

Guardianships and the FAFSA

Some FAFSA applicants may live with a legal guardian instead of their parents. To know whether such youth should check “yes” to the “ward of the court” question on the FAFSA, it is important to consider how the guardianship came about. Sometimes parents go to court (in California, the probate court) to have a legal guardian appointed for their child – for example, if the parents are unable to care for the child due to illness, a job overseas, etc. This type of guardianship does not make a youth a “ward of the court” for FAFSA purposes.

However, some youth end up in legal guardianships through an entirely different process. When a child is removed from his parents due to abuse or neglect, and is not adopted, a relative or foster parent may become the child’s legal guardian, and the court will create the legal guardianship as the child’s long-term placement. A youth in this type of guardianship should check “yes” to the “ward of the court” question. These youth have been removed by the court from their parents’ custody due to abuse or neglect, and thus are similar to children in foster care. California law explicitly states that the dependency court “retains jurisdiction” over the youth “as a ward of the legal guardianship” even after the court case is closed and the youth no longer has social worker visits, review hearings, etc.¹ It would be inconsistent and contrary to the purpose of the FAFSA to require these youth to obtain financial information from their estranged parents.

Also, legal guardianship, like foster parenting and unlike adoption, ends when a youth turns 18, and does not create rights of inheritance, Social Security benefits, etc. This is why the FAFSA considers adoptive parents’ financial information but not that of guardians or foster parents.

Please see the following Guardianship Scenarios Flow chart for specific examples of youth who would and would not be considered “wards of the court” for the purposes of FAFSA.

¹ WIC §366.3 and §366.4

Guardianship Scenarios Flow Chart

Wards of the Court

Scenario A

Alvin was removed from his parents' home and placed in foster care when he was 5 years-old due to abuse, neglect, or abandonment. He never reunifies with his parents and the Court creates a legal guardianship with his Aunt Tracy when Alvin turns 8. The court keeps Alvin's court case open until his 19th birthday.

Alvin is a Ward of the Court for the purposes of FAFSA and should mark "yes" to the related FAFSA question both before and after his 19th birthday.*

Scenario C

Carl was removed from his parents and placed with a non-relative caregiver (family friend or foster parent). He doesn't reunify with his parents. The Court creates a legal guardianship when Carl turns 16. The court kept Carl's case open until his 19th birthday.

Carl is a Ward of the Court for FAFSA purposes and should mark "yes" to the related FAFSA question.*

Scenario B

The Court removes Brenda from the care of her parents when she was 9 years-old due to abuse, neglect, or abandonment. The Court places Brenda with her grandmother. Brenda's parents fail to complete their case plan and reunify with her. The Court grants Brenda's grandmother legal guardianship when she is 11 years-old. The Court closes the court case so Brenda no longer has an attorney or comes to court. However, the Court retains legal jurisdiction over Brenda as a ward of the legal guardianship pursuant to WIC §366.3 and §366.4.

Brenda is a Ward of the Court for FAFSA purposes and should mark "yes" to the related FAFSA question.*

Not Wards of the Court

Scenario D

When Donna was 16 her mom had a serious illness and went to court to set up a guardianship so Donna could be cared for by her grandmother. She did this so that Donna's grandmother could make health and education decisions.

Donna is NOT a Ward of the Court for FAFSA purposes and would mark "no" on the related FAFSA question.

However, Donna's circumstances may warrant a Dependency Override.

Scenario E

Elaine's parents ask their family friend, Reshae, to take care of her. Elaine goes to live with Reshae, her parents give Reshae a letter saying she has the authority to make health and education decisions for Elaine.

Elaine is NOT a Ward of the Court for FAFSA purposes.

However, Elaine's circumstances may warrant a Dependency Override

Green = Youth who would be able to answer "yes" to the related FAFSA question.

Red = Youth who would *not* be able to answer "yes" to the related FAFSA question.

* When a dependency court (i.e. child welfare) creates a guardianship over a dependent child and "closes the court case," the court still retains jurisdiction over the child as a ward of the legal guardianship. This is true regardless of whether the court appointed legal guardian is or is not a relative. The child is therefore a ward of the court for purposes of the FAFSA. See CA Welfare and Institution Code Section 366.3 and 366.4.