April 27, 2007

The Honorable Bradford W. Bailey
Hardin County Prosecuting Attorney
One Courthouse Square, Suite 50
Kenton, Ohio 43326-1575

SYLLABUS: 2007-006

1. Under R.C. 3313.536(C), the board of education of each city, exempted village, and local school district and the governing authority of each chartered nonpublic school is required to file with the county sheriff a copy of the current comprehensive school safety plan and building blueprint for each of the board's or governing authority's school buildings located in the county.

2. R.C. 3313.536(C) does not require the board of education of a city, exempted village, or local school district or the governing authority of a chartered nonpublic school to file with the county sheriff a copy of a building floor plan for each of the board's or governing authority's school buildings located in the county.

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April 27, 2007

OPINION NO. 2007-006

The Honorable Bradford W. Bailey
Hardin County Prosecuting Attorney
One Courthouse Square, Suite 50
Kenton, Ohio 43326-1575

Dear Prosecutor Bailey:

You have requested an opinion whether R.C. 3313.536(C) requires the board of education of each city, exempted village, and local school district and the governing authority of each chartered nonpublic school to file with the county sheriff a copy of the current comprehensive school safety plan, building blueprint, and building floor plan for each of the board's or governing authority's school buildings located in the county. Based on the following reasons, we conclude that, under R.C. 3313.536(C), the board of education of each city, exempted village, and local school district and the governing authority of each chartered nonpublic school is required to file with the county sheriff a copy of the current comprehensive school safety plan and building blueprint for each of the board's or governing authority's school buildings located in the county. R.C. 3313.536(C) does not, however, require the board of education of a city, exempted village, or local school district or the governing authority of a chartered nonpublic school to file with the county sheriff a copy of a building floor plan for each of the board's or governing authority's school buildings located in the county.

R.C. 3313.536(A) requires the board of education of each city, exempted village, and local school district and the governing authority of each chartered nonpublic school to adopt a comprehensive school safety plan for each school building under the board's or governing authority's control. The safety plan addresses potential hazards to staff and student safety and proposes operating changes to promote the prevention of potentially dangerous problems and circumstances. R.C. 3313.536(A). When developing a safety plan, a board or governing authority shall involve community law enforcement and safety officials, parents, teachers, and nonteaching employees and consider incorporating remediation strategies into the plan where documented safety problems have occurred. *Id.*

A safety plan must include a protocol for addressing serious threats to the safety of school property, students, employees, or administrators and a protocol for responding to emergency events that compromise the safety of school property, students, employees, or administrators. *Id.* Each protocol must include procedures determined by the board or governing authority to be appropriate for responding to threats or emergencies "including such things as notification of appropriate law enforcement personnel, calling upon specified emergency response personnel for assistance, and informing parents of affected students." *Id.*

Providing comprehensive school safety plans, building blueprints, and building floor plans for school buildings to county sheriffs is addressed in R.C. 3313.536(C), which reads, in part:

> *The board or governing authority shall file a copy of the current safety plan and building blueprint with each law enforcement agency that has jurisdiction over the school building* and, upon request, the fire department that serves the political subdivision in which the school building is located.
>
> The board or governing authority also shall file a copy of the current safety plan and a floor plan of the building, but not a building blueprint, with the attorney general, who shall post that information on the Ohio law enforcement gateway or its successor.
>
> *Copies of safety plans, building blueprints, and floor plans shall be filed as described in this division not later than the ninety-first day after the effective date of this amendment.*[1] If a board or governing authority revises a safety plan, building blueprint, or floor plan after the initial filing,[2] the board or governing authority shall file copies of the revised safety plan, building blueprint, or floor plan in the manner described in this division not later than the ninety-first day after the revision is adopted. (Emphasis and footnotes added.)

Under R.C. 3313.536(C), therefore, a copy of the current comprehensive school safety plan and building blueprint for a school building under the control of a board of education of a city, exempted village, or local school district or the governing authority of a chartered nonpublic

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[1] Amended Substitute House Bill 79 of the 126th General Assembly requires that all copies of comprehensive school safety plans, building blueprints, and building floor plans be filed not later than the ninety-first day after its effective date. The effective date of Am. Sub. H.B. 79 is March 30, 2007. Hence, all safety plans, building blueprints, and building floor plans must be filed with the appropriate persons no later than June 29, 2007.

[2] The board of education of each city, exempted village, and local school district and the governing authority of each chartered nonpublic school must update each school building's comprehensive school safety plan "at least once every three years and whenever a major modification to the building requires changes in the procedures outlined in the plan." R.C. 3313.536(B).

school "shall be filed" with the county sheriff that has jurisdiction over the school building.[3] *See generally* R.C. 2901.01(A)(11)(a) (the term "law enforcement officer," as used in the Revised Code, includes a county sheriff). Use of the word "shall" indicates that the filing requirement of R.C. 3313.536(C) is mandatory unless there appears a clear and unequivocal legislative intent to the contrary. *See Dep't of Liquor Control v. Sons of Italy Lodge 0917*, 65 Ohio St. 3d 532, 534, 605 N.E.2d 368 (1992) ("[i]n statutory construction, the word 'may' shall be construed as permissive and the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that they receive a construction other than their ordinary usage" (quoting *Dorrian v. Scioto Conservancy Dist*., 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph one))).

There is no indication that the General Assembly intended the filing requirement of R.C. 3313.536(C) to be optional, permissive, or discretionary rather than mandatory. To the contrary, the repeated use of the word "shall" in R.C. 3313.536(C) indicates that the filing requirement is mandatory. *See Dorrian v. Scioto Conservancy Dist*., 27 Ohio St. 2d at 107, 271 N.E.2d 834 ("[t]he word 'shall' is usually interpreted to make the provision in which it is contained mandatory, especially if frequently repeated" (citation omitted)).

Moreover, it is evident that the General Assembly chose mandatory language to provide for the safety and security of school property, students, employees, and administrators. *See generally* 2003 Op. Att'y Gen. No. 2003-019 at 2-148 ("it is apparent that, in providing for the safety and security of its schools, a board of education is expected to communicate and cooperate with its local law enforcement officials"). This literal reading of the plain language of R.C. 3313.536(C) is consistent with the fact that boards of education of school districts, governing authorities of chartered nonpublic schools, and county sheriffs have a duty to take action in the event of an emergency or threat to the safety of school property, operations, students, or personnel. *See generally* R.C. 311.07(A) (the county sheriff "shall preserve the public peace"); R.C. 3313.20(A) (a board of education has express authority to "make any rules that are necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises"); R.C. 3313.47 (a board of education is responsible for "the management and control" of all the public schools that it operates in its district, and authority to provide for the hiring of employees to maintain and protect its facilities); R.C. 3313.536(A) ("[t]he board of education of each city, exempted village, and local school district and the governing authority of each chartered nonpublic school shall adopt a comprehensive school safety plan for each school building under the board's or governing authority's control"); *State ex rel. Attorney General v. McLain*, 58 Ohio St. 313, 320, 50 N.E. 907 (1898) ("[i]t is the duty of the sheriff … [t]o preserve the peace in his bailiwick or county"); 2003 Op. Att'y Gen. No. 2003-019 at 2-147 ("R.C. 3313.20 and R.C. 3313.47 have been

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[3] Under R.C. 3314.03(A)(11)(d), the provisions of R.C. 3313.536(C) are made applicable to the governing authorities of community schools. *See* Sub. H.B. 422, 126th Gen. A. (2006) (eff. Sept. 28, 2006).

construed to grant the board of education authority to take reasonable steps to provide for the safety and security of the buildings and activities of the school district, its personnel, and its students"). Accordingly, under R.C. 3313.536(C), the board of education of each city, exempted village, and local school district and the governing authority of each chartered nonpublic school is required to file with the county sheriff a copy of the current comprehensive school safety plan and building blueprint for each of the board's or governing authority's school buildings located in the county.

No provision in R.C. 3313.536(C), however, requires the board of education of a city, exempted village, or local school district or the governing authority of a chartered nonpublic school to file with the county sheriff a copy of a building floor plan for each of the board's or governing authority's school buildings located in the county. Instead, R.C. 3313.536(C) requires that a copy of a building floor plan for each of the board's or governing authority's school buildings be filed with the Attorney General.[4]

The absence of similar language in R.C. 3313.536(C) with regard to filings to be made with the county sheriff thus indicates that the board of education of a city, exempted village, or local school district or the governing authority of a chartered nonpublic school is not required to file with the county sheriff a copy of a building floor plan for each of the board's or governing authority's school buildings located in the county. *See generally State v. Droste*, 83 Ohio St. 3d 36, 39, 697 N.E.2d 620 (1998) (under the general rule of statutory construction *expressio unius est exclusio alterius*, the expression of one or more things implies the exclusion of those not identified); *Thomas v. Freeman*, 79 Ohio St. 3d 221, 224-25, 680 N.E.2d 997 (1997) (the rule of *expressio unius est exclusio alterius*, or the naming of a specific thing, implies the exclusion of those not named); *Metro. Sec. Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81 (1927) ("[h]aving used certain language in the one instance and wholly different language in the other, it will rather be presumed that different results were intended"); *Lake Shore Elec. Ry. Co. v. P.U.C.O.*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (had the legislature intended a particular meaning, "it would not have been difficult to find language which would express that purpose," having used that language in other connections); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 67, 110 N.E. 627 (1915) (had the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result). Therefore, R.C. 3313.536(C) does not require the board of education of a city, exempted village, or local school district or the governing authority of a chartered nonpublic school to file with the

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[4] Under R.C. 3313.536(C), the board of education of each city, exempted village, and local school district and the governing authority of each chartered nonpublic school is expressly required to file with the Attorney General a copy of the current comprehensive school safety plan and the building floor plan for each of the board's or governing authority's school buildings. A board or governing authority is not required to file with the Attorney General a building blueprint for each of the board's or governing authority's school buildings. R.C. 3313.536(C).

county sheriff a copy of a building floor plan for each of the board's or governing authority's school buildings located in the county.

In conclusion, it is my opinion, and you are hereby advised as follows:

1. Under R.C. 3313.536(C), the board of education of each city, exempted village, and local school district and the governing authority of each chartered nonpublic school is required to file with the county sheriff a copy of the current comprehensive school safety plan and building blueprint for each of the board's or governing authority's school buildings located in the county.

2. R.C. 3313.536(C) does not require the board of education of a city, exempted village, or local school district or the governing authority of a chartered nonpublic school to file with the county sheriff a copy of a building floor plan for each of the board's or governing authority's school buildings located in the county.

Respectfully,

MARC DANN
Attorney General