

OPINION NO. 82-100**Syllabus:**

7 Ohio Admin. Code 5123:2-1-04(F)(2) establishes the ratio of adult enrollees to direct service staff in a direct service program of a county board of mental retardation and developmental disabilities at a maximum of fifteen adult enrollees to one direct service staff member.

To: David E. Bowers, Allen County Prosecuting Attorney, Lima, Ohio
By: William J. Brown, Attorney General, December 10, 1982

I have before me your request for my opinion concerning the required ratio of adult enrollees to staff members in a workshop operated by a county board of mental retardation and developmental disabilities (169 board).

By way of background you state that 7 Ohio Admin. Code 5123:2-1-04(F)(2) establishes a staff/enrollee ratio as follows: "The overall ratio of adult enrollees to direct service staff in the adult direct service program shall not exceed fifteen (15) enrolled clients to one (1) staff member." The board's employment contract with its staff contains a similar provision: "The employer agrees to maintain an adequate work force to provide a ratio of an adult enrollee to direct service staff not to exceed an average of 15 enrolled clients to one staff member. . . ." You also state that the Allen County 169 board employs in its adult direct service program a workshop specialist and habilitation specialists, who are the program's direct service staff members, and several other persons, who are support staff members. In light of these facts you ask whether rule 5123:2-1-04(F)(2) requires a specific ratio of adult enrollees to only direct service staff or whether the rule merely establishes a ratio of adult enrollees to all staff members.

A county board of mental retardation and developmental disabilities, as a creature of statute, has only those powers expressly granted by statute or necessarily implied therefrom. 1981 Op. Att'y Gen. No. 81-048. In addition to performing the duties imposed upon it by R.C. Chapters 3323 and 5126, the board must comply with rules promulgated by the Director of Mental Retardation and Developmental Disabilities under R.C. 5126.08, which states, in part: "The director of mental retardation and developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code for all services provided by a county board of mental retardation and developmental disabilities" (emphasis added). 1980 Op. Att'y Gen. No. 80-009 (syllabus, paragraph two).

Pursuant to R.C. 5126.08, the Director of Mental Retardation and Developmental Disabilities has promulgated rule 5123:2-1-04(F)(2), which applies to all 169 boards. 7 Ohio Admin. Code 5123:2-1-02. It is well settled that a rule issued pursuant to statutory authority has the force and effect of law unless the rule is unreasonable or is in clear conflict with a statutory provision governing the same subject matter. Kroger Grocery & Baking Co. v. Glander, 149 Ohio St. 120, 79 N.E.2d 228 (1948). The board is, therefore, bound to comply with the enrollee/staff ratio set forth in rule 5123:2-1-04(F)(2), absent a showing that the rule is unreasonable or conflicts with statute. Thus, I must conclude that the rule limits the authority of the board to fix enrollee/staff ratios in employment contracts with its staff.

As set forth above, rule 5123:2-1-04(F)(2) states: "The overall ratio of adult enrollees to direct service staff in the adult direct service program shall not

exceed fifteen (15) enrolled clients to one (1) staff member" (emphasis added). The ratio of adult enrollees to direct service staff required by the rule is a maximum of fifteen enrolled clients to one "staff member." It may appear that the term, "staff member," refers to all staff members. I believe, however, that the term "staff member" is limited by the first portion of the sentence, which states that the ratio established for adult direct service programs is that of "adult enrollees to direct service staff." The only staff members who should be included in computing this ratio are, therefore, direct service staff members. In the situation you describe, the patient/staff ratio required by rule 5123:2-1-04(F)(2) is a maximum of fifteen enrolled clients to one workshop specialist or habilitation specialist.

Based on the foregoing, it is my opinion, and you are advised, that 7 Ohio Admin. Code 5123:2-1-04(F)(2) establishes the ratio of adult enrollees to direct service staff in a direct service program of a county board of mental retardation and developmental disabilities at a maximum of fifteen adult enrollees to one direct service staff member.