

OPINION NO. 83-017

Syllabus:

Pursuant to R.C. 4753.12(B), persons who hold an appropriate certificate from the State Board of Education and who contract with a board of education to render speech pathology or audiology services on either a part-time or a full-time basis are not subject to the jurisdiction of the State Board of Speech Pathology and Audiology unless they also offer to render speech pathology or audiology services to the general public; if they do offer services to the general public, such persons are subject to licensure and regulation by both the State Board of Education and the State Board of Speech Pathology and Audiology.

To: Chester E. Gallant, Executive Secretary, Board of Speech Pathology and Audiology, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, April 18, 1983

I have before me the request from the Board of Speech Pathology and Audiology for an opinion concerning the authority of the Board to license and regulate the practice of speech pathology and audiology by persons who serve under contract with a board of education.

As you note in your letter, the Board is empowered pursuant to R.C. Chapter 4753 to regulate the practice of speech pathology and audiology in Ohio. As a general matter, no person may practice either of these professions in this state unless licensed by the Board. R.C. 4753.02. See R.C. 4753.07. However, R.C. 4753.12 restricts the licensure and regulatory functions of the Board in certain instances. This provision reads in part:

Nothing in this chapter shall be construed to:

. . . .

(B) 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 speech and hearing therapist issued by the state board of education, 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 certification 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 education of the public schools of a county, city, local, or exempted village school district from identification screening of speech or hearing impairments of pupils enrolled in the district. Provided such persons are performing activities within the scope of their employment and do not offer to render speech 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 thus establishes limitations on the Board's authority to regulate the practice of speech pathology and audiology by persons licensed or certificated by the State Board of Education.

The State Department of Education has promulgated rules governing speech and hearing services in the schools as part of its body of rules for the education of handicapped students. [1981-1982 Monthly Supp.] Ohio Admin. Code 3301-51-05(E) at 222 provides for audiological services for children, and division (E)(3) sets out the qualifications for a school audiologist as follows:

(a) The school audiologist shall hold an Ohio teacher's certificate.

(b) The school audiologist shall possess at least a master's degree in audiology or its equivalent from an accredited institution.

(c) The school audiologist shall hold an Ohio special education teacher's certificate for a school audiologist if such a certificate is established by the state board of education.

Rule 3301-51-05(N) at 225 provides for speech and language services and division (N)(5) states at 226 that, "[t]he speech-language pathologist shall hold an Ohio special education teacher's certificate for speech and hearing therapy." See 2 Ohio Admin. Code 3301-21-28 (setting out the requirements for each grade of a certificate for speech and hearing therapy). See generally R.C. 3319.22 (setting forth the different grades and types of teaching certificates which the State Board of Education may issue); R.C. 3319.30 (prohibiting the compensation of any person for teaching in a school supported in whole or in part by state or federal funds if he does not have a certificate for the position he holds); R.C. 3319.31 (concerning the revocation of teaching certificates).

You note that, in light of R.C. 4753.12, the Board has maintained that speech pathologists and audiologists who are employed on a full-time basis by a board of education are exempt from licensure by the Board. The Board has left licensure of such employees to the State Board of Education. See generally R.C. 3319.22. You further explain that, "the Board has taken a different view of those individuals who have contracted to provide the services of a speech pathologist and/or audiologist to a school system. The Board has consistently required these individuals be licensed by the Board. . . ." (Emphasis by the Board.) Pursuant to R.C. 3319.08, a board of education contracts with all of its teachers. It is my understanding that you are concerned with persons who contract with a board of education to provide speech pathology and/or audiology services to a school system for only a few hours a week. The question of the Board is whether the State Board of Education has exclusive jurisdiction over the licensure of speech pathologists and audiologists who are hired by a board of education on a part-time basis to provide professional services to a school system, or whether the State Board of Education and the State Board of Speech Pathology and Audiology both have jurisdiction over the licensure of such persons.

The terms of rule 3301-51-05, set forth above, require all persons who provide audiological or speech pathology services pursuant to contract with a board of education to hold an appropriate certificate from the State Board of Education. No exception is explicitly made for persons who provide services on a part-time basis, nor can one be reasonably implied. R.C. 4753.12(B) prohibits the Board of Speech Pathology and Audiology from licensing or otherwise regulating persons who have an appropriate certificate issued by the State Board of Education, and who are rendering speech pathology and audiology services pursuant to a contract with a board of education. Again, I can find no language in R.C. 4753.12(B) which indicates that an exception exists as to persons rendering such services on a part-time basis.

The last sentence of R.C. 4753.12(B), however, does provide that in order to be exempt from the Board's jurisdiction, such persons named in that section must be "performing activities within the scope of their employment and [must] not offer to render speech pathology or audiology services to the general public outside of the institutions or organizations in which they are employed." Thus, if a person who provides speech pathology or audiology services to a school system also provides or offers to provide such services to the general public, he is subject to licensure and regulation by the Board of Speech Pathology and Audiology, as well as to certification and regulation by the State Board of Education. Pursuant to R.C. 4753.12(B), however, the Board of Speech Pathology and Audiology may not assume jurisdiction over the activities which such person performs pursuant to a contract with a board of education.

In conclusion, it is my opinion, and you are advised, that pursuant to R.C. 4753.12(B), persons who hold an appropriate certificate from the State Board of Education and who contract with a board of education to render speech pathology or audiology services on either a part-time or a full-time basis are not subject to the jurisdiction of the State Board of Speech Pathology and Audiology unless they

also offer to render speech pathology or audiology services to the general public; if they do offer services to the general public, such persons are subject to licensure and regulation by both the State Board of Education and the State Board of Pathology and Audiology.