



MARICOPA
COMMUNITY COLLEGES

Office of the
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Compliance

GUARDIANSHIPS AND POWER OF ATTORNEY: WHAT'S THE DIFFERENCE AND HOW DO THEY APPLY IN THE COLLEGE SETTING?

This month's Melissa Talks will explore the difference between a power of attorney and a legal guardianship and how these documents can show up in your work for the District. First, let's dig into the general difference between the two documents.

GUARDIANSHIPS (also known as conservatorship)

A guardianship is a legal relationship in which a person (or an entity) is appointed by a court of competent jurisdiction to make decisions for another, such as in the case of minors and adults who are or who have become incapable of taking care of themselves or making decisions on their own. In the case of minors, guardianships will apply until the minor is 18 years old. In the case of legally-deemed incompetent adults, once the guardianship is obtained, the ward (the person for whom the guardianship is in place) cannot revoke or terminate the guardianship. Only the court can dissolve this relationship. [*There are some cases where a temporary guardianship may be obtained. This relationship can be terminated after achieving a certain purpose*]. Guardians make all decisions for and in behalf of their wards but must not benefit from transactions made for his ward. A guardianship requires the guardian to report to the court and other agencies the financial dealings made for the ward to determine where the ward's money went.

POWER OF ATTORNEY

A power of attorney, on the other hand, is a written, legal document wherein an individual called "the principal" appoints another individual called "the agent" to act on his/her/their behalf; authorizing the agent to make transactions for the principal. Usually, a power of attorney is made when a principal sees that they are unable to handle some (or all) of their affairs. This is usually done when the principal becomes ill, has been in an accident, or is out of town/outside of the country and financial decisions need to be made. A power of attorney requires the consent of the principal for the document to take effect. Should the principal see that the power of attorney is no longer needed, the principal can revoke or terminate it at any time. A power of attorney can take immediate effect, or spring into effect upon the occurrence of a specified event such as illness or injury, depending upon the purpose of the document.

A power of attorney can be made for different transactions; financial, medical, educational, and other matters. The power of the agent is limited only to the content of the agreement. A special power of attorney, which is referred to as "a durable power of attorney" can also be obtained. A power of attorney does not require the agent to account for the way in which the principal's money is spent.

MORE ABOUT AN EDUCATIONAL POWER OF ATTORNEY

Once students turn 18, they are legally an adult and empowered to control their own life. If the student has disabilities, however, they may not feel as if they are ready to make the myriad decisions required in educational spaces. An Educational Power of Attorney (EPOA) grants the agent authority to act only in the educational world. The EPOA can be broad, covering all the bureaucratic tasks and paperwork involved in attending college, or specialized to deal with specific areas. The agent can make decisions exactly as if they were the student. These include: a) registering for class; b) deciding on a course of study; c) meeting with the administration, and d) applying for financial aid. Naturally, the agent cannot, however, attend classes or take tests for the student.

HOW MAY THESE DOCUMENTS AFFECT OUR SERVICE TO STUDENTS?

FERPA

Neither a guardianship nor a power of attorney takes away all of the student's rights. So, for purposes of FERPA, the student would continue to have "inspect and review" rights, unless there was something pretty specific in the guardianship to the contrary. Guardians have the same status under FERPA as parents, which means very little at the college level. An agent (under a power of attorney) can make decisions for the principal but again, the student retains their rights under FERPA.

Parental Involvement

Often faculty, Admissions, Disability Services, and Student Affairs offices encounter a parent who wishes to be involved in all aspects of their student's educational experience (i.e., to be present for all meetings with academic and Disability Services advisors and all other College staff, to schedule appointments on the student's behalf, where typically the student must make all arrangements). Generally speaking, with guardianships, the guardian has the same right as a parent over a college student but does not have the rights of the student himself or herself. This is an important distinction. When guardians suggest that the guardianship order requires the college to treat the guardian as the student, please consult with the Office of General Counsel.

In some cases, the order may be specific enough to warrant certain disclosures to the guardian, but the focus in reviewing the order is to identify what, if any, rights it takes away from the student and which rights it gave the guardian. For instance, a guardian doesn't get to participate in a due process meeting in a student conduct, just because they are a guardian. If there is a general finding of incompetency by a court of law, you have a bigger issue to weigh as you consider whether you can continue to accept tuition to keep an incompetent person enrolled in a program after the person has been found judicially to be incompetent. Can such a person be otherwise qualified to participate in the program?

With a power of attorney, the agent has even less authority to impose themselves in matters pertaining to student interactions with college faculty and staff. A power of attorney, you recall, grants the agent to make decisions for the principal. It does not absolve the student from participating in their educational experience or from being expected to interact with faculty/staff, even when it is an EPOA. Again, if the student is not able to engage in their education, the question of being "not otherwise qualified" is presented.

Disability Resources Services—not otherwise qualified

Under the ADA/504, colleges are required to provide reasonable accommodations to qualified students. However, that does not automatically allow parent(s) into every meeting. There is also an argument to be made that the student who would require such intense parental involvement in a college setting is not "otherwise qualified" within the meaning of the ADA/504. At the postsecondary educational level, a qualified student with a disability is a student with a disability **who meets the academic and technical standards requisite for admission or participation in the institution's educational program or activity**. When issues of not being "otherwise qualified" come up, please remember that the argument becomes a bit more difficult to make because of our status as open enrollment. So, it is best to redirect the parent and let them know you need to be engaging with the student and that the student needs to be the one who primarily "manages" their educational journey. At the post-secondary level, the student will be treated as an adult; the disability service provider deals with the student, not the parent(s). Students, whether disabled or not, who arrive at college without self-advocacy skills often struggle. The independence of the college experience alone can be the biggest obstacle students have to overcome. Self-advocacy means being able to make decisions, to make one's own appointments, to follow through, to plan ahead, and to take responsibility for one's actions (or lack of action).

It is the student's responsibility to contact the Office of Disability Services and request services, to know when and where tutorial sessions take place, to talk to a professor, to remember to take medications, to complete assignments on time, to develop good study habits, and to attend class.

A power of attorney or guardianship does not fundamentally alter the student's responsibility to engage in their educational journey. If the parent persists in their desire to "act as the student," consult with the Office of General Counsel.



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