February 2, 1999

OPINION NO. 99-010

Frank J. Weldele, Ph.D., Chairperson
Board of Speech-Language Pathology and Audiology
77 South High Street, 16th Floor
Columbus, Ohio 43266

Dear Chairperson Weldele:

You have requested an opinion regarding the issuance, by the State Board of Education, of a license or certificate for a person to practice as a school speech-language pathologist or school audiologist. Your questions relate to the licensure exception set forth in R.C. 4753.12(B). You explain in your letter that R.C. Chapter 4753 grants to the Board of Speech-Language Pathology and Audiology the authority to license and regulate the practice of speech-language pathology and audiology in Ohio. R.C. 4753.02 thus provides, in pertinent part, that "[n]o person shall practice, offer to practice, or aid and abet the practice of the profession of speech-language pathology or audiology ... unless the person is licensed under [R.C. Chapter 4753]." R.C. 4753.03 in turn has created the Board of Speech-Language Pathology and Audiology and R.C. 4753.05 grants the Board the specific authority to regulate and license the practice of speech-language pathology and audiology.[1]

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[1] Other provisions within R.C. Chapter 4753 address the eligibility requirements a person must satisfy for Board licensure as a speech-language pathologist or audiologist, R.C. 4753.06; the issuance of a license or conditional license to practice speech-language pathology or audiology, R.C. 4753.07; R.C. 4753.071; the licensure of speech-language pathology aides and audiology aides, R.C. 4753.072; the waiver of examination and educational requirements for certain persons who wish to practice as speech-language pathologists or audiologists, R.C. 4753.08; the renewal of licenses, R.C. 4753.09; and disciplinary actions the Board may take against its licensees or injunctive relief the Board may pursue against any person engaging in any practice that constitutes an offense under R.C. Chapter 4753 or the rules promulgated thereunder by the Board, R.C. 4753.10. *See also* R.C. 4753.01 (definitions of terms used in R.C. Chapter 4753, including "[s]peech-language pathologist," R.C. 4753.01(A), "[s]peech-language pathology," R.C. 4753.01(B), "[p]ractice of speech-language pathology," R.C. 4753.01(C), "[a]udiologist," R.C. 4753.01(D), and "[p]ractice of audiology," R.C. 4753.01(G)).

You further note the existence of certain exceptions to Board licensure. These exceptions are set forth in R.C. 4753.12. *See* R.C. 4753.12(A)-(M). Your inquiry is addressed to the exception in division (B) of R.C. 4753.12, which was recently amended by the General Assembly in Am. Sub. S.B. 96, 122nd Gen. A. (1997) (eff. June 11, 1997). As thus amended, R.C. 4753.12(B) states the following:

> Nothing in this chapter shall be construed to:
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> . . . .
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> Prevent or restrict the practice of speech and hearing therapy or the use of the official title of such practice by a person *who holds a valid and current license or certificate as a school speech-language pathologist or school audiologist issued by the state board of education under section 3319.22, 3319.222, or 3319.223 of the Revised Code,* to prevent or restrict the establishment of standards and courses of study pursuant to Chapter 3319. of the Revised Code, to prevent or restrict the licensure of teachers pursuant to Chapter 3319. of the Revised Code, or prevent any person assigned by or under the control of the superintendent of or board of a city, local, or exempted village school district or of an educational service center from identification screening of speech or hearing impairments of pupils enrolled in the district or educational service center, *provided such persons are performing activities within the scope of their employment and do not offer to render speech-language pathology or audiology services to the general public outside of the institutions or organizations in which they are employed.* (Emphasis added.)

R.C. 4753.12(B) thus recognizes the authority of the State Board of Education[2] under R.C. 3319.22-.223 to issue educator licenses, teachers' certificates, and temporary licenses in the specialty of school speech-language pathology, respectively, to persons as school speech-language pathologists or school audiologists. You assert that, in some instances, the State Board of Education has issued such licenses or certificates that bear effective dates that precede either (1) the dates on which the licenses or certificates were actually issued, or (2) the dates of the applications submitted by the persons seeking such licenses or certificates. You further assert that such action on the part of the State Board of Education "vastly broadens the narrow exemption from Board licensure provided for under [R.C. 4753.12(B)], and prevents regulation of unlicensed practice."

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[2] Your letter refers to the Ohio Department of Education. The General Assembly has granted the formal authority to issue educator licenses under R.C. 3319.22, teachers' certificates under R.C. 3319.222, and temporary licenses in the specialty of school speech-language pathology under R.C. 3319.223 to the State Board of Education. *See* R.C. 3319.22-.223.

In light of the foregoing, you have asked us whether the State Board of Education may issue licenses or certificates for the provision of speech-language pathology and audiology services in Ohio schools that bear effective dates that precede the dates on which the licenses or certificates were actually issued or the dates set forth on the applications that were submitted to the State Board of Education for such licenses or certificates. You also have asked whether persons who practice speech-language pathology or audiology in Ohio schools prior to applying to the State Board of Education for licensure or certification, or while the applications therefor are pending, are exempt from licensure by the Board of Speech-Language Pathology and Audiology pursuant to R.C. 4753.12(B).

In researching these matters we have learned that the State Board of Education and the Department of Education have adopted and follow a practice of issuing all educator licenses and teachers' certificates on a fiscal year basis. Specifically, each license or certificate that is issued under R.C. Chapter 3319 is effective from July 1 through June 30, regardless of the actual date of its issuance. This practice is intended to promote continuity in the educational process by ensuring that individual licenses or certificates do not expire in the course of the academic year. Your first question, therefore, more precisely concerns the validity of this practice under current law.

Article VI, § 4 of the Ohio Constitution provides, in part, that "[t]here shall be a state board of education which shall be selected in such manner and for such terms as shall be provided by law.... The respective powers and duties of the board ... *shall be prescribed by law*." (Emphasis added). *See* R.C. 3301.01(A) ("[t]here is hereby created the state board of education"). Accordingly, the State Board of Education may exercise only such authority as has been expressly granted it by the General Assembly, or as necessarily may be implied in order to enable the Board to exercise one or more of its express powers. *See generally, e.g., Union Title Co. v. State Bd. of Educ.*, 51 Ohio St. 3d 189, 190, 555 N.E.2d 931, 932 (1990) ("[s]ection 4, [a]rticle VI of the Ohio Constitution mandates the creation of a State Board of Education and requires the General Assembly to prescribe its powers and duties"); *State ex rel. Clarke v. Cooke*, 103 Ohio St. 465, 134 N.E. 655 (1921) (syllabus paragraph two) ("[b]oards of education, and other similar governmental bodies, are limited in the exercise of their powers to such as are clearly and distinctly granted"). Therefore, in addressing your first question, we must examine and evaluate the scope of authority conferred upon the State Board of Education by R.C. 3319.22-.223 to issue educator licenses, teachers' certificates, and temporary licenses in the specialty of school speech-language pathology to persons who wish to serve as school speech-language pathologists or school audiologists.

R.C. 3319.22, as enacted by Am. Sub. S.B. 230, 121st Gen. A. (1996) (eff., in part, Oct. 29, 1996), is a new statute. In Am. Sub. S.B. 230 the General Assembly has amended and repealed certain provisions of R.C. Chapter 3319 (schools--superintendent; teachers; employees) that heretofore have addressed the issuance of teachers' certificates by the State Board of Education and the Department of Education. One fundamental purpose of this legislation is to replace the system of *teachers' certificates* with a new system of *educator licenses*.

R.C. 3319.22 now provides, in pertinent part, that "[t]he state board of education shall adopt rules establishing the standards and requirements for obtaining temporary, associate, provisional, and professional educator licenses of any categories, types, and levels the board elects to provide." R.C. 3319.22(A). Such rules as have been adopted and promulgated thus far by the State Board of Education appear in 5 Ohio Admin. Code Chapter 3301-24 (1997-98 Supplement) and [1997-1998 Ohio Monthly Record vol. 1] Ohio Admin. Code Chapter 3301-23 at 1442 and 1443. As pertains to your inquiry, rule 3301-24-05(E)(1)(a) and (e), respectively, set forth the requirements for the issuance of a "professional pupil services license" authorizing a person to serve as a school audiologist or school speech-language pathologist. These requirements read as follows:

> (E) The professional pupil services license, valid for five years for working with learners at all levels, shall be issued to an individual deemed to be of good moral character who has successfully completed either of the following:
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> (1) An approved program of preparation and who is recommended by the dean or head of teacher education, who has completed an examination prescribed by the state board of education, and who has evidenced the education and experience requirements specified below:
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> (a) School audiologist
>
> (i) Master's degree, and
>
> (ii) Current license to practice audiology issued by the Ohio board of speech pathology and audiology [*sic*];
>
> ....
>
> (e) School speech-language pathologist
>
> (i) Master's degree, and
>
> (ii) Current license to practice as a speech pathologist issued by the Ohio board of speech pathology and audiology [*sic*].

R.C. 3319.222 is another new provision enacted by Am. Sub. S.B. 230. This statute gives the State Board of Education a grace period during which it may continue to issue certain categories of teachers' certificates in accordance with the statutory provisions otherwise repealed by Am. Sub. S.B. 230, and to recognize the validity of other categories of teachers' certificates previously issued in accordance with those repealed statutory provisions, until the transition period to the system of educator licenses is completed.[3]

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[3] R.C. 3319.222 reads as follows:

> (A) Notwithstanding the amendments to and repeal of statutes by the act that enacted this section, the state board of education shall do the following in accordance with the former statutes in effect immediately prior to amendment or repeal by the act that enacted this section:

The third and final statue referenced in R.C. 4753.12(B) is R.C. 3319.223. The General Assembly recently enacted R.C. 3319.223 in Am. Sub. 96, 122nd Gen. A. (1997) (eff. June 11, 1997), for the purpose of authorizing the State Board of Education to issue temporary licenses in the specialty of school speech-language pathology. Division (A) of R.C. 3319.223 thus provides that on request of the superintendent of a school district or educational service center, the State Board of Education "may issue a temporary license to an individual as an educator in the specialty of speech-language pathology." To qualify for a temporary license a person "must have at least a bachelor's degree in speech and hearing," and the State Board of Education "shall evaluate each application received and issue a temporary license to each applicant who meets the qualifications for licensure." *Id.* Division (B) of R.C. 3319.223 states

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(1) Accept applications for new, and renewal and upgrade of, provisional and professional teachers' certificates through September 1, 1998, and issue them on the basis of the applications received by that date;

(2) Accept applications for one-time renewals or upgrades of provisional teachers' certificates after September 1, 1998, and before September 2, 2002, and issue them on the basis of the applications received during this period;

(3) Accept applications for one-time renewals or upgrades of professional teachers' certificates after September 1, 1998, and before September 2, 2006, and issue them on the basis of the applications received during this period;

(4) Accept applications for permanent teachers' certificates through September 1, 2003, and issue them on the basis of the applications received by that date.

(B) A permanent teacher's certificate issued under sections 3319.22 to 3319.31 of the Revised Code prior to the effective date of this section or issued under division (A) of this section shall be valid for teaching in the subject areas and grades for which the certificate was issued except as the certificate is limited, suspended, or revoked under section 3319.31 of the Revised Code.

(C) A teacher's certificate that is not a permanent certificate and that has been issued under sections 3319.22 to 3319.31 of the Revised Code prior to the effective date of this act or that is issued under division (A) of this section shall be valid until it expires, for teaching in the subject areas and grades for which the certificate was issued except as the certificate is limited, suspended, or revoked under section 3319.31 of the Revised Code.

(D) Nothing in this section shall be construed to prohibit a person from applying to the state board of education for an educator license issued under section 3319.22 of the Revised Code as it exists on and after the effective of this section.

(E) On and after the effective date of this section, any reference in the Revised Code to educator licensing is hereby deemed to refer also to teacher certification under divisions (A), (B), and (C) of this section.

that a temporary license expires one year after the date it is issued, and further addresses the renewal of temporary licenses and the conditions for such renewal.

[1997-1998 Ohio Monthly Record vol. 1] Ohio Admin. Code 3301-23-44 at 1442 addresses the issuance of temporary licenses. As pertains to your inquiry, rule 3301-23-44(B)(1) and (3), respectively, authorize the issuance of a "temporary pupil service license" to an individual in order to serve as a school audiologist or school speech-language pathologist:

> (B) Temporary pupil service license. A temporary pupil service license may be issued to an individual who evidences a current license as specified below provided the vacancy has been posted with the ohio [*sic*] department of education for two weeks and no properly licensed and suitable candidate has been identified by the employing district:
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> (1) School audiologist—current license to practice audiology issued by the ohio [*sic*] board of speech-language pathology and audiology;
>
> . . . .
>
> (3) School speech-language pathologist—current license to practice as a speech pathologist issued by the ohio [*sic*] board of speech-language pathology and audiology, or a baccalaureate degree in speech-language pathology or in speech communication disorders. (Bracketed material in original.)

Accordingly, the provisions of R.C. 3319.22-.223, and the administrative regulations promulgated thereunder, grant the State Board of Education the authority to issue educator licenses, teachers' certificates, and temporary licenses in the specialty of speech-language pathology authorizing persons to serve as school speech-language pathologists or school audiologists, provided those persons satisfy the requirements set forth in the statutes and administrative regulations.

Nowhere in these statutes or administrative regulations is there an express directive that authorizes or permits the State Board of Education to issue educator licenses, teachers' certificates, or temporary licenses in the specialty of speech-language pathology that bear effective dates that precede the dates on which the licenses or certificates are actually issued or the dates set forth on the applications that are submitted to the Board for such licenses or certificates. On that basis, therefore, it might be argued that the State Board of Education may not issue educator licenses, teachers' certificates, or temporary licenses in the specialty of speech-language pathology that bear effective dates that precede the dates on which the licenses or certificates are actually issued.

However, elsewhere in R.C. Chapter 3319 the General Assembly has enacted provisions that address the circumstances in which the treasurer of a board of education or educational service center may pay a teacher for services rendered. These provisions, as interpreted and applied by the Ohio Supreme Court, furnish support for the State Board of Education's practice

of issuing educator licenses or teachers' certificates that are effective for the period July 1 through June 30. Let us review these authorities and the rationale they provide for this practice.

Regarding licensure or certification as a prerequisite to the receipt of compensation by a teacher in an Ohio school, R.C. 3319.30 states the following:

> Except as provided in section 3319.36 of the Revised Code, no person shall receive any compensation for the performance of duties as teacher in any school supported wholly or in part by the state or by federal funds who has not obtained a license of qualification for the position as provided for under section 3319.22 of the Revised Code and which license shall further certify to the good moral character of the holder thereof. Any teacher so qualified may, at the discretion of the employing board of education, receive compensation for days on which the teacher is excused by such board for the purpose of attending professional meetings, and the board may provide and pay the salary of a substitute teacher for such days.

By its express terms R.C. 3319.30 specifies an exception to the foregoing requirement. This exception appears in R.C. 3319.36. Division (A)(2) of R.C. 3319.36 states, in pertinent part, that no treasurer of a board of education or educational service center

> shall draw a check for the payment of a teacher for services until the teacher files with the treasurer ... a written statement from the city or exempted village district superintendent or the educational service center superintendent that the teacher has filed with the treasurer a legal educator license or internship certificate, or true copy of it, to teach the subjects or grades taught, with the dates of its validity.

See also R.C. 3319.36(B) (same with respect to a teacher in a local school district). The exception referred to in R.C. 3319.30 appears in division (C) of R.C. 3319.36, and reads as follows:

> Notwithstanding division (A) of this section, the treasurer may pay either of the following:
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> (1) Any teacher for services rendered during the first two months of the teacher's initial employment with the school district or educational service center, *provided such teacher* is the holder of a bachelor's degree or higher and *has filed with the state board of education an application for the issuance of a provisional or professional educator license;*
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> (2) Any substitute teacher for services rendered while conditionally employed under section 3319.101 of the Revised Code. (Emphasis added.)

The Ohio Supreme Court addressed the application of R.C. 3319.36 in *Whitley v. Canton City School Dist. Bd. of Educ.*, 38 Ohio St. 3d 300, 528 N.E.2d 167 (1988), in the course of

deciding a labor dispute between a teacher and his employing school district. Plaintiff Whitley, an industrial arts teacher employed by the Canton City School District Board of Education, was laid off from his teaching position in June 1983. Pursuant to the applicable collective bargaining agreement, Whitley was placed on a reduction in force list. The collective bargaining agreement provided, in part, that no new teachers would be employed by the board of education while there were teachers on the reduction in force list who were certified for any opening. It also provided that a teacher whose name appeared on the list would be offered reemployment when a position became available for which that teacher was certified.

On May 18, 1984, Whitley advised the board of education that he would be certified in elementary education prior to the beginning of the 1984-1985 school year. On June 13, 1984, the board of education received notice from the University of Akron that Whitley was enrolled in a retraining program and was expected to complete it by August 17. On August 20, 1984, the board received notice from the University of Akron that Whitley had completed the program.

Thereafter the board of education considered Whitley as a candidate for elementary teaching vacancies and interviewed him for four different elementary teaching vacancies. However, he was not offered any of the available positions.

On October 30, 1984, Whitley received a provisional certificate in elementary education from the Department of Education. The certificate stated that it was valid from July 1, 1984, through June 30, 1988. Whitley then sued the board of education for breach of the collective bargaining agreement, claiming he should have been recalled for one of the vacant positions. The trial court granted the board's motion for summary judgment and denied Whitley's motion for summary judgment, and the court of appeals affirmed in a split decision.

On appeal the Ohio Supreme Court considered whether the several grounds asserted by the board of education in the trial court were sufficient to support summary judgment in the board's favor. In that regard the board had argued that (1) the reduction in force provisions in the collective bargaining agreement applied only to areas in which the employee was certified at the time of the layoff; (2) Whitley was not certified in elementary education at the time of hiring for the 1984-1985 school year; and (3) Whitley did not, under the terms of the agreement, have "reasonable qualifications and experience equal" to the teachers hired over him. The court rejected each of these reasons as a basis for summary judgment, and so reversed the judgment of the court of appeals and entered final judgment in favor of Whitley on his motion for summary judgment.

What is significant for purposes of the present inquiry is the court's discussion and ruling with respect to the board's argument that Whitley was not certified in elementary education at the time of hiring for the 1984-1985 school year. The court found that Whitley was certified for the 1984-1985 school year because the certificate on its face declared that the effective date of the certification was July 1, 1984, and thus it was immaterial that Whitley did not actually receive the certificate until October 30, 1984. *Whitley v. Canton City School Dist. Bd. of Educ.,*

38 Ohio St. 3d at 302, 528 N.E.2d at 169-70. In reaching this conclusion the court relied upon the provisions of R.C. 3319.36 that permit a teacher to be paid while his application for certification is pending before the State Board of Education:

> Significantly, *R.C. 3319.36 explicitly provides for the payment of teachers for the first two months of the school year while their applications for certification are pending before the State Board of Education.*
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> . . . .
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> R.C. 3319.36 recognizes the delay involved in the issuance of certificates following the completion of the required course work. This provision negates the argument that a teacher is not certified until the certificate is issued. It anticipates and authorizes the precise sequence to the issuance of the elementary teaching certificate to Whitley.... R.C. 3319.36 also authorizes the current practice of the Department of Education, which is to make all certificates effective on July 1 irrespective of the date of issuance. Baker, 1987-88 Handbook of Ohio School Law (1987) 265, Section 7.18.1, fn. 71.6.
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> Accordingly, we hold that where a contractual dispute arises between a school board and a teacher regarding the date of the teacher's certification, the teacher will be considered certified on the date the certificate issued by the Ohio Department of Education became effective unless the contract specifically provides to the contrary. (Emphasis in original.)

38 Ohio St. 3d at 302-03, 528 N.E.2d at 169-70.

Accordingly, the provisions of R.C. 3319.36(C)(1) and the holding of the Ohio Supreme Court in *Whitley v. Canton City School Dist. Bd. of Educ.* grant the State Board of Education a certain amount of administrative discretion with respect to the issuance of educator licenses and teachers' certificates. Further, these authorities endorse and sanction, as a reasonable exercise of that discretion, the Board's practice of issuing educator licenses and teachers' certificates with an effective date of July 1, even though such licenses or certificates may not actually be issued to and received by individual applicants until some time after July 1 or the commencement of the school year. *See* 1 *Baker's Ohio School Law Guide* (1997-98 edition) 7.18.1, at 319 n.65 ("[i]t has been the practice of the Department of Education to make all licenses issued within a given year effective on July 1, irrespective of the date of issuance"). As applied to your question, this means that the State Board of Education, acting pursuant to R.C. 3319.22, R.C. 3319.222, or R.C. 3319.223, may issue an educator license, teachers' certificate, or temporary license in the specialty of speech-language pathology to a person to serve as a school speech-language pathologist or school audiologist that is effective for the period July 1 through June 30, regardless of the date when the license or certificate is actually issued to and received by an applicant. In accordance with this practice, the State Board of Education may issue an educator license, teachers' certificate, or temporary license in the specialty of speech-language pathology to a person to serve as a school speech-language pathologist or school audiologist that bears an

effective date that precedes the date on which the license or certificate is actually issued to and received by an applicant.

In your second question you have asked whether persons who practice speech-language pathology or audiology in Ohio schools prior to applying to the State Board of Education for licensure or certification, or while the applications therefor are pending, are exempt from licensure by the Board of Speech-Language Pathology and Audiology pursuant to R.C. 4753.12(B). In order to answer this question we must examine the language of R.C. 4753.12(B) and consider how the foregoing analysis affects the application of that provision. Let us consider first persons who practice speech-language pathology or audiology while their applications for licensure or certification are pending with the State Board of Education.

R.C. 4753.12(B) states that nothing in R.C. Chapter 4753 "shall be construed to ... [p]revent or restrict the practice of speech and hearing therapy or the use of the official title of such practice by a person who *holds* a valid and current license or certificate as a school speech-language pathologist or school audiologist *issued by* the state board of education under section 3319.22, 3319.222, or 3319.223 of the Revised Code,...provided such persons are performing activities within the scope of their employment and do not offer to render speech-language pathology or audiology services to the general public outside of the institutions or organizations in which they are employed." (Emphasis added.) By its terms this statute provides that the practice restrictions of R.C. Chapter 4753, including the prohibitions against unlicensed practice set forth in R.C. 4753.02, do not prevent or restrict the practice of speech and hearing therapy by a person who possesses a license or certificate issued by the State Board of Education under R.C. 3319.22, R.C. 3319.222, or R.C. 3319.223, provided the person performs speech-pathology or audiology activities within the scope of his employment as a school speech-language pathologist or school audiologist and does not offer such services to the general public.[4] *See Black's Law*

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[4] Examination of the administrative regulations promulgated by the State Board of Education under R.C. 3319.22, R.C. 3319.222, and R.C. 3319.223 indicates that R.C. 4753.12(B)'s exemption from the practice restrictions of R.C. Chapter 4753, and hence licensure by the Board of Speech-Language Pathology and Audiology, is, as a practical matter, confined to persons who hold temporary pupil service licenses or certificates authorizing them to serve as school speech-language pathologists. *Compare* 5 Ohio Admin. Code 3301-24-05(E)(1)(a) and (e) (the professional pupil services license to serve as a school audiologist or school speech-language pathologist shall be issued to a person who, *inter alia*, has a master's degree and a current license to practice audiology or as a speech pathologist issued by the Board of Speech-Language Pathology and Audiology) *and* [1997-1998 Ohio Monthly Record vol. 1] Ohio Admin. Code 3301-23-44 (B)(1) at 1442 (the temporary pupil service license to serve as a school audiologist may be issued to a person who, *inter alia*, has a current license to practice audiology issued by the Board of Speech-Language Pathology and Audiology) *with* [1997-1998 Ohio Monthly Record vol. 1] Ohio Admin. Code 3301-23-44(B)(3) at 1442 (the temporary pupil service license to serve as a school speech-language pathologist may be issued to a person who,

Dictionary 730 and 731 (Sixth ed. 1990) (definition 8: the term "hold," used as a verb, means "[t]o possess; to occupy; to be in possession and administration of; as to hold office"); *Webster's Third New International Dictionary, Unabridged* 1078 (1993) (definition 1a: as a transitive verb, "hold" or "holds" means "to retain in one's keeping" or "maintain possession of").

A person who has submitted an application to the State Board of Education for an educator license, teachers' certificate, or temporary license in the specialty of speech-language pathology under R.C. 3319.22-.223 and is awaiting issuance of that license or certificate is not in possession of the license or certificate. A strict reading of R.C. 4753.12(B), therefore, would lead one to conclude that such person remains subject to the practice restrictions of R.C. Chapter 4753, and thus is required to be licensed by the Board of Speech-Language Pathology and Audiology in order to perform activities or services as a school speech-language pathologist or school audiologist.

As explained above, however, R.C. 3319.36(C)(1) grants a grace period to a person who has applied for and is awaiting issuance of an educator license or teachers' certificate from the State Board of Education for purposes of being compensated by his employing school district. Further, *Whitley v. Canton City School Dist. Bd. of Educ*. endorses and approves the State Board of Education's practice of issuing licenses or certificates with an effective date of July 1, regardless of the license or certificate's actual date of issuance. Finally, the plain language of R.C. 4753.12(B) makes clear the General Assembly's intention that persons who are issued licenses or certificates to serve as school speech-language pathologists or school audiologists by the State Board of Education are not required to be licensed by the Board of Speech-Language Pathology and Audiology.

In light of these facts, it would appear to be unreasonable to deny the benefit of R.C. 4753.12(B)'s licensing exemption to a person who has applied for, and will be issued in due course, a license or certificate to serve as a school speech-language pathologist or school audiologist from the State Board of Education. As one authority has noted with regard to R.C. 3319.30, "[t]he mischief intended to be avoided by the statute requiring licensure prior to payment is the teaching of school by an unqualified person, not the making of a contract by a person before he obtains a license." 1 *Baker's Ohio School Law Guide* 7.02, at 293 (footnote omitted). Similarly, the mischief to be avoided by requiring the licensure or certification of persons to serve as school speech-language pathologists or school audiologists by the State Board of Education is the rendition of speech-language or audiology services to school children by unqualified persons. If a person has applied to the State Board of Education for a license or certificate to serve as a school speech-language pathologist or school audiologist and possesses

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inter alia, has a current license to practice as a speech pathologist issued by the Board of Speech-Language Pathology and Audiology *or a baccalaureate degree in speech-language pathology or in speech communication disorders*).

the qualifications for such license or certificate, *see* 5 Ohio Admin. Code 3301-24-05(E)(1)(a) and (e); [1997-1998 Ohio Monthly Record vol. 1] Ohio Admin. Code 3301-23-44(B)(1) and (3) at 1442, this problem will not materialize. It would seem, therefore, that little or no purpose would be served by requiring a person who is otherwise qualified to offer services as a school speech-language pathologist or school audiologist to be licensed by the Board of Speech-Language Pathology and Audiology during the period that intervenes between the time the person applies to the State Board of Education for a license or certificate and the time when that license or certificate is finally issued.

A different result follows, however, in the case of a person who has not applied to the State Board of Education for a license or certificate under R.C. 3319.22-.223 as a school speech-language pathologist or school audiologist. The grace period in R.C. 3319.36(C)(1) for compensation purposes extends only to a person who has applied to the State Board of Education for an educator license or teachers' certificate. The law provides no such grace period for a person who has not submitted an application to the State Board of Education. By analogy, therefore, R.C. 4753.12(B)'s exemption from the practice restrictions of R.C. Chapter 4753 is available only to a person who has applied to the State Board of Education for a license or certificate to serve as a school speech-language pathologist or school audiologist; the benefit of the exemption should not extend to a person who has not made such application to the State Board of Education.

Based upon the foregoing, therefore, it is my opinion, and you are advised that:

1. In order to authorize a person to serve as a school speech-language pathologist or school audiologist, the State Board of Education, acting pursuant to R.C. 3319.22, R.C. 3319.222, or R.C. 3319.223, may issue an educator license, teachers' certificate, or temporary license in the specialty of speech-language pathology that is effective for the period July 1 through June 30, regardless of its actual date of issuance or receipt. In accordance with this practice, the State Board of Education may issue an educator license, teachers' certificate, or temporary license in the specialty of speech-language pathology that bears an effective date that precedes the actual date of its issuance or receipt.

2. For purposes of R.C. 4753.12(B), a person who has submitted an application to the State Board of Education for an educator license, teachers' certificate, or temporary license in the specialty of speech-language pathology under R.C. 3319.22, R.C. 3319.222, or R.C. 3319.223 in order to serve as a school speech-language pathologist or school audiologist is exempt from the prohibitions against the unlicensed practice of the profession of speech-language pathology or audiology set forth in R.C. 4753.02 pending issuance of the license or certificate by the State Board of Education.

3. For purposes of R.C. 4753.12(B), a person who wishes to serve as a school speech-language pathologist or school audiologist but has not submitted an application to the State Board of Education for an educator license, teachers' certificate, or temporary license in the specialty of speech-language pathology under R.C. 3319.22, R.C. 3319.222, or R.C. 3319.223 is not exempt from the prohibitions against the unlicensed practice of the profession of speech-language pathology or audiology set forth in R.C. 4753.02.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

February 2, 1999

Frank J. Weldele, Ph.D., Chairperson
Board of Speech-Language Pathology and Audiology
77 South High Street, 16th floor
Columbus, Ohio 43266

Syllabus: 99-010

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3. For purposes of R.C. 4753.12(B), a person who wishes to serve as a school speech-language pathologist or school audiologist but has not submitted an application to the State Board of Education for an educator license, teachers' certificate, or temporary license in the specialty of speech-language pathology under R.C. 3319.22, R.C. 3319.222, or R.C. 3319.223 is not exempt from the prohibitions against the unlicensed practice of the profession of speech-language pathology or audiology set forth in R.C. 4753.02.