

# Legal Guardian vs. Custody

## And Other Dependency Situations



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# Dependency Status

- **Definition of a Parent**
- **Dependency Questions (with special focus on):**
  - **Legal Guardian**
  - **Homeless Students**
  - **Ward of the Court**
  - **Special Circumstances**



# Dependency Status

- “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.”
- If a student is considered a dependent of his parents, their income and assets must be included on the FAFSA. The CPS will calculate a parent contribution and add it to the student’s contribution to derive an EFC.



# Dependency Status

- **Biological Parents**
- **Adoptive Parents**
- **Step-parents if they are married to the student's biological parent**
- **Same-sex parents if they are married**
- **Biological Parents living together**
- **Other situations?**



# Who Does NOT Qualify as a Parent?

- **Foster Parents**
- **Legal Guardians who have not adopted student**
- **Relatives who do or do not have custody of student**
- **Step-parents who have not adopted the student and who would be the only person providing parental information**
- **Un-married biological parents NOT living together**
- **Other situations?**



# Determining Dependency Status

Student Demographics	School Selection	Dependency Status	Parent Demographics	Financial Information	Sign & Submit	Confirmation
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**STUDENT**

## Dependency Determination

Application was successfully saved.

Were you born before January 1, 1994?

On the day you submitted your FAFSA, were you married?

At the beginning of the 2017-2018 school year, will you be working on a master's or doctorate program (such as an MA, MBA, MD, JD, PhD, EdD, or graduate certificate, etc.)?

Do you now have or will you have children who will receive more than half of their support from you between July 1, 2017 and June 30, 2018?

Do you have dependents (other than your children or spouse) who live with you and who receive more than half of their support from you, now and through June 30, 2018?

Are you currently serving on active duty in the U.S. Armed Forces for purposes other than training?

Are you a veteran of the U.S. Armed Forces?

At any time since you turned age 13, were both your parents deceased, were you in foster care, or were you a dependent or ward of the court?

As determined by a court in your state of legal residence, are you or were you an emancipated minor?

Does someone other than your parent or stepparent have legal guardianship of you, as determined by a court in your state of legal residence?

On or after July 1, 2016, were you homeless or were you self-supporting and at risk of being homeless?

At any time on or after July 1, 2016, did your high school or school district homeless liaison determine that you were an unaccompanied youth who was homeless or were self-supporting and at risk of being homeless?

At any time on or after July 1, 2016, did the director of an emergency shelter or transitional housing program funded by the U.S. Department of Housing

### Help and Hints

Student Born Before January 1, 1994?  
Question 46

The answer to this question is pre-filled based on your answer to the date of birth question earlier in the application.



# Emancipated Minor and Legal Guardianship

- 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.



# Emancipated Minor and Legal Guardianship

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.



	Legal Guardianship	Legal Custody
Student status for FAFSA purposes	INDEPENDENT	DEPENDANT
Definition	Court gives limited control of student to guardian for a limited purpose	Court gives exclusive control to custodian to make all decisions relating to the student
Relationship created by court order	Duty and authority to act in the best interests of the student	Duty to protect, train, discipline, shelter, feed, educate, medical care, financial assistance
Ward of the court?	Yes	No
Financially responsible for student?	No	Yes

- The key issue for financial aid purposes is that when a child becomes a ward of the court, no parent or other person is financially responsible for the child. Legal guardians and foster parents are not financially responsible for a ward of the court. (so Independent status) Adoptive parents, on the other hand, are financially responsible for the child. (so dependant status)
- If there is any confusion as to whether the student is a ward of the court or not, the financial aid administrator should ask for a letter from the judge clarifying whether the child is a ward of the court for student aid purposes (Section 480(d)(2) of the Higher Education Act of 1965)





# Virginia's Definition of Legal Custody

- **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 of Legal Custody

- **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



# Custody Example

## CUSTODY/VISITATION ORDER

COMMONWEALTH OF VIRGINIA

Roanoke City Juvenile and Domestic Relations District Court

Case No. [REDACTED]

In re: [REDACTED]

DOB: [REDACTED]

VIEWED ORIGINAL

JUL 22 2015  
BY: [REDACTED]

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]



# Virginia's Definition - Legal Guardianship

- **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 - Legal Guardianship

- **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.**



# Virginia's Definition - Legal Guardianship

VIRGINIA:

IN THE **CIRCUIT COURT OF LOUDOUN COUNTY**

In Re: [REDACTED]  
a **minor child** [REDACTED]

## **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 that [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 4<sup>th</sup> day of December, 2009.



# Homelessness

- **Homeless youth definitions (from the FSA Handbook - AVG):**
    - **At risk of being homeless** - when a student's housing may cease to be fixed, regular, and adequate, for example, a student who is being evicted and has been unable to find fixed, regular, and adequate housing.
    - **Homeless** - lacking fixed, regular, and adequate housing.
    - **Self-supporting** - when a student pays for his own living expenses, including fixed, regular, and adequate housing.
    - **Unaccompanied** - when a student is not living in the physical custody of a parent or guardian.
    - **Youth** - a student who is 21 years old or younger or still enrolled in high school as of the date he signs the application.
- \*\*YOUTH REQUIREMENT HAS BEEN REMOVED**



# Homelessness Scenario

- **Student submitted a dependency appeal indicating that he stayed in Virginia to live with his Aunt so he could finish high school while his family moved to Philadelphia. The relationship with his Aunt went downhill and he was sent back home to live with his parents. When his high school counselor heard, she offered to let him come back to VA and live with her to finish school. Things went downhill with the counselor and he is now living with his girlfriend's family. He provided documentation from a high school registrar stating that he is enrolled at the school under the McKinney-Vento Assistance Act. If you go on facebook there are multiple pictures of the student with his parents at high school football games and pictures of him and his parents at high school graduation. His parents are clearly in his life.**



# Homelessness

- **If a student has documentation from one of the below, the student should answer yes to one of the homelessness questions:**
  - **A school district homeless liaison;**
  - **The director (or designee) of an emergency shelter or transitional housing program funded by the U.S. Department of Housing and Urban Development; or**
  - **The director (or designee) of a runaway or homeless youth basic center or transitional living program.**



# Homelessness

- **The determination may be based on a documented interview with the student if no written documentation available.**
- **“If the institution has no conflicting information about the status of the student, the institution should not request additional documentation.” (GEN-15-16)**
- **Focus on whether or not student is homeless or at risk – not why**



# Homelessness

- If a student doesn't have and cannot get documentation from any of these authorities, a financial aid administrator (FAA) must make this determination.
- Documentation that an FAA may consider includes (but is not limited to):
  - Local school district personnel
  - State homeless education coordinators
  - Staff from college access programs (TRIO, GEAR UP)
  - Mental health professionals, social workers, doctors, and clergy



# Orphan, Foster Care, Ward of Court

0302/0003

 **County of Fairfax, Virginia**  
To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

**ACCEPTANCE OF PAROLE FOR:** [REDACTED]

We, the 19<sup>th</sup> Judicial District CSU, agree to accept Supervision of the above-named ward on 11/25/15.

Placement: Transitional Living Program  
Address of Placement: 10570 Page Avenue Fairfax, VA 22030  
Person Assuming Responsibility of Ward: [REDACTED] parent's  
Transportation Arrangements: parents will transport from DJJ to TLP  
School Ward will be Attending: NA – acquired HS Diploma  
Address: NA  
Phone #: NA Fax#: NA  
Administrator/Contact Person: NA

Will ward be expected to work?  Yes  No

Resources referred to:  Community Mental Health for Click here to enter text.  
 Outpatient ATOD Services  
 AA/NA/CA

Special Conditions of Parole:  Transitional Living Program  
 Electronic Monitoring  
 Drug Screening

*Michelle McPhatter*  
\_\_\_\_\_  
Signature  
Parole Officer  
\_\_\_\_\_  
Title  
11/25/15  
\_\_\_\_\_  
Date



# Orphan, Foster Care, Ward of Court

- A student who was an orphan—both her parents were dead—when 13 or older is independent even if she was subsequently adopted. Likewise, a student who was at any time since the age of 13 a foster child or a ward of the court is independent even if her status changed later.
- 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



# Orphan, Foster Care, Ward of Court

- **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**



# Orphan, Foster Care, Ward of Court

- **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**



# Orphan, Foster Care, Ward of Court

## Foster Care

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



# Orphan, Foster Care, Ward of Court

- **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)**



# “Easy” Questions

- Born before January 1
- Married
  - The student must answer this question according to her marital status at the time the FAFSA is signed; after that, **she cannot update FAFSA information for changes in her marital status except in limited instances**; see Chapter 4. A student who is only engaged answers as unmarried unless she waits until after the wedding to complete the FAFSA. For this question a **student is considered married if she is separated or planning to divorce or if she has a relationship that meets the criteria for common-law marriage in her state**. A student who was independent only because she was married becomes dependent for the next award year if she divorces and cannot answer yes to any of the dependency questions.
- Graduate or professional student



# “Easy” Questions

- Born before January 1
- Married
- Graduate or professional student
  - The FAFSA asks if the student will be working on a master’s, doctorate, or graduate certificate program at the beginning of the school year. A student who is a graduate or professional student is independent for purposes of Title IV aid. Graduate and professional students aren’t eligible for Pell grants, so a student who incorrectly answers “Yes” to this question must submit a correction before he can get a Pell grant, even if he is independent for another reason. **Students should fill out the FAFSA based on their expected grade level at the beginning of the award year.** If a dependent student completes her undergraduate program during the year and begins graduate school, she can update the answer to the dependency question so that the CPS can reprocess her application, or the aid administrator at the graduate school can recalculate her EFC and use it to package her graduate aid.



# Children and Dependent Questions

- Have children and provide more than half their support?
  - If the student is receiving support to raise her child, is the child still considered a legal dependent? **If one or both of the student's parents are directly or indirectly providing more than 50% support in cash or other assistance to the child, then the student would answer "No" to the FAFSA question about legal dependents.** "Indirect support" to the child includes support that a parent gives to the student on behalf of the child. If the student is living with a parent who is paying for most of the household expenses, the parent would usually be considered the primary source of support to the child, and the student would answer "No" to the question about legal dependents. However, there may be some cases where the student can demonstrate that she provides more than half of her child's support even while living at home, in which case she would answer "Yes" to the question about legal dependents. When the student receives money for the child from any source other than her parents, she may count it as part of her support to the child. Sources include child support and government programs, such as Temporary Assistance for Needy Families (TANF) and the Supplemental Nutrition Assistance Program (SNAP, formerly the federal Food Stamp Program), that provide benefits for dependent children. **So a student may be considered independent when the benefit she receives is the primary support for her child.** For example, if a student who lives alone with her child receives cash from her boyfriend that amounts to more than 50% support for her child, then she would be able to count the child as a dependent and in her household size, and she would be independent. If the boyfriend is the father of the child and a student himself, then he would also be able to count the child as a dependent and in his household size, and he would be independent too.

# Children and Dependent Questions

- **Have children and provide more than half their support?**
- **Dependents (other than spouse and children) and provide more than half their support?**
  - **Students who have legal dependents are independent. Legal dependents comprise children (including those who will be born before the end of the award year) of the student who **receive more than half their support from the student**, and other persons (except a spouse) who live with and receive more than half their support from the student as of the FAFSA signing date and will continue to do so for the award year. The same criteria apply to household size. When a student applies after the award year has begun, in order to count a person not her child as a dependent, the support already given that year plus the future support must total more than 50% for the whole year.**



# Military and Veteran Questions



- **Active duty military for purposes other than training**
- **Veteran**
  - **Veterans and persons on active duty in the U.S. Armed Forces (the Army, Navy, Air Force, Marines, or Coast Guard) for purposes other than training are independent. Veterans are those who were in active service and were released under a condition other than “dishonorable.” This includes those who fraudulently entered the service, as long as their entire period of service was not voided. There is no minimum amount of time the student has to have served to be a veteran—even one day counts and even basic training (boot camp) counts—but it does have to be active service.**
  - **Students who attended a U.S. service academy or preparatory school (see margin note on page 24) for at least one day and were released under conditions other than “dishonorable” count as veterans for Title IV purposes. Students serving in ROTC or currently attending a U.S. military academy are not veterans.**
  - **Members of the National Guard or Reserves are only considered veterans if they were called up to active federal duty by presidential order for a purpose other than training. It does not matter how long the active duty lasted or if the student returned to reserve status afterward, but, as with the other qualifying veterans, the student must have had a character of service that was not “dishonorable.”**



# Special Circumstances

- **Parents of student are incarcerated**
- **Student left home due to abuse**
- **Parents are in war-torn country and unable to be contacted**
- **Student does not know where parents are (abandonment)**
- **Each school will collect documentation and process Professional Judgment each year**



# Special Circumstances

- **Evidence must be provided from student:**
  - **Court or law enforcement documentation**
  - **Letters from clergy member or social worker**
  - **Letters from a school counselor**
  - **Other data to be considered?**



# Special Circumstances

- **NOT SPECIAL CIRCUMSTANCES:**

- **Parents refuse to provide information**
- **Parents refuse to help student pay for college**
- **Parents do not claim student as a dependent on income taxes**
- **Student does not live with parents**
  
- **Student could have Unsubsidized Loan eligibility/ special requirements\*\*\***



# Questions

- ????

