June 19, 2001

OPINION NO: 2001-023

The Honorable Gerald L. Heaton
Logan County Prosecuting Attorney
117 East Columbus Avenue, Suite 200
Bellefontaine, Ohio 43311-2053

Dear Prosecutor Heaton:

We have received your request for an opinion concerning the manner in which a county board of mental retardation and developmental disabilities provides transportation for certain special education students who receive vocational training in adult services programs offered by the board. The question is whether the individuals in question may be transported in the same manner as adults who are enrolled in those programs, or whether they must be transported under the more stringent standards that apply to school transportation. You have asked generally about provisions appearing in Chapter 3301-83 and rule 3301-51-10 of the Ohio Administrative Code, and you have asked specifically about the applicability of 5 Ohio Admin. Code 3301-83-19, entitled "Authorized vehicles for transportation of pupils to and from school and school-related events."[1]

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[1] 5 Ohio Admin. Code 3301-83-19 reads as follows:

(A) School buses

All vehicles designed to carry more than nine passengers, not including the driver, and used to transport students to or from school or school-related events shall meet or exceed all applicable federal regulations and the Ohio school bus construction standards. Refer to division (F) of section 4511.01 of the Revised Code and rules 4501-5-01 to 4501-5-10 of the Administrative Code.

(B) Public transit vehicles

Public transit vehicles includes vehicles owned and operated by regional transit authorities or community transit authorities, or which are privately owned, under contract with a board of education or county board of mental retardation

In the situation with which you are concerned, the Logan County Board of Mental Retardation & Developmental Disabilities is asked by area schools to provide transportation for special education students whose individualized education programs (IEP's)[2] call for vocational

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and developmental disabilities and operated on routes designed for the purpose of transporting fare-paying passengers and eligible students simultaneously.

(C) Board-owned or leased vehicles other than school buses

Includes vehicles, originally designed and constructed at the factory for nine passengers or less, not including the driver, used for transportation of preschool and special needs children or for the transportation of pupils who are not accessible to conventional transportation services. If a van-type vehicle is used, it shall be equipped with a fire extinguisher, first-aid kit, reflectors, and shall have a rooftop sign marked "School Transportation."

(D) Privately owned vehicles other than school buses

Includes vehicles, nine passengers or less, as originally designed and constructed at the factory, not including the driver, and used for transportation of pupils from the place of residence to the nearest pickup point on a regular school bus route. Residence must be one-half mile or more from the pickup point and inaccessible to a regular school bus.

(E) Vehicles not meeting the definitions listed in paragraphs (A) to (D) of this rule do not conform to state and federal law/rule and shall not be used for transportation of pupils to or from school or or [*sic*] school related events.

(F) Vehicles approved for activity use only

(1) A school activity bus is a school bus which meets all the requirements of the Ohio school bus construction standards, rules 4501-5-01 to 4501-5-10 of the Administrative Code.

(2) School activity buses are permitted to use the following items which are not permitted on route buses: interior book racks, coach-type seats, exterior roof luggage racks, and independent auxiliary engine-powered air-conditioning.

(3) School activity buses may be used as the school bus owner policy permits. Use of the activity bus shall not conflict with commercial bus operations and shall comply with all applicable state and federal laws and rules.

(4) Activity buses shall not be used on regular routes.

(5) Activity buses are not eligible for school bus purchase assistance.

[2] An individualized education program, commonly known as an IEP, is a written statement prepared for each child with a disability. It sets forth a special education program designed to meet the unique needs of that child. R.C. 3323.01(A), (B), and (E); R.C. 3323.011; 5 Ohio Admin. Code 3301-51-01(Y) and (DDD); 5 Ohio Admin. Code 3301-51-02(E); *see also* 20 U.S.C.A. §§ 1401(11), 1412(a)(4), and 1414(d) (West Group 2000); 34 C.F.R. §§ 300.7(a) and 300.347 (2000).

training at RTC Industries. The Logan County Board of Mental Retardation & Developmental Disabilities offers that vocational education program as one of its services to adults[3] and, in accordance with relevant provisions of law, also makes it available to special education students who are at least sixteen years of age.[4] Some of those students participate in a transition-to-work program that the Logan County Board of Mental Retardation & Developmental Disabilities offers for high school students during the summer.

The question concerning transportation has arisen because, in transporting adults who are enrolled in its programs, the Logan County Board of Mental Retardation & Developmental Disabilities uses a van driven by a qualified driver with a commercial driver's license. However, you have noted that this mode of transportation does not meet the requirements for school transportation that are set forth in Chapter 3301-83 and rule 3301-51-10 of the Ohio Administrative Code.

To answer your question, let us begin with an review of the manner in which special education is provided in Ohio. Pursuant to Ohio statute and in accordance with federal law, all children with disabilities as defined by statute are entitled to a free appropriate public education designed to meet their unique needs and prepare them for employment and independent living. 20 U.S.C.A. §§ 1400(d)(1)(A) and 1412(a)(1) (West Group 2000); 34 C.F.R. § 300.13 (2000); 34 C.F.R. § 300.300 (2000); R.C. 3323.01(D); R.C. 3323.02; R.C. 3323.04; 5 Ohio Admin. Code 3301-51-01(T). *See generally* 1991 Op. Att'y Gen. No. 91-024. The board of education, after consulting with the county board of mental retardation and developmental disabilities, is responsible for placing each of those children in an appropriate education program and assuring that the child receives related services, including transportation, necessary to assist the child to benefit from the special education. R.C. 3323.01(B) and (C); R. C. 3323.04; R.C. 3323.08; R.C. 3327.01; 5 Ohio Admin. Code 3301-51-01(UU); 5 Ohio Admin. Code 3301-51-02 to 3301-51-

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[3] The authority of a county board of mental retardation and developmental disabilities to offer adult vocational education programs is derived from R.C. 5126.05(A)(3) and R.C. 5126.051(B)(1). R.C. 5126.05(A)(3); R.C. 5126.051(B)(1); *see also* R.C. 5126.053(B)(2); R.C. 5126.082(A)(2); R.C. 5126.12(B)(1)(c). Adult services offered by the board may be made available to individuals who are eighteen or over and not enrolled in a special education program or to individuals who are at least sixteen and are eligible under rules adopted by the Director of Mental Retardation and Developmental Disabilities. R.C. 5126.01(A); R.C. 5126.04; R.C. 5126.05; R.C. 5126.051(B); 15 Ohio Admin. Code 5123:2-1-06. The board has authority to transport adults to such programs. *See* R.C. 5126.04; R.C. 5126.05; 15 Ohio Admin. Code 5123:2-1-03; 15 Ohio Admin. Code 5123:2-1-06.

[4] A child with a disability remains eligible for special education until the child reaches twenty-two years of age, unless the child has completed the twelfth grade and has been issued a diploma. 5 Ohio Admin. Code 3301-51-01(T)(5)(b); *see also* R.C. 3323.01(A); R.C. 3323.04.

03; 5 Ohio Admin. Code 3301-51-05(A); *see also* 34 C.F.R. § 300.24 (2000). *See generally* 1987 Op. Att'y Gen. No. 87-026. An IEP is prepared for each child who needs special education. *See* note 2, *supra*. The IEP sets forth instructional objectives and must include a statement of the transition services needed for the child beginning no later than age sixteen. R.C. 3323.01(E)(4); *see also* 20 U.S.C.A §§ 1401(30) and 1414(d) (West Group 2000).

"Transition services" are defined as coordinated activities for a student, designed within an outcome-oriented process, that promote movement from school to post-school activities and are based upon the student's needs, preferences, and interests. R.C. 3323.01(L). Transition services may include vocational training, post-secondary education, integrated employment, continuing and adult education, adult services, independent living, and community participation. *Id.*; *see also* 20 U.S.C.A. § 1401(30) (West Group 2000); 34 C.F.R. § 300.29 (2000). Thus, the IEP of a student aged sixteen or over may include participation in an adult vocational training program offered by the county board of mental retardation and developmental disabilities. *See* R.C. 3323.01(L); 15 Ohio Admin. Code 5123:2-1-06(D)(2); note 3, *supra*.

Let us turn now to the rules about which you have inquired – namely, those governing the transportation of schoolchildren and appearing in Chapter 3301-83 and rule 3301-51-10 of the Ohio Administrative Code. Chapter 3301-83 of the Ohio Administrative Code is entitled "Ohio Pupil Transportation Operation and Safety Rules." 5 Ohio Admin. Code Chapter 3301-83. It contains rules prescribing minimum requirements for a safe pupil transportation program, including the types of vehicles that may be used for the transportation of schoolchildren, the training and qualifications that drivers must have, and safety and emergency procedures. 5 Ohio Admin. Code 3301-83-04; *see, e.g.*, 5 Ohio Admin. Code 3301-83-06; 5 Ohio Admin. Code 3301-83-07; 5 Ohio Admin. Code 3301-83-10 to 3301-83-12; 5 Ohio Admin. Code 3301-83-15; 5 Ohio Admin. Code 3301-83-19 to 3301-83-21; *see also* R.C. 4511.75; R.C. 4511.76; R.C. 4511.763; 5 Ohio Admin. Code Chapter 3301-87; 10 Ohio Admin. Code Chapter 4501-1; 10 Ohio Admin. Code Chapter 4501-5.[5] The purpose of the rules is "to reduce and prevent, to the greatest extent possible, death or injury to pupils and to ensure uniform, economical and efficient pupil transportation operations." 5 Ohio Admin. Code 3301-83-03.

Rule 3301-83-19, quoted in note 1, *supra*, defines various types of vehicles that are authorized to transport pupils to and from school and school-related events. 5 Ohio Admin. Code 3301-83-19(A) to (D). Those vehicles are school buses, pupil transit vehicles, board-owned or leased vehicles other than school buses, and privately owned vehicles other than school buses. The rule describes the various types of authorized vehicles and the circumstances in which they may be used. *Id.* It goes on to state expressly that vehicles not meeting the definitions "do not conform to state and federal law/rule and shall not be used" for transportation

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[5] Provisions of rule establish standards for school buses designed for transporting children who have special transportation needs. 5 Ohio Admin. Code 3301-87-06; 10 Ohio Admin. Code 4501-5-08; *see also* 5 Ohio Admin. Code 3301-51-01(EEE); 5 Ohio Admin. Code 3301-51-10(A)(2).

of pupils to or from school or school related events. 5 Ohio Admin. Code 3301-83-19(E). By its terms this rule governs all transportation of pupils to school and school-related events. It provides no exceptions for pupils who have disabilities.

Rule 3301-51-10 is contained in the chapter entitled "Rules for the Education of Handicapped Children," *see* 5 Ohio Admin. Code Chapter 3301-51, and contains provisions governing the transportation of children with disabilities, *see* 5 Ohio Admin. Code 3301-51-10. Under that rule, transportation includes "[t]ravel to and from school, between schools, and in and around school buildings, during normal school hours" and other travel arranged by the school district, defined to include the county board of mental retardation and developmental disabilities. 5 Ohio Admin. Code 3301-51-10(A)(3) and (4). Children with disabilities include individuals aged three through twenty-one, and the matter of transportation may be addressed in a child's IEP. 5 Ohio Admin. Code 3301-51-02(E); 5 Ohio Admin. Code 3301-51-10(A)(5) and (C); *see also* 5 Ohio Admin. Code 3301-83-21. Rule 3301-51-10 states expressly: "Those who transport eligible children with disabilities must comply with the appropriate provisions of the rules 3301-83-03 to 3301-83-22 of the Administrative Code." 5 Ohio Admin. Code 3301-51-10(D)(2).

Rule 3301-51-10 lists several types of vehicles as being authorized for transportation of children with disabilities: board owned or operated school buses, contractor owned or operated school buses, taxicabs and ambulances, privately owned or operated vehicles other than school buses, and board owned or operated vehicles other than school buses. 5 Ohio Admin. Code 3301-51-10(E)(2). The rule goes on to state: "All vehicles used must be authorized vehicles as defined in rule 3301-83-19 of the Administrative Code." 5 Ohio Admin. Code 3301-51-10(E)(3). Rule 3301-51-10 thus specifies that vehicles used by a county board of mental retardation and developmental disabilities to transport children with disabilities must meet the requirements of rule 3301-83-19.

The question you have presented is whether the fact that vocational education in an adult program is included in an IEP and is part of a special education program means that transportation to that program must be provided as required for schoolchildren, or whether the fact that the vocational education is an adult program that is part of the transition services preparing the individual to leave the school setting means that the individual may be transported as an adult. Under current provisions of law, we conclude that the standards applicable to schoolchildren continue to apply to transportation provided to individuals with disabilities as long as those individuals are receiving special education. *See* note 4, *supra*.

As noted above, rule 3301-51-10 contains provisions governing the transportation of children with disabilities by a school district or a county board of mental retardation and developmental disabilities. It states expressly that there must be compliance with appropriate provisions of Chapter 3301-83 and that vehicles must meet the requirements of rule 3301-83-19. 5 Ohio Admin. Code 3301-51-10. Those requirements thus are applicable to every situation involving the transportation of a child for purposes of special education as prescribed by the child's IEP. The requirements are not modified by the fact that a particular child may be

participating in an adult program. So long as the child is receiving special education pursuant to an IEP, the child's transportation is governed by Chapter 3301-83 and rule 3301-51-10 of the Ohio Administrative Code. *See also, e.g.*, 5 Ohio Admin. Code 3301-83-04 (defining "school bus owner" to include county boards of mental retardation and developmental disabilities); 1980 Op. Att'y Gen. No. 80-009 (syllabus, paragraph 2) ("[a] county board of mental retardation must comply with … the rules of the State Board of Education, including [5] Ohio Admin. Code Chapter 3301-51").

By definition, transportation provided to a special education student to enable that child to carry out the programs set forth in the child's IEP is part of the free appropriate public education required by law, and the transportation must comply with standards established by law. R.C. 3323.01(B), (C), and (D); 5 Ohio Admin. Code 3301-51-10; *see also* R.C. 3323.02; R.C. 3323.04; R.C. 3327.01. The standards apply whether transportation is provided by the school district or by the county board of mental retardation and developmental disabilities and regardless of the nature of the programs included in the child's IEP. *See* 5 Ohio Admin. Code 3301-51-10. The inclusion of a child in an adult vocational training program does not remove the child from the benefits of the transportation standards established by law for the protection of schoolchildren with disabilities.[6]

We note that Chapter 3301-83 of the Ohio Administrative Code includes a rule that sets forth supplementary provisions for county boards of mental retardation and developmental disabilities. 5 Ohio Admin. Code 3301-83-21. That rule governs the transportation both of children who are receiving services as part of an IEP and children who are receiving services that are not part of an IEP but are instead part of an individualized habilitation plan (IHP) designed to serve needs that are not primarily educational. *Id.*; *see* R.C. 5126.01; R.C. 5126.04; *see also* 1991 Op. Att'y Gen. No. 91-024, at 2-125. Rule 3301-83-21 makes provision for alternative transportation in a vehicle that meets the requirements of the random vehicle inspection rules and regulations of the Ohio Department of Public Safety and is driven by a person with a commercial driver's license of the proper class. 5 Ohio Admin. Code 3301-83-21(H) and (J). The rule thus authorizes such alternative transportation, but it does not appear to authorize the transportation of schoolchildren absent compliance with rule 3301-51-10 and rule 3301-83-19. *See generally* 15 Ohio Admin. Code 5123:2-1-03 (addressing different types of transportation that a county board of mental retardation and developmental disabilities may provide).

We are aware that a county board of mental retardation and developmental disabilities has express authority to combine its transportation of children in programs approved or funded by the State Board of Education with the transportation of children and adults enrolled in other programs and services offered by the county board of mental retardation and developmental

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[6] Various types of transportation meet these standards. *See* R.C. 3327.01; 5 Ohio Admin. Code 3301-51-10(E)(2); 5 Ohio Admin. Code 3301-83-19; 1987 Op. Att'y Gen. No. 87-026; *see also* 5 Ohio Admin. Code 3301-83-01(C).

disabilities. R.C. 3323.09(B); R.C. 5126.05(D); *see* R.C. 5126.12. However, the statutory language does not expressly permit the board to transport schoolchildren in the less stringent manner permitted for adult transportation, and we find no basis for concluding that the authorization to combine the transportation of children and adults provides authority to disregard the safety standards applicable to schoolchildren.

For the reasons set forth above, it is, therefore, my opinion, and you are hereby advised, that transportation provided by a county board of mental retardation and developmental disabilities to a child who, in accordance with the child's individualized education program, receives special education in an adult vocational education program provided by the board must comply with the provisions applicable to the transportation of schoolchildren, as set forth in 5 Ohio Admin. Code Chapter 3301-83 and 5 Ohio Admin. Code 3301-51-10.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

June 19, 2001

The Honorable Gerald L. Heaton
Logan County Prosecuting Attorney
117 East Columbus Avenue, Suite 200
Bellefontaine, Ohio 43311-2053

SYLLABUS: 2001-023

Transportation provided by a county board of mental retardation and developmental disabilities to a child who, in accordance with the child's individualized education program, receives special education in an adult vocational education program provided by the board must comply with the provisions applicable to the transportation of schoolchildren, as set forth in 5 Ohio Admin. Code Chapter 3301-83 and 5 Ohio Admin. Code 3301-51-10.