

	<b>STATE OFFICE for SERVICES to CHILDREN and FAMILIES</b>  <b>CLIENT SERVICES MANUAL I</b>  ISSUED BY: Program Operations EFFECTIVE DATE: January 2, 1996	<b>NUMBER:</b> I-B.1.4
		<b>SECTION:</b> B. Case Management
		<b>SUBSECTION:</b> 1. Legal
<b>SUBJECT:</b> 4. Guardian and Legal Custodian Consents		

Interpretation: Manager,  
Foster Care

Approval: \_\_\_\_\_  
Assistant Administrator,  
Program Operations

**REFERENCES:** CF 242, "Consent for Medical/Surgical Care and Treatment"  
ORS 109.640  
ORS 418.005  
ORS 419B.370, 419B.373, 419B.376, 419B.379  
ORS 436  
SOSCF Policy # I-B.1.3, "Voluntary Agreements"

**PURPOSE**

**413-020-0100** The purpose of OAR 413-020-0100 through 413-020-0170 is to:

(1) Define the State Office for Services to Children and Families' (SOSCF) authority as guardian and legal custodian of children in its care or in the care of its agents;

(2) Specify how that authority will be exercised by agency staff and its agents;  
and

(3) Specify requirements to be met when this authority is exercised.

(NOTE: Conditions under which a parent or legal guardian may enter into a "Voluntary Placement Agreement" or a "Voluntary Custody Agreement" are addressed in SOSCF policy # I-B.1.3, "Voluntary Agreements," OAR 413-020-0300 through 413-020-0325.)

**Statutory Authority: ORS 418.005**  
**Stats. Implemented: ORS 109.640, 418.312**

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## DEFINITIONS

**413-020-0110 (1) "Guardian"** means a person or agency having the powers and responsibilities of a parent to make binding decisions for a child, including the authority to:

- (a) Authorize surgery for the child;
- (b) Authorize enlistment in the armed forces;
- (c) Consent to the child's adoption when the child is in the permanent custody of the agency;
- (d) Make other decisions of substantial legal significance concerning the child; but
- (e) A guardian is not a conservator of the child's property or estate.

**(2) "Legal Custody"** means that a person or agency has legal authority:

- (a) To have physical custody and control of a child;
- (b) To supply the child with food, clothing, shelter and other necessities;
- (c) To provide the child with care, education and discipline;
- (d) To authorize medical, dental, psychiatric, psychological, hygienic or other remedial care or treatment for the child, and in any emergency where the child's safety appears urgently to require it, to authorize surgery or other extraordinary care; and
- (e) Legal custody includes temporary custody of a child under an order pursuant to ORS 419B.233 and 419B.331.

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**(3) "Permanent Custody"** means legal custody of a child:

**(a)** Who has been permanently committed to the agency by the juvenile court after parental rights have been terminated under ORS 419B.527;

**(b)** Who has been released and surrendered to the agency by the parents under ORS 418.270.

**(4) "Physical Custodian"** means a person or agency, including a child's legal or biological parent, a relative, foster parent, adoptive parent or a licensed child-caring agency who is authorized by the agency to provide a residence and day-to-day care for a child who is in the legal custody of the agency.

**(5) "Service Worker"** means the agency staff person assigned primary responsibility for a child served by the agency.

**(6) "Voluntary Custody"** means legal custody given to the agency, by written agreement, by a parent or legal guardian of a child.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: ORS 109.640, 418.312**

## POLICY

### RESPONSIBILITY OF STAFF TO SECURE A LEGAL CONSENT

**413-020-0120** Whenever the legal consent of a parent or guardian is needed for a child in the care and custody of State Office for Services to Children and Families, the service worker shall secure the consent of the person authorized to approve the proposed service or activity. Relevant information shall be provided the authorized person to assure the agency's authority to consent, the need for and advisability of the service or activity, and whenever feasible, the concurrence of parents and/or physical custodians.

**Statutory Authority: ORS 418.005**

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**Stats. Implemented: ORS 109.640, 418.312**

### **SOSCF AUTHORITY IN VOLUNTARY CUSTODY PLACEMENTS**

**413-020-0130 (1)** When a parent or guardian of a child gives SOSCF voluntary custody of a child, the parent or guardian will remain guardian of the child and will retain the authority to consent to actions addressed in OAR 413-020-0150 unless they are specifically assigned to the agency in the Voluntary Custody Agreement. Specifically, the parent or guardian retains sole authority to:

- (a) Authorize non-emergent surgery for the child;
- (b) Consent to the child's marriage;
- (c) Authorize the child's enlistment in Armed Forces or Job Corps; and
- (d) Make other decisions of substantial legal significance concerning the child.

**(2)** When a child is in the voluntary custody of SOSCF, the agency or the physical custodian will exercise the authority of a legal custodian as assigned in the Voluntary Custody Agreement.

**(3)** In the event the parent or legal guardian is unavailable or unwilling to fulfill the responsibilities of a guardian, SOSCF will petition the Juvenile Court and request authority to provide essential services to the child.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: ORS 109.640, 418.312**

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## EXERCISE AND DELEGATION OF LEGAL CUSTODIAN AUTHORITY

**413-020-0140** Where SOSCF has legal custody of a child through a Voluntary Custody Agreement, a court order, or a Release and Surrender Agreement, the agency will exercise its authority through agency staff and through delegation to other persons as follows:

**(a)** Physical Custodian.

**(A)** The agency will delegate to the child's physical custodian its authority to consent to:

- (i)** The child's registration in regular curriculum in public school;
- (ii)** Making or changing the child's schedule of classes in school;
- (iii)** The child's absence from school;
- (iv)** The child's participation in school and extracurricular activities;
- (v)** Purchase of school insurance for the child;
- (vi)** The child's participation in school meals program;
- (vii)** Routine medical care and dental care; including vaccinations and immunization; routine examinations and lab tests;
- (viii)** Short term intercounty travel;
- (ix)** Application for workers permits or releases; and
- (x)** School pictures, except those listed in OAR 413-020-0140(b)(A)(v).

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**(B)** The agency delegates the foregoing responsibilities to the physical custodian by this administrative rule. This delegation shall continue as long as the child is in the legal custody of SOSCF and resides with the physical custodian. Any exception to this rule shall be given in writing to the child's custodian and a copy will be maintained in the child's case record.

**(b)** Service Worker or Supervisor.

**(A)** The child's service worker or supervisor will exercise the agency's authority to give consent for:

**(i)** School testing;

**(ii)** Access to academic or school behavioral records;

**(iii)** Participation in outdoor school;

**(iv)** Psychiatric or psychological evaluation, or outpatient psychiatric or psychological treatment for the child; and

**(v)** Photograph(s) taken for publicity purposes or media promotions that may draw attention to the individual.

**(B)** In addition, the service worker or supervisor may exercise the agency's consent authority to any action to which the physical custodian may consent.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: ORS 109.640, 418.312**

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## EXERCISE AND DELEGATION OF GUARDIAN AUTHORITY

**413-020-0150** Where the agency has legal custody of a child through a court order in which the agency has specifically been given guardianship, or a Release and Surrender Agreement, the agency will exercise its authority through agency staff as follows;

**(a)** Branch Manager.

**(A)** The branch manager will exercise the agency's authority to consent to the following actions with respect to children served by that branch office:

**(i)** Emergency medical care and/or surgery;

**(ii)** Major medical and surgical procedures that are not extraordinary or controversial;

**(iii)** Admission to a state training center for the retarded, or to any state hospital or a private hospital for purpose of psychiatric treatment;

**(iv)** Enlistment of a child in the Armed Forces or the Job Corps;

**(v)** Marriage;

**(vi)** Registration in special schools;

**(vii)** Application for driver's training, permits and license;

**(viii)** Interstate travel and international travel;

**(ix)** Examination by law enforcement agency (e.g.,

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polygraphs, interrogations without a warrant, etc.).

**(B)** Branch managers may exercise SOSCF's consent authority to any action to which a service worker or supervisor may consent.

**(b)** Adoption Manager. The adoption manager will exercise SOSCF's authority to consent to the adoption of a child who is in the permanent custody of the agency.

**(c)** Assistant Administrators.

**(A)** The agency's authority to consent to the following actions for a child in its legal custody will be exercised only by the responsible assistant administrator, or in his/her absence, another assistant administrator, the deputy administrator or the director:

**(i)** Abortion, except when a young woman 15 years of age or older exercises her statutory right to consent to her own abortion;

**(ii)** Extraordinary or controversial medical or surgical procedures, such as organ transplants, kidney dialysis, open heart surgery, or any procedure involving substantial life threat;

**(iii)** Any medical or surgical procedure to which a legal parent or guardian of the child or the child is opposed;

**(iv)** Sterilization under ORS Chapter 436, but only when such procedure is necessary to protect the child's life.

**(B)** Assistant administrators, the agency's deputy administrator and the director may exercise the agency's authority to consent to any action to which branch managers may consent.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: ORS 109.640, 418.312**

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### **ACTIONS NOT AUTHORIZED**

**413-020-0160 (1)** No agency officer or employee will consent to educational planning which is defined as the responsibility of a surrogate parent.

**(2)** No agency officer, employee, or agent will exercise the agency's authority to give consent to the purchase of or ownership of a motor vehicle by a child in legal custody of the agency. This prohibition does not prevent a child in the legal custody of the agency from exercising the right to purchase or own a motor vehicle on his or her own account.

**(3)** No agency officer or employee shall co-sign or counter-sign any purchase contract for a child in the agency's custody.

**(4)** No agency officer or employee will accept responsibility or serve as conservator of a child's property or estate.

**(5)** No agency officer, employee, or agent shall consent to the sterilization of a child, except pursuant to ORS Chapter 436, and to save the child's life.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: ORS 109.640, 418.312**

### **GENERAL PROVISIONS**

**413-020-0170 (1)** SOSCF acknowledges the right of a minor 15 years of age or older to consent to hospital care, medical and surgical diagnosis or treatment without the consent of the parent or guardian.

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**(2)** Whenever agency staff exercise the agency's authority to authorize actions described as the responsibility of a legal guardian under these rules, SOSCF staff shall:

**(a)** Consider the impact of the proposed action upon the welfare of the child, the child's family and the community prior to deciding whether to consent to or authorize the proposed action;

**(b)** Consult with the physical custodian of the child;

**(c)** When the child is not in the permanent custody of SOSCF, make reasonable efforts to consult the child's legal parent(s) or guardian(s) about the action proposed and consider the parent(s) or guardian's preference concerning the action proposed prior to making a decision to consent to or authorize the proposed action unless there is cause to believe such consultation will be detrimental to the child;

**(d)** Prepare a brief written record of the circumstances of the action consented to whenever SOSCF provides a written consent for actions defined as the responsibility of a guardian. The written record and a copy of any consent made in writing will be filed in the child's case record.

**(3)** In any case where agency staff consider it necessary or appropriate, they may notify the juvenile court, and/or seek the court's concurrence, prior to consenting to or authorizing any of the actions described in these rules with respect to children in the agency's custody.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: ORS 109.675**