

(A) DEFINITIONS: As used in this chapter:

- (1) "Adult" means an individual 18 years of age or older or an individual under 18 years of age who has been emancipated.
- (2) "Developmental Disability" has the same meaning as set forth in O.R.C. Section 5123.01(Q).
- (3) "Principal" means an adult who seeks to enter, or has entered, into a supported decision making agreement;
- (4) "Supported decision-making" means a process of supporting and accommodating an adult with a developmental disability to enable the adult to make, communicate and implement life decisions, without impeding the self-determination of the adult. Life decisions include but are not limited to decisions related to where the adult wants to live, the services, supports, and medical care the adult wants to receive, whom the adult wants to live with, and where the adult wants to work,
- (5) "Supported decision-making agreement" is an agreement between an Adult with a Developmental Disability and a Supporter entered into under this section .
- (6) "Supporter" means an adult who has entered into a supported decision-making agreement with an adult with a disability.

(B) PURPOSE. The purpose of this section is to recognize the ability of Adults with Developmental Disabilities to engage in Supported decision-making and thereby empower the individual to retain decision-making autonomy. This chapter is based upon the fundamental principle that Adults with Developmental Disabilities should be afforded all of the rights set forth in O.R.C. Section 5123.62. Supported Decision-Making shall always be considered as a less restrictive alternative for Adults with Developmental Disabilities prior to the appointment of a guardian pursuant to O.R.C. Chapter 2111.

(C) NATURAL SUPPORTED DECISION-MAKING. Supported decision-making is not required to be a written agreement and can arise naturally when an Adult with Developmental Disability relies upon natural supports or chosen friends to assist him/her with decisions in their daily lives.

(D) PRESUMPTION OF CAPACITY. All Adults, including adults with developmental disabilities, are presumed to be capable of making decisions regarding their daily living and to be competent to handle their own affairs unless otherwise determined by a court of competent jurisdiction. A diagnosis of intellectual disability, or developmental disability, of itself, does not void the presumption of capacity and competency. The manner in which an individual communicates with others is not grounds for decision that the adult is incapable of managing the adult's affairs or entering into a Supported decision-making agreement.

Execution of a Supported Decision-making agreement may not be used as evidence of incapacity and does not preclude the ability of the adult who has entered into such an agreement to act independently of the agreement.

- (E) **SUPPORTED DECISION-MAKING AGREEMENT.** A Supporter may exercise the authority granted to the Supporter in the supported decision-making agreement. The Supporter shall owe the Adult with a Developmental Disability a fiduciary duty to act in accordance and within the scope of the Supported Decision-making agreement. At no time shall the Supporter with whom the Adult enters into a Supported Decision-making agreement act in contradiction to the expressed wishes or the decision-making authority of the Adult.
- (F) **SUPPORTED DECISION-MAKING AGREEMENT FORM.** A Supported Decision-making Agreement form shall be a written agreement entered into by both the Adult with a Developmental Disability and the Supporter. The Ohio Department of Developmental Disabilities shall make and provide a model Supported Decision-making Agreement which is not required to be used but may be used for the purposes stated herein. A Supported Decision-making agreement must be signed and acknowledged, voluntarily, without coercion or undue influence, by the Adult with a Developmental Disability and the Supporter(s) in the presence of a notary public or two unrelated witnesses who are adults and who subscribe that they saw the Adult with a Developmental Disability execute the Supported Decision-making agreement of his/her own free will and accord.
- (G) **DECISION MAKING ASSISTANCE OF A SUPPORTER.** Except as otherwise limited by a supported decision-making agreement, a Supporter may do all of the following:
- (1) Assist the Principal with making decisions, communicating decisions and understanding information about, options for, and the responsibilities and consequences of decisions;
 - (2) Help the Principal access, obtain, and understand any information that is relevant to any life decision, including but not limited to medical, psychological, financial, employment, Medicaid or educational records;
 - (3) **Understand the Principal's personal values, beliefs and preferences including those that reflect the Principal's cultural, ethnic and/or religious heritage**, ascertain the wishes and decisions of the Principal, and advocate to ensure the implementation of the Principal's wishes and decisions;
 - (4) Help the Principal monitor information about the Principal's affairs or services, including keeping track of future necessary or recommended services; and
 - (5) Accompany the Principal and participate in discussions with other persons.
- (H) **ACCESS TO PERSONAL INFORMATION.**

- (1) A Supporter is only authorized to assist the adult with a disability in accessing, collecting, or obtaining information that is relevant to a decision authorized under the supported decision-making agreement.
- (2) If a Supporter assists an adult with a disability in accessing, collecting, or obtaining personal information, including **but not limited to** protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) or educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), the Supporter shall ensure the information is kept confidential, as applicable, and is not subject to unauthorized access, use, or disclosure.
- (3) The existence of a supported decision-making agreement does not preclude an adult with a disability from seeking personal information without the assistance of a Supporter.

(I) **CONFLICT OF INTEREST.** In the event a Supporter has a financial interest, personal interest or any potential conflict of interest in a decision being made by a Principal, the Supporter shall:

- (1) Fully disclose the conflict of interest to the Principal and any other members of the Principal's support team, including but not limited to the Principal's service and support administrator and/or qualified intellectual disability professional; and
- (2) Refrain from advising or counseling the Principal on the decision giving rise to the conflict of interest.

A Supporter who intentionally fails to disclose a conflict of interest or who otherwise breaches his/her fiduciary duty to the Principal shall be liable for all reasonable damages incurred as a result thereof.

(J) **REVOCATION.** A Principal may revoke a supported decision making agreement at any time **by notifying the supporter**. A revocation **of a written supported decision making agreement under** this section must be in writing, and a copy of the revocation must be provided to the Supporter.