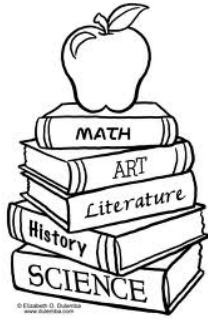


- O. The right to be free from emotional, psychological and physical abuse;

No one should hit me, hurt me, yell at me or say terrible things to me;



- P. The right to participate in appropriate programs of education, training, social development and habilitation and in programs of reasonable recreation;
I have the right to go to school or a work setting and meet and work with other people. I have the right to programs that help me and to go out on activities.



- Q. The right to participate in decisions that affect their lives;
I have the right to decide the things that will affect me.



- R. The right to select a parent or advocate to act on their behalf;
I have the right to ask someone, like my parents, an advocate or a friend, to speak with me and/or for me and to help me do things.



- S. The right to manage their personal financial affairs, based on individual ability to do so;
I have the right to manage and spend my own money based on my ability to do so.



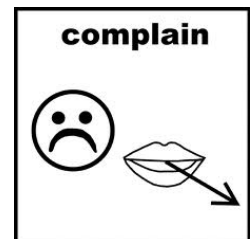
- T. The right to confidential treatment of all information in their personal and medical records, except to the extent that disclosure or release of records is permitted under sections 5123.89 and 5126.044 {5126.04.4} of the Revised Code;

I have the right to have the information in my file kept private.



- U. The right to voice grievances and recommend changes in policies and services without restraint, interference, coercion, discrimination or reprisal;

I have the right to complain if I don't agree with something. I also have the right to talk about my complaints without being threatened by others to change my mind or get me in trouble.



- V. The right to be free from unnecessary chemical or physical restraints;



I cannot be given medications to control my behavior, be tied up, held down or locked up unless it is needed to keep me from hurting myself or others, or unless I have agreed and there is a written plan.



- W. The right to participate in the political process;

I have the right to learn about how laws are made, join in community decisions, vote for people who make the laws and be able to tell them how I feel about laws.



- X. The right to refuse to participate in medical, psychological or other research or experiments.

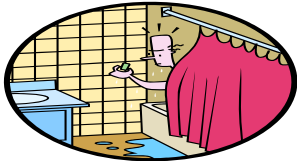
I have the right to say "no" to being a part of any study or experiment.





These rights should be a part of everyone's life, everyday. People with disabilities are no different than anyone else when it comes to how we deserve and expect to be treated.

We have been taught to respect our elders. Do you think about how you talk to someone with a disability who is older than you, and compare it to how you talk to someone who is also older than you but, does not have a disability?



If your parents needed assistance to use the restroom, would you help them the same way that you assist the individuals that you serve, to use the restroom? Privacy during toileting, showering and dressing is something that we take for granted for ourselves. Is it something that we always ensure for the people we serve?

If you had a family member who was arrested because of some type of inappropriate behavior, would you discuss it with a co-worker, who didn't know your family member?



We choose what clothing we want to wear on a daily basis. This is something that everyone is able to do. If the person that you provide services for is non-verbal and totally dependant on others for care, placing a choice of two different outfits where their body language, even if they only look at one of the outfits, provides them with the opportunity to make an important decision about their life. We need to provide opportunities for the people who we serve, to be actively involved in as many decisions that affect their lives, as possible.

If someone is unable to pay their bills, they would need help with managing their money. A payee is a provider that can help them with this. The money is the individual's but the payee makes sure that their financial needs are being met according to their ELP.



When someone utilizes a wheelchair for mobility, think of the best way to assist them. Do you ask them if they need help before you place your hands on the handles of the wheelchair to push them in their chair? Or do you know when it's time for a meal or personal care and just grab their chair and go where you think that they need to be? Remember that even if someone is non-



verbal and can't tell you that they would like your help or can't independently mobilize their wheelchair, it is best to verbalize your intent to take them to a different area so that their body can prepare for the movement. This also allows time for their mind to prepare for the change in activity.

We must all assure that we treat people with disabilities with the same dignity and respect that we expect for ourselves.

The easiest way to do this, is to picture yourself or your family member receiving the care you are about to provide. If it feels right, it probably is right.



Guardianship in Ohio

The natural guardianship of parents, that is their parental rights and control over their child, ends when their children reach the age of eighteen in Ohio. At that point, they no longer have the legal ability to make decisions and to sign consent forms for their child. They may be excluded from participating in decisions their child makes. Many parents who have a child with a disability struggle to decide if they need to remain the decision-makers in their child's life. If they decide to seek guardianship when their child turns eighteen, they must go to their local probate court to complete and submit an application for guardianship. Guardianship takes away a person's ability to make decisions about his or her life. Other options which place fewer restrictions on the person with a disability should be considered first. One of the less restrictive options may be able to meet the person's needs without the appointment for a guardian.



What is a guardian?

A guardian is a person, corporation or an association appointed by a probate court to be legally responsible for another person and/or for another person's property (estate) when that person is unable to manage his or her personal needs or property because of a mental disability. Only a "natural person" (not a corporation) can be appointed as a guardian of the person. The only exception to this rule is that Advocacy and Protection Services, Inc. (APSI) can serve as guardian of the person.

What is a ward?

A ward is the person for whom a guardian has been appointed.

Who needs a guardian?

There are two prerequisites that should exist before a court appoints a guardian.

1. The person must be incompetent in at least one important area of their life. This is often easy to determine because of activities of daily living. Can they take care of themselves and their property or are they at risk if left on their own?
2. There must be a present need for the guardianship. The person may have significant deficits in their life but they may have such a strong support network through families, friends, service providers and others that guardianship is not necessary.

There are some situations where guardianship is needed to protect a person's health and safety, assuring their rights are not violated and helping make their needs and wants known. A person, who is non-verbal and has profound mental retardation, may need a guardian if they don't have family support. Someone may need a guardian if their mental capacity to understand is in doubt and they have significant medical issues that require frequent consent to

medical procedures. Upholding the principles of self-determination, it may be useful in assessing whether or not a person needs a guardian to evaluate the extent to which the individual can participate in the decisions that affect his or her own life. Participation would include such aspects as understanding and communication capabilities.

Why are guardians appointed?

A probate court will appoint a guardian to direct the legal, financial affairs and /or the personal care for a person who is not able to manage his or her own affairs because of a mental disability. Family members or others can ask the court to act to protect someone who appears to be lacking the ability to do so for him or herself and is therefore 'incompetent.' If the court finds that the person is incompetent and a guardianship is necessary, the court will appoint a guardian. Once appointed, a guardian is accountable to the probate court for providing proper care and management of the ward's affairs in the ward's best interest.

What are the general powers and duties of a guardian?

The control that a guardian has over a ward is limited to the authority granted by Ohio statutes, decisions of Ohio courts, and orders and rules of the probate court. All guardians must obey the orders and judgments of the probate court which appointed them. The probate court may give broad and far-reaching powers to a guardian, or it may limit or deny any power granted under Ohio statutes or Ohio case law. Ohio law provides for different types of guardianship.

What are the types of guardianship?

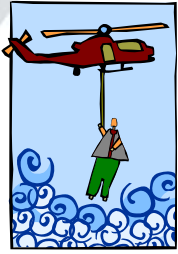
Guardianship of the Estate – Guardianship of the estate gives the guardian the authority to make all financial decisions for the ward.

Guardianship of the Person – Guardianship of the person gives the guardian the authority to make all day-to-day decisions of a more personal nature (that is, all decisions *except* financial decisions) on behalf of the ward. Such decisions would include things like arrangements for food, clothing, residence, medical care, recreation and education. It includes medical consents, consents to IHPs/ELPs (Individual Habilitation Plans/ Essential Lifestyle Plans), consents to participate in Special Olympics and to have photo of the individual used.

Plenary Guardianship or Guardian of Person and Estate – The court can appoint a guardianship of person and estate which gives the guardian the authority to make nearly all decisions for the individual, and combines the authority of guardianship of person and guardianship of estate.



Emergency Guardianship-Emergency guardianship allows a probate court to issue any order that it considers necessary to prevent injury to the person or the person's estate or may



appoint someone as guardian without prior notice to the person and without a formal hearing when: 1) an emergency exists, and 2) a guardian is necessary to prevent injury to the person or estate who is incompetent. This initial appointment of an emergency guardianship may last for a maximum of seventy-two hours. For good cause shown, after notice to the person who is incompetent and other interested parties, and after a hearing, the court may extend an emergency guardianship for a specified period of time, but not to exceed an additional thirty days.

Interim Guardianship- An 'interim guardian' is a guardian appointed after a former guardian has been removed or resigns when the welfare of the ward requires immediate action.

Guardian ad litem- Guardian ad litem is a different type of guardianship where a guardian is appointed for the very specific purpose of representing a minor or someone who is allegedly incompetent during the course of a particular type of litigation. The guardian's authority ends when the litigation ends.

Co-Guardianship-Co-Guardianship is where two people are appointed to act as guardian for someone at the same time, sharing the responsibilities. Co-Guardianship is not a good idea in a divorce situation, or where there is animosity between the potential co-guardians.

What Rights Are Taken Away When a Guardian Is Appointed?

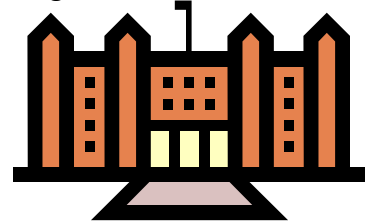
The rights taken away depend upon the type of guardian who is appointed. If a plenary guardian (guardian of the person and estate) is appointed, then nearly all of an individual's rights are taken away and given to a guardian to exercise on the individual's behalf. The individual has, in essence, been determined to be totally incompetent in the eyes of the law. The loss of personal rights is why guardianship is a very serious step and only to be taken as a last resort. That is why a limited guardianship that identifies and limits a specific area in an individual's life, without affecting any other rights, is much preferred, if guardianship is needed. It is serious to take an individual's rights away and give them to someone else to exercise. However, many parents and other guardians do this for their children or wards-not to punish or control them-but to speak and advocate for or with them, to protect their health and safety, and to help them exercise rights they never could have exercised on their own. Often the guardian knows the individual best, and is best situated to speak for and advocate for the individual-even more so if the guardian is a parent or sibling. In addition, the guardian may be the one person who is a constant in the ward's life because direct care staff and professionals come and go.

Some areas of the person's life may involve fundamental rights or a right of privacy. There may be specific medical procedures, such as those that implicate reproductive rights, for example: abortion or sterilization, which should be decided by the person whenever possible. If this is not

possible, the law may require the guardian to ask the probate court to review the guardian's decision.

Also, some rights are personal to the ward and cannot be exercised by a guardian. A guardian cannot make a will or execute a power of attorney for the ward. Unless a court specifically rules that a person is incompetent for purposes of voting, an individual retains the right to vote-even if the individual has a plenary guardian.

While a guardian can 'voluntarily' admit the ward to a developmental center or psychiatric hospital, without prior approval of the court, the court may review the admission subsequently upon request for release by the Ohio Legal Rights Service or the person.



Alternatives to Guardianship

A person may have significant deficits in life, but the person's support network (for example: families, friends, service providers) may be so effective that guardianship is not necessary.

Other options exist that can effectively address a person's needs without the appointment of a guardian.

1. **Representative Payeeship or Authorized Representative**-If the person's only significant income comes from government benefits, it may not be necessary for the person to have a guardian of the estate or a plenary guardian. A representative payeeship or authorized representative may be able to manage all of the person's financial needs.



2. **Trust**-A trust could be used instead of a guardianship of the estate, to handle funds for the person.
3. **Conservatorship**- A conservator is a person appointed by the probate court at the request of a mentally competent adult who is physically unable to manage certain aspects of his or her life. The person requesting the appointment of a conservator specifies the powers requested on the Petition for Conservatorship.

If a person is mentally competent but has a physical disability that limits the ability to manage matters, the person can:

- Ask the probate court to appoint a conservator.
- Choose the person who will become the conservator.
- Dismiss the conservator if the person wants to change to a different conservator.
- Specify to the court just what authority he or she wants the conservator to have.

- Ask the probate court to end the conservatorship because the persons' physical disability has decreased and a conservatorship is no longer necessary.

4. Adult Protective Services for Adults with Developmental Disabilities-A court may order a County Board of DD to provide protective services for up to one year, to an adult with a developmental disability, who is being abused or neglected, if the adult lacks the capacity to protect him or herself.

If the individual who needs assistance is over age 60, the individual might also be eligible for other protective services available to the elderly.

5. Protection Orders- It would be too restrictive to take away a persons' rights through a guardianship order to keep that person safe, when it might be possible to accomplish the same thing with a court order of protection. A person may also be able to ask that a court, order someone who is hurting or threatening to hurt them, to stay away and not have any contact with them.



There are two kinds of protection orders: a Civil Protection Order which can last up to five years or a Temporary Protection Order which is issued by a criminal court judge.

6. Powers of Attorney-A power of attorney is a legal document that gives someone else valid authority to act on an individuals' behalf. In theory, a power of attorney is of limited usefulness when given by a person with an ongoing mental disability such as mental retardation. A person must be competent when he or she gives someone else the valid authority.

In reality, however, many people, including parents of adult children with mental retardation, often claim authority to represent the individual through a power or attorney. Such claims would probably not withstand a legal challenge.

An example of a more appropriate use of a power of attorney would be when a competent, healthy person gives someone else the power to make health care decisions for him or her, at a later time, through a durable power of attorney for health care. Then the document may provide reassurance to the person if he or she becomes unable to make decisions for him or herself, as a result of an accident, aging and so on.

A power of attorney is clearly an alternative to guardianship if made by individuals when they are competent. It is much less valuable as an alternative if the competency of the maker of the power of attorney has always been in doubt, such as when the maker is a person who has always been mentally retarded.

7. Circle of Support, Volunteer Advocate, and Good Programs & Services-

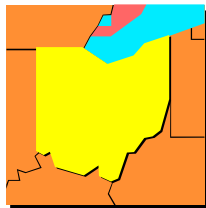
An alternative to guardianship is to make sure the person has a support system that meets all of the person's needs and advocates in the person's behalf



- 8. Microboard-**A new concept that originated in Canada and is in use in a few states such as Tennessee, Maryland and Missouri, is for an individual's circle of support to formalize its involvement by incorporating, with the individual as the chairman of the board. Such a legal entity can be of benefit in our complex Medicaid world, including in the hiring and firing of staff and negotiating with the service delivery system. Microboards are being explored in several Ohio counties.

Residency Requirement for Ohio Guardians

Guardians are not required to live in the same state to be appointed as guardian for minor children pursuant to a parent's legal will. However, for a person to serve as guardian for an adult in Ohio, he or she must live in the same state. A reason for that requirement is that it is difficult for a guardian to carry out duties if the guardian does not have frequent face-to-face



contact with his or her ward. O.R.C. Section 2109.21© states "A guardian....shall be removed on proof that he is no longer a resident of this state." This requirement may not make sense when the proposed guardian lives just across the state line.

Some probate courts will allow a local person to be appointed as a co-guardian with someone who lives out of state, such as a parent who has retired and moved to Florida.

Immunity for Ohio Guardians

Ohio law also provides personal immunity for a person while he or she acts as guardian, as long as the person does not act negligently or outside the scope of authority as guardian. To have protection under this section of the law, it is necessary only that the person makes it clear that he or she is acting in the official capacity as guardian. (O.R.C. 2111.151) For example, guardians should sign all documents with their name and write, 'as Guardian' immediately after their name. As a result of this provision guardians should not have to worry about exposing their personal assets when they consider becoming a guardian.

Conflict of Interest Provision Concerning Providers of Services

Ohio law prohibits someone who is providing services to an individual from also serving as his or her guardian. O.R.C. 5123.93 states, "In no case shall the guardianship of a person with mental retardation be assigned to....a person or agency who provides services to the person

with mental retardation.” There is an exception to this prohibition where there is relationship of blood or marriage between the proposed guardian and ward. The rationale for this provision is that it would be impossible for a person who is providing services to also be an effective advocate against the service provider (himself or herself).

Choosing a Guardian

Parents of an individual with developmental disabilities should not automatically assume that one of the individual’s siblings is willing to become guardian for the individual when they (the parents) can no longer serve in that capacity. The willingness of the sibling to serve as guardian should be thoroughly discussed with the parents, and the wishes of the individual should be considered. When possible, a family member who knows the individual well and is interested in



his or her welfare should be selected. For someone to be considered for guardianship of the estate, that person should have some skill in managing finances and business affairs. If a person needs a guardian and no family member is willing to serve, a court may appoint a local attorney to carry out that role. Sometimes, such an appointment can be a real disservice to the individual. Even if the attorney-guardian handles matters professionally, he or she doesn’t have the personal interest to really get to know and get involved with the individual.

Guardianship Agency for Those Without Available Family

The Ohio Department of Developmental Disabilities also provides the services of a nonprofit agency to act as guardian for those who need it and have no one else available in their lives. For more information, contact Advocacy and Protective Services, Inc. (APSI) at 1 (800) 282-9363.

Naming a Guardian in a Will



Nominating someone in a will to serve as guardian doesn’t make it happen automatically, unless the ward is a minor. The person nominated needs to go to probate court and file an application to be appointed guardian by the court.

If you are going to nominate guardians in a will as a way of expressing your wishes, consider nominating three guardians – a primary and two backups. Individuals with disabilities may outlive their parents by 30-40 years, and it is difficult to anticipate who will be available during their lifetimes. At least one of those nominated should be the same age or younger than the individual. Even if the parents did not serve as guardians, they may wish to nominate guardians in case guardianship would ever become necessary.

Application Process and Fees

Each county probate court has its own set of application forms that must be completed to start the process. Included in those forms is a Statement of Expert Evaluation that must be filled out by a physician or a licensed clinical psychologist. The forms and fees vary somewhat from county to county. The application should be filed in the county in which the individual resides. It would not be unusual to have fees of \$150 with \$75 due when the application is submitted, and the remaining \$75 due when the guardianship is awarded. If the applicant cannot pay the fees, the applicant can ask that the indigent guardianship fund be used to cover those expenses. Alternatively, the applicant might indicate that he cannot afford to pay the application fee and request that it be waived. In either case, it may be helpful for the applicant to file an affidavit of indigence with the court – a notarized statement in which the applicant swears he or she does not have sufficient funds to pay the application fee. The court will send notice that the guardianship application has been filed to all next of kin who live in the state, in case they wish to object to the guardianship. It will also ask a probate court investigator to interview the prospective ward and people who know him or her, and to make a recommendation to the probate court as to whether the guardianship is needed.



What Happens at the Hearing

Finally the court will set the matter for hearing, often before a magistrate instead of the judge. If everyone is in agreement that the guardianship is needed, or if no one appears to object, then a letter of guardianship is awarded. If anyone objects, including the person who would receive the guardian, then the hearing becomes more like a trial where witnesses are examined and cross-examined.

The proposed ward has the right to object to having a guardian appointed for him or her and has several other due process rights, including the following:

- The right to be present during the hearing;
- The right to have an attorney represent him or her, even if he or she cannot afford one;
- The right to prevent his or her personal physician and certain other parties from testifying against him or her; and
- The right to have an independent evaluation.

Do I Need an Attorney to Apply for Guardianship?



In some counties, it will be necessary to have an attorney to file the guardianship application in probate court. That is especially true where the application is for a guardianship of the estate, where a bond will also have to be posted. It is also true in some of the larger urban counties where it can be a formidable task to negotiate the probate court system. However, it is often

worthwhile to contact the clerk of the probate court. The clerk knows what is going on and can be very helpful.

Reporting Requirements

The law requires a guardian to file a report with the probate court at least every two years, but some courts require that guardians report annually. Not only will guardians be required to state whether there is need for the guardianship to continue, but they will also have to submit another statement of expert evaluation signed either by a physician, a licensed social worker, a licensed clinical psychologist, or the person's team.

Guardians of the estate must report annually as to how they spent the funds of the ward on his or her behalf during the prior year. (Guardians of the estate are required to get permission from the probate court before making such expenditures, unless such authority is specifically granted in their letter of guardianship or other order of the court.) Guardians are required to do accounting and submit receipts for all such expenditures.



Rights, Duties and Responsibilities of Guardians

Guardians owe a fiduciary duty—a special duty—to act in the best interest of their ward. In order to do that, they should see their ward often and ask them what he or she wants in a given situation.

The guardian's authority derives from the probate court, the superior guardian. As such, the guardian should be able to seek advice from the probate court about his or her duties. The guardian may need to submit a

motion to ask the court what to do in a given situation.

The authority of a guardian is restricted to what is listed in his or her letter of guardianship. If the guardianship awarded is a plenary guardianship (guardianship of person and estate), the authority of the guardian has very few limits, but is as complete as allowed by Ohio law and the probate court that has jurisdiction of the guardianship.

Ohio law also indicates that a guardian “shall be the guardian of the minor children of his ward” unless the court appoints someone else. O.R.C.2111.02

What If a Guardian Does Not Appear to Be Doing a Good Job?

The probate judge is the superior guardian, and anyone can provide information to the court to help the judge determine if the guardian is doing his or her duties. The ward may always ask the judge to issue instructions to the guardian requiring the guardian to agree to specific things, such as allowing the ward to participate in vocational programs or to move to a community based setting.

If the guardian has consented to medical care, the ward or an “interested party” can object, and the court must hold a hearing to determine whether the medical care is in the best interest of the ward. An “interested party” can also seek periodic review of the need for guardianship.

The judge can also remove a guardian who has engaged in misconduct, such as stealing from the ward. In this case, another individual may be appointed to act as the person's guardian.

Guardianship in a Medicaid World

The MR/DD service delivery system is increasingly turning to Medicaid to pay for many services. Medicaid often likes to deal with someone considered to be a legally responsible party. For example, if Medicaid officials doubt the competence of someone with mental retardation to speak for him or herself, they may insist that the person be represented by a guardian. Medical providers, too, often will refuse to accept consent from someone with a disability.

How is a Guardianship Terminated?

Sometimes it becomes apparent that a guardianship should have never been granted for a certain individual, even for some individuals with mental retardation. In such cases, it is appropriate to approach a probate court with a motion to terminate a guardianship, or a motion to reduce a guardianship to a limited guardianship. There are also provisions in the law where the ward may submit a motion to the court asking that the guardianship be ended. However, a court may be reluctant to terminate a guardianship where the underlying condition that justified the guardianship (for example: mental retardation) has not been cured.

When guardians resign, move out of state or die, wards are left in legal limbo – still determined incompetent by a probate court in at least some areas of their lives, but with no one who can legally act for them. That is why it is important to notify a probate court, the superior guardian, when a guardian is no longer available.



Also, note O.R.C. 2111.45 indicates that, “The marriage of a ward shall terminate the guardianship as to the person, but not as to the estate, of the ward.” This law is based on the assumption that a spouse will now oversee the personal needs of the individual.

Resource

In case an individual would need legal assistance in order to contest a guardianship, or in case an individual would want information about his or her legal rights in a guardianship matter, they may contact the Ohio Legal Rights Service at 1 (800) 282-9181.

In closing.....some key points to remember:

- *Rights can't override health and safety.*
- *If the guardian wants something for the individual and the team wants something else, ODMRDD can be called to help make the decision.*
- *The guardian's authority depends on the level of guardianship. For example: a medical only guardian*



has authority only to give consent for medical treatment. This could extend to placement if it is a health related placement.

- *Some rights are personal to the individual and cannot be exercised by the guardian:*
 1. *There may be certain medical procedures that a probate court will not allow a guardian to give consent to such as abortion, sterilization or sex change.*
 2. *A guardian cannot make a will or execute a power of attorney for his or her ward.*
 3. *Voting is a fundamental right. Unless a court specifically rules that a person is incompetent for purposes of voting, an individual retains the right to vote-even if the person has a plenary guardian (guardian of the person & estate).*
- *There are many alternatives to guardianship that should be explored before pursuing guardianship. One is a circle of support; rallying those people important to an individual around him or her to make sure the individual has a support system that meets all of his or her needs and advocates on the individual's behalf, may negate the need for a guardian.*
- *Not all rights violations are MUIs; however, all have potential to be.*
- *Some rights violations are automatic MUIs.*

They are violations of:

 1. *the right to be free from emotional, psychological and physical abuse,*
 2. *the right to be free from unnecessary chemical or physical restraints,*
 3. *the right to refuse to participate in medical, psychological or other research or experiments and*
 4. *the right to be free from exploitation of finances and property.*