OPINION NO. 2007-028

Syllabus:

In the absence of a statute that authorizes a board of education to charge tuition to a resident parent of a child who is entitled to attend the schools of the district without tuition under R.C. 3313.64(B)(1) for the child's attendance at a cooperative educational program, whether such program is an ''educational option'' or a ''joint education program,'' offered by the school district in conjunction with other school districts, R.C. 3313.64(C) prohibits a board of education from imposing such a charge.

To: Susan Tave Zelman, Superintendent of Public Instruction, Columbus, Ohio

By: Marc Dann, Attorney General, September 5, 2007

You have requested the Attorney General's opinion concerning the authority of school districts to charge tuition for attendance at a program offered to students of the school districts that have collaborated in establishing the program. This program has been described as an ''educational option,'' as that term is defined in 5 Ohio Admin. Code 3301-35-01(B)(8),[1] or as a ''joint educational program,'' as

[1] 5 Ohio Admin. Code 3301-35-01(B)(8) defines the term ''educational options'' for purposes of 5 Ohio Admin. Code Chapter 3301-35, as meaning:*learning experiences or activities* that are designed to extend, enhance or supplement classroom instruction and meet individual student needs. Educational options are *offered in accordance with local board of education policy* and with parental approval. Such options may include, but are not limited to:

> (a) ''Distance learning''-systematic instruction in which the instructor and/or student participate by mail or electronic media.
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> (b) ''Educational travel''-an educational activity involving travel under the direction of a person approved by the board of education and parent.
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> (c) ''Independent study''-an educational activity involving advanced or in-depth work that an individual student pursues under the direction of a credentialed member of the school staff.
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> (d) ''Mentor program''-an educational activity including advanced or in-depth work by an individual student under direction of a non-credentialed individual. Mentors must meet criteria established by the board of education and are subject to parent approval.

described in R.C. 3313.842. One of the school districts that participates in this program plans to charge a fee to the parent of each child from the district who attends the program, even if the parent of that child resides within the school district.

Based upon conversations with your staff, we have modified your question to read, as follows:

> If the child of a resident parent participates in the program, may the school district, in an effort to cover the personnel and administrative costs of the program, charge resident parents tuition?

For the reasons that follow, we conclude that a board of education is without authority to require a parent who resides in the district and whose child attends a collaborative educational program such as you describe to pay a fee to cover the personnel and administrative costs of the program.

We begin with the well-established principle that boards of education, as creatures of statute, possess only those powers granted them by statute. *State ex rel. Clarke v. Cook*, 103 Ohio St. 465, 134 N.E. 655 (1921) (syllabus, paragraph two). Thus, we must determine whether any statute authorizes a board of education to require payment of a fee for the attendance of a child whose parent resides in the school district at a program that is a collaborative effort of various school districts.

The duty of a school district to provide a free education is prescribed by R.C. 3313.64, division (C) of which prohibits a school district from charging tuition for a child, as described in R.C. 3313.64(B), who is admitted to school in accordance with R.C. 3313.64(B)(1) in the district in which the child's parent resides.[2] There are specific statutory exceptions to the general prohibition in R.C. 3313.64(C). *See, e.g.* R.C. 3313.641 (in part, authorizing certain boards of education to offer

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> (e) ''Study abroad program''-a school program in another country that is made available to Ohio students and which is comparable to programs offered in the state of Ohio.
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> (f) ''Tutorial program''-an educational activity involving work by an individual student under the direction of a credentialed teacher. (Emphasis added.)

[2] R.C. 3313.64 states, in pertinent part:

> (B) Except as otherwise provided in section 3321.01 of the Revised Code for admittance to kindergarten and first grade, a *child who is at least five but under twenty-two years of age* and any handicapped preschool child *shall be admitted to school* as provided in this division.
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> (1) *A child shall be admitted to the schools of the school district in which the child's parent resides.*
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> ....
>
> (C) *A district shall not charge tuition for children admitted under division (B)(1) or (3) of this section.* If the district admits a child under division (B)(2) of

summer school, adult classes, postgraduate and other programs ''upon such terms and upon payment of such tuition as the board prescribes,'' and providing that ''[c]ourses of instruction in basic literacy may be offered with or without tuition, as the board determines''); R.C. 3313.646(A) (stating, in part, ''[a] board of education may establish fees or tuition, which may be graduated in proportion to family income, for participation in a preschool program. In cases where payment of fees or tuition would create a hardship for the child's parent or guardian, the board may waive any such fees or tuition'').[3] We must determine, therefore, whether the General Assembly has provided an exception from the prohibition in R.C. 3313.64(C) against a board of education's charging a resident parent tuition for his child's attendance at a school in the district for a situation in which a child within the district attends a collaborative program such as you describe.

As indicated in the material forwarded to us with your opinion request, one of the participating school districts refers to the program in question as an ''educational option,'' *see* note one, *supra*, while the Department of Education finds the program to be more akin to a ''joint education program,'' R.C. 3313.842. Let us, therefore, examine the authority of a board of education with respect to offering each such program.

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this section, tuition shall be paid to the district that admits the child .... (Emphasis added.)

[3] *See also, e.g.*, R.C. 3313.208(B) (stating, in part, ''[f]ees or tuition, in amounts determined by the board, may be charged for participation in the [latchkey] program''); R.C. 3313.52 (stating, in part, ''[a]ny person more than eighteen years old may be permitted to attend evening school upon such terms and upon payment of such tuition as the board prescribes''); R.C. 3323.143 (stating, in part, ''[i]f a handicapped child's custodial parent has made a unilateral placement of the child, the parent shall be responsible for payment of tuition to the program or facility the child is attending as a result of that placement as long as the district of residence has offered a free appropriate public education to that child''); R.C. 3327.06(B) (stating, in part, ''[w]hen the board of education of a city, exempted village, or local school district admits to the schools of its district any pupil who is not entitled to be admitted to the district's schools under [R.C. 3313.64(B) or (F), R.C. 3313.645, or R.C. 3313.65] for whose attendance tuition is not an obligation of the board of another district of this state, such board shall collect tuition for the attendance of such pupil from the parents or guardian of the pupil'').

There are also statutes that authorize a board of education to impose a charge for ''materials,'' other than textbooks or electronic textbooks, used in a course of instruction, R.C. 3313.642, for loss or destruction of instructional materials or damage to school buildings, R.C. 3313.642, or for the use of eye protective devices for certain classes or programs, R.C. 3313.643. As you mention, however, the school district's proposed charge is intended to cover personnel and administrative costs of the program, not classroom materials. Thus, neither R.C. 3313.642 nor R.C. 3313.643 authorizes a school district to impose a charge for personnel and administrative costs of a program such as you describe.

The authority of a board of education to offer its students "educational options" is found in 5 Ohio Admin. Code 3301-35-06(C)-(F), which define a school day for students in grades kindergarten through twelve as consisting of a certain number of hours of scheduled classes, certain supervised activities, or approved educational options. Division (G) of the rule establishes certain requirements applicable to "educational options" offered by a school district.[4] No statute, however, authorizes a board of education to charge tuition for a child's participation in an "educational option" offered by the school district if the student is entitled to attend the schools of the district without payment of tuition, as provided by R.C. 3313.64(B)(1).

One of the school districts participating in the program suggests that the cooperative educational program you describe is an "educational option" that a school district has no obligation to provide and that no student is required to attend. Because of the optional nature of the program, the school district asserts that it may condition a student's participation in the program upon compliance with any terms the school board may adopt under its general authority to regulate and manage its schools and pupils. The school district relies upon *Picklesimer v. Southwestern City School Dist. Bd. of Educ.*, No. 80AP-195, 1980 Ohio App. Lexis 13371 (Franklin County Sept. 30, 1980), and 1982 Op. Att'y Gen. No. 82-014, in support of its proposition. In *Picklesimer*, the court found that the authority of a board of education under R.C. 3313.20 to adopt necessary rules for the government of its pupils

[4] 5 Ohio Admin. Code 3301-35-06(G) states:

> (G) When made available, educational options shall require:
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> (1) An instructional plan that is based on individual student needs and shall include:
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> (a) Instructional objectives that align with the school district's curriculum requirements;
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> (b) An outline that specifies instructional activities, materials, and learning environments; and
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> (c) A description of the criteria and methods for assessing student performance.
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> (2) Parental permission for students under age eighteen;
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> (3) Superintendent approval prior to student participation;
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> (4) Involvement of a credentialed teacher in reviewing the instructional plan, providing or supervising instruction, and evaluating student performance; and
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> (5) Credit for approved educational options shall be assigned according to student performance relative to stated objectives of the educational option and in accordance with local board policy and established procedures.

and schools and under R.C. 3313.47 to manage and control its schools was sufficient to authorize a school board to impose a fee to be paid by students using the school parking lot. Adopting the reasoning of the *Picklesimer* court, 1982 Op. Att'y Gen. No. 82-014, concluded that a board of education may also charge a student a reasonable fee to participate in an extracurricular athletic program. Unlike the situations addressed in *Picklesimer* and 1982 Op. Att'y Gen. No. 82-014, however, a school board's authority to regulate and manage its schools and students is constricted by the provisions of R.C. 3313.64(C), which expressly prohibits a school district from charging tuition for any child whose parent resides in the school district.

The school district also asserts that a student who attends the cooperative educational program, which the district describes as not being one of its own programs, has nonetheless been admitted to the schools of the school district, and yet must pay the school district to which he has been admitted for attendance at the program. Again, however, we find no statutory exception to the prohibition in R.C. 3313.64(C) that would authorize a school district to charge tuition in such a situation.

We find, therefore, that, absent a statutory exception to the prohibition in R.C. 3313.64(C) against charging tuition for a child who is entitled by R.C. 3313.64(B)(1) to admission to the schools of the district in which the child's parents resides, a board of education may not charge tuition for a child's attendance at an "educational option" offered by the school district in which the child's parent resides. Thus, even if the cooperative educational program you describe constitutes an "educational option," as defined in rule 3301-35-01(B)(8), a board of education has no statutory authority to charge tuition to a parent who resides in the district for the attendance of that parent's child at a cooperative educational program such as you describe.

Let us now examine R.C. 3313.842, which authorizes boards of education to establish and operate "joint education programs," as follows:

> The boards of education of any two or more school districts may enter into an agreement for joint or cooperative establishment and operation of any educational program including any *class*, *course*, or *program that may be included in a school district's graded course of study* and staff development programs for teaching and nonteaching school employees. *Each school district* that is party to such an agreement *may contribute funds* of the district in support of the agreement and for the establishment and operation of any educational program established under the agreement. The agreement shall designate one of the districts as the district responsible for receiving and disbursing the funds contributed by the districts that are parties to the agreement. (Emphasis added.)

R.C. 3313.842 expressly authorizes school districts that participate in a joint education program to use school district funds to support the agreement with another district or districts or to establish and operate educational programs under the agree-

ment, but is silent with respect to charging tuition for a student's participation in such a program. We have found no other statute that authorizes a board of education that offers a ''joint education program,'' as described in R.C. 3313.842, to charge tuition for a child's participation in such a program if the child's parent resides in the school district. Thus, even if the program you describe constitutes a ''joint education program,'' as described in R.C. 3313.842, a school district participating in such program has no authority to charge tuition for a child's attendance in such program if the child's parent resides in the school district.

We conclude, therefore, that, in the absence of a statute that authorizes a board of education to charge tuition to a resident parent of a child who is entitled to attend the schools of the district without payment of tuition under R.C. 3313.64(B)(1) for the child's attendance at a cooperative educational program, whether such program is an ''educational option'' or a ''joint education program,'' offered by the school district in conjunction with other school districts, R.C. 3313.64(C) prohibits a board of education from imposing such a charge.

Based upon the foregoing, it is my opinion, and you are hereby advised that, in the absence of a statute that authorizes a board of education to charge tuition to a resident parent of a child who is entitled to attend the schools of the district without tuition under R.C. 3313.64(B)(1) for the child's attendance at a cooperative educational program, whether such program is an ''educational option'' or a ''joint education program,'' offered by the school district in conjunction with other school districts, R.C. 3313.64(C) prohibits a board of education from imposing such a charge.