

July 2, 2018

The Honorable William C. Hayes
Licking County Prosecuting Attorney
20 South Second Street
Newark, Ohio 43055

SYLLABUS:

2018-016

When an abused, neglected, or dependent child has been committed to the temporary or permanent custody of a public children services agency and placed by the public children services agency in a private residential facility in another state, and the other state is a member of the Interstate Compact on the Placement of Children, the costs of educating the child shall be paid by the school district determined by the court pursuant to R.C. 2151.362(A). The court shall determine which school district shall bear the cost of education by applying R.C. 3313.64(C)(1) or (C)(2). (1965 Op. Att’y Gen. No. 65-16, overruled, as a result of legislative enactment.)



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OPINION NO. 2018-016

The Honorable William C. Hayes
Licking County Prosecuting Attorney
20 South Second Street
Newark, Ohio 43055

Dear Prosecutor Hayes:

You have requested an opinion whether education costs, for a child who is in the custody of a public children services agency and placed in a private residential facility in a state other than Ohio, may be paid by the board of education of the child's home school district or another public entity in Ohio. You have explained that the public children services agency in Licking County has legal custody of a child.¹ The child suffers from severe behavioral problems and there is no suitable placement available for him in Ohio. Accordingly, the agency has placed him in a private residential facility in Virginia. The residential facility provides education to its residents through another private entity. You wish to know whether the board of education of the child's home school district in Ohio is responsible for paying the tuition costs related to the education he receives during his placement in the residential facility in Virginia.²

¹ In this opinion we have used the terms "temporary custody" and "permanent custody" to refer to legal custody of a child that has been vested in a public children services agency. *Compare* R.C. 2151.353(A)(3) (juvenile court may make an order of disposition that "[a]ward[s] legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings"), *with* R.C. 2151.353(A)(2)(a) (commitment of an abused, neglected, or dependent child to the temporary custody of a public children services agency) *and* R.C. 2151.353(A)(4) (commitment of an abused, neglected, or dependent child to the permanent custody of a public children services agency).

² Although we have recited facts that are related to a particular child's placement, this opinion does not make a binding legal determination as to the financial responsibilities of a particular school district in relation to a particular child. An opinion of the Attorney General cannot make factual determinations, resolve legal disputes between parties, or assign liability to a particular entity. 2004 Op. Att'y Gen. No. 2004-022, at 2-186 ("it is inappropriate to use a formal opinion of the Attorney General to make findings of fact or to attempt to determine rights between particular parties"); 2001

Vesting Custody of a Child in a Public Children Services Agency

Before addressing your question, it is helpful to understand the ways in which a child may be committed to the custody of a public children services agency. For the purpose of R.C. Chapter 2151, “legal custody” is:

a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities.³

R.C. 2151.011(B)(21) (footnote added). Generally, when a court awards legal custody of a child as a disposition under R.C. 2151.353, legal custody of the child is vested in a person, rather than in a public children services agency. *See* R.C. 2151.353(A)(3) (juvenile court may make an order of disposition that “[a]ward[s] legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings”); R.C. 2151.412(H)(4)-(5). An award of legal custody is intended to be permanent and may not be modified or terminated

unless [the court] finds, based on facts that have arisen since the order was issued or that were unknown to the court at the time, that a change has occurred in the circumstances of the child or the person who was granted legal custody, and that modification or termination of the order is necessary to serve the best interest of the child.

R.C. 2151.42(B).

Op. Att’y Gen. No. 2001-026, at 2-144 (“[t]he Attorney General cannot adjudicate the legal rights or responsibilities of particular persons”). Rather, an opinion of the Attorney General provides an explanation of the law that is applicable to a legal question. *See* 2001 Op. Att’y Gen. No. 2001-026, at 2-144 (“a formal opinion of the Attorney General can only address questions of law”). The agencies and public officials involved, or ultimately the courts, shall determine which school district, or other public entity, in a particular case shall pay the costs of tuition for a particular child.

³ For the purpose of R.C. Chapter 2151, “residual parental rights, privileges, and responsibilities” are “those rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal custody of the child, including, but not necessarily limited to, the privilege of reasonable visitation, consent to adoption, the privilege to determine the child’s religious affiliation, and the responsibility for support.” R.C. 2151.011(B)(48).

In contrast, a child may be committed to the temporary or permanent custody of a public children services agency as a disposition ordered by a court following the adjudication of the child as an abused, neglected, dependent, unruly, or delinquent child. R.C. 2151.353(A)(2)(a) (commitment of an abused, neglected, or dependent child to the temporary custody of a public children services agency); R.C. 2151.353(A)(4) (commitment of an abused, neglected, or dependent child to the permanent custody of a public children services agency); R.C. 2151.354(A)(1) (disposition of an unruly child may include any disposition authorized by R.C. 2151.353); R.C. 2152.19(A)(1) (disposition of a delinquent child may include any disposition authorized by R.C. 2151.353). Alternatively, a public children services agency may obtain temporary custody of a child if the agency and the parents, legal guardian, or other person having custody of a child, agree to place the child in the temporary custody of the agency for up to thirty days, without an order from a juvenile court. R.C. 5103.15(A)(1).⁴ A final way in which custody of a child may be vested in a public children services agency is if the agency and the parents, legal guardian, or other person having custody of a child enter into an agreement surrendering the child into the permanent custody of the agency. R.C. 5103.15(B). It is our understanding that you are concerned about a child who has been committed to the temporary custody of a public children services agency as an adjudicated abused, neglected, or dependent child.

The term “temporary custody” denotes “legal custody of a child who is removed from the child’s home, which custody may be terminated at any time at the discretion of the court, or if the legal custody is granted in an agreement for temporary custody, by the person who executed the agreement.” R.C. 2151.011(B)(55). “Permanent custody” is used to describe “a legal status that vests in a public children services agency or a private child placing agency, all parental rights, duties, and obligations, including the right to consent to adoption, and divests the natural parents or adoptive parents of all parental rights, privileges, and obligations, including all residual rights and obligations.” R.C. 2151.011(B)(31). Once a child is committed to the permanent custody of a public children services agency, parental rights are terminated and steps may be taken for the child to be adopted. *See* R.C. 2151.417(G)(4).

Custody of a child is distinguishable from a child’s placement. “[T]he placement of a child involves the making of a living arrangement for that child and does not require a change in the legal custody of the child.” 1995 Op. Att’y Gen. No. 95-032, at 2-168 n.6; *see generally* R.C. 2151.011(B)(36) (“[p]lacement for adoption’ means the arrangement by a public children services agency or a private child placing agency with a person for the care and adoption by that person of a child of whom the agency has permanent custody”); R.C. 2151.011(B)(37) (“[p]lacement in foster care’ means the arrangement by a public children services agency or a private child placing agency for the out-of-home care of a child of whom the agency has temporary custody or permanent custody”); R.C. 5103.23, article II(D) (for the purpose of the Interstate Compact on the Placement of Children,

⁴ Temporary custody may be extended for additional thirty-day periods pursuant to R.C. 5103.15.

“‘[p]lacement’ means the arrangement for the care of a child in a family free or boarding home, or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective, or epileptic, or any institution primarily educational in character, and any hospital or other medical facility”). A child’s placement refers to where a child lives, while custody refers to a legal status held by a person or entity. When a juvenile court commits a child to the temporary or permanent custody of a public children services agency, the court has determined the child’s custody, leaving determinations as to the child’s placement to the public children services agency. *In re V.B.*, 12th Dist. No. CA2014-05-008, 2014-Ohio-5492, 2014 Ohio App. LEXIS 5324, at ¶ 13 (when a child is committed to the temporary custody of a public children services agency, the agency determines the child’s placement and the juvenile court may not order the agency to place the child in a particular institution); *In re J.D.*, 172 Ohio App. 3d 288, 2007-Ohio-3279, 874 N.E.2d 858, at ¶ 18 (Franklin County) (same as previous parenthetical); *see also In re S.M.*, 12th Dist. No. CA2009-02-008, 2009-Ohio-4677, 2009 Ohio App. LEXIS 3968, at ¶ 15-16 (if after custody is vested in a public children services agency, the agency’s placement of a child is challenged, the juvenile court may review the child’s placement pursuant to R.C. 2151.417).

Placement in a Facility Outside Ohio

A public children services agency shall “[p]rovide such care as the public children services agency considers to be in the best interests of any child adjudicated to be an abused, neglected, or dependent child the agency finds to be in need of public care or service[.]” R.C. 5153.16(A)(4). The care the public children services agency provides

shall be provided by the agency, by its own means or through other available resources, in the child’s own home, in the home of a relative or qualified nonrelative, or in a certified foster home, any other home approved by the court, receiving home, school, hospital, convalescent home, or other *public or private institution within or outside the county or state*.

R.C. 5153.161(B) (emphasis added). A public children services agency is, therefore, expressly authorized to provide care to a child through other available resources in a school, or a public or private institution within or outside Ohio. *Id.* To ensure continuity in the care provided by a public children services agency and the continuing jurisdiction of an Ohio court when a child is placed in another state, Ohio has adopted the Interstate Compact on the Placement of Children. *See* R.C. 5103.20, article I(G); R.C. 5103.23. To the extent applicable, a juvenile court is required to exercise its jurisdiction in child custody matters in accordance with the Interstate Compact on the Placement of Children (R.C. 5103.20-22 or R.C. 5103.23-.237). R.C. 2151.23(F)(1); *see also* R.C. 5103.20, article

III(A) (the Interstate Compact on the Placement of Children applies to children that have been adjudicated abused, neglected, dependent, or delinquent).⁵

When a child is placed in another state, “[t]he sending state⁶ shall *retain* jurisdiction over [the] child with respect to *all matters of custody* and disposition of the child *which it would have had* if the child had remained in the sending state.” R.C. 5103.20, article IV(A) (footnote and emphasis added). In addition, “[t]he sending agency⁷ shall *retain* jurisdiction over the child sufficient to determine *all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had* if the child had remained in the sending agency’s state[.]” R.C. 5103.23, article V(A) (footnote and emphasis added).

R.C. 5103.231 states “[f]inancial responsibility for any child placed pursuant to the provisions of the interstate compact on the placement of children shall be determined in accordance with the provisions of Article V of [R.C. 5103.23].” Article V(A) of R.C. 5103.23 requires the sending agency to “*continue* to have financial responsibility for support and maintenance of the child during the period of the placement.”⁸ *See also* R.C. 5103.20, article VII(A)(1)(a) (“[t]he public child placing agency in

⁵ Insofar as your letter states that the child has been placed in Virginia, a party to the Interstate Compact on the Placement of Children, Va. Code Ann. § 63.2-1000 (2018), *et seq.*, this opinion does not address your question with respect to a state that is not a party to the Interstate Compact.

⁶ As used in the Interstate Compact on the Placement of Children, a “sending state” is “the state from which the placement of a child is initiated.” R.C. 5103.20, article II(T). In the situation described in your letter, the sending state is Ohio.

⁷ For purposes of the Interstate Compact on the Placement of Children, a “sending agency” is “a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency, or other entity which sends brings, or causes to be sent or brought any child to another party state.” R.C. 5103.23, article II(B). In the situation described in your letter, Ohio (and officers or employees thereof), Licking County (and officers or employees thereof), the public children services agency in Licking County, and the juvenile court in Licking County may each constitute a “sending agency” for the purpose of the Interstate Compact on the Placement of Children depending upon which entity is responsible for sending the child to another state.

⁸ Pursuant to R.C. 5103.23, article V(B), “when the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.” As used in the Interstate Compact on the Placement of Children, the “receiving state” is “the state to which the child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.” R.C. 5103.23, article II(C). In the situation described in your letter, Virginia is the receiving state.

the sending state shall have financial responsibility for ... [t]he ongoing support and maintenance for the child during the period of placement, unless otherwise provided for in the receiving state”). Once the receiving state has approved the placement of a child in that state by a public children services agency in Ohio, if placement of the child has been made by a public children services agency, the public children services agency in Ohio that has custody of the child “shall ... [m]aintain *financial responsibility* for the care, medical care and *education* of the child and retain jurisdiction of the child[.]” 13 Ohio Admin. Code 5101:2-52-04(E)(3) (Supplement 2016-2017) (emphasis added). If a child has been placed outside Ohio by an Ohio court, “the parent, legal guardian or Ohio court shall ... [m]aintain financial responsibility for the care, medical care and *education* and retain jurisdiction of the child throughout the duration of placement[.]” 13 Ohio Admin. Code 5101:2-52-10(C) (Supplement 2016-2017) (emphasis added).

A member of your office has explained that the child who is the subject of your letter was placed in the private facility in Virginia by the public children services agency in Licking County and not by the juvenile court. Accordingly, the Licking County juvenile court retains jurisdiction with respect to *all matters of custody* and disposition of the child *which it would have had* if the child had been placed in Ohio. Moreover, the public children services agency in Licking County retains jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child and shall maintain financial responsibility for the child’s education after he is placed in Virginia.

The statutes enacting the Interstate Compact on the Placement of Children and the accompanying administrative rules use terms such as “retain,” “continue,” and “maintain” when addressing the authority and responsibilities of the sending state and the sending agency with respect to the support and maintenance of a child placed in another state. R.C. 5103.20, article IV(A); R.C. 5103.23, article V(A); rule 5101:2-52-04(E)(3). Those provisions of the Interstate Compact on the Placement of Children contemplate that, when a child is placed in another state, financial orders and responsibilities regarding the child’s care shall remain in place as if the child had been placed in Ohio. *See generally Merriam-Webster’s Collegiate Dictionary* 270 (11th ed. 2005) (defining “continue” as “to maintain without interruption a condition, course, or action ... to remain in existence”); *id.* at 749 (defining “maintain” as “to keep in an existing state”); *id.* at 1063 (defining “retain” as “to keep in possession or use ... to hold secure or intact”). The Interstate Compact on the Placement of Children does not impose a new method of dividing or assessing costs of education. Rather, it requires that the costs of education be divided and assessed as they would have been had the child been placed in Ohio. 1989 Op. Att’y Gen. No. 89-092, at 2-444 (the Interstate Compact on the Placement of Children “appears to be directed at establishing requirements and limitations between the sending agency and the receiving state, but does not affect the rights, responsibilities, and obligations of the sending agency with respect to persons, agencies or other entities within the state from which the child is sent,

as governed by the laws of that state”).⁹ Therefore, whether the home school district of the child who is the subject of your letter may be required to pay the costs of education while the child is in Virginia depends upon whether the home school district could be required to pay those costs if the child was placed in Ohio.

Costs of Education for a Child Committed to the Temporary Custody of a Public Children Services Agency

We now address the payment of tuition costs for a child committed to the temporary custody of a public children services agency and placed in Ohio. If a child, who has been adjudicated an abused, neglected, or dependent child, is not returned to the child’s own home at a dispositional hearing, the juvenile court “shall determine which school district shall bear the cost of the child’s education and shall comply with [R.C. 2151.36].” R.C. 2151.35(B)(3); *see also* Juv. R. 34(C) (“[i]f the child is not returned to the child’s home, the court shall determine the school district that shall bear the cost of the child’s education and may fix an amount of support to be paid by the responsible parent or from public funds”). R.C. 2151.36 requires the juvenile court to issue an order “requiring that the parent, guardian, or person charged with the child’s support pay for the care, support, maintenance, and education of the child.” When a court makes an order that removes a child from the child’s own home or vests legal or permanent custody in a public children services agency, the court is also required to determine which school district shall bear the cost of educating the child. R.C. 2151.362(A)(1). “That school district shall bear the cost of educating the child unless and until the

⁹ In 1989 Op. Att’y Gen. No. 89-092, at 2-444 to 2-445, the Attorney General addressed whether an Ohio school district that was determined to be responsible for the cost of education of a child placed in another state should pay the receiving state or the Ohio public children services agency. The Attorney General concluded

R.C. 5103.20 merely enables the receiving state to look to the sending agency ... for financial responsibility for the costs of the child’s maintenance and support.... Whether the responsible school district is to make payments to the receiving state or to the children services board is a matter which is not directed by statute. The juvenile court may, therefore, in the exercise of its discretion, determine to whom such payments may be made.

Id. This is further support for the notion that the Interstate Compact on the Placement of Children does not impose a system of allocating or dividing costs, but incorporates the cost allocation that would be in place if the child was placed in the sending state.

department of education determines that a different district shall be responsible for bearing that cost pursuant to [R.C. 2151.362(A)(2)].”¹⁰ R.C. 2151.362(A)(1).

The determination of which school district shall pay the cost of educating the child shall be made in accordance with R.C. 3313.64(C)(1) or (C)(2). R.C. 2151.362(A)(1). More specifically, R.C. 2151.362(A)(1) states “[i]n the manner prescribed by [R.C. 3313.64(C)(1) or (2)], as applicable, the court, at the time of making any order that removes a child from the child’s own home or that vests legal or permanent custody of the child in a ... government agency, shall determine the school district that is to bear the cost of educating the child.” Pursuant to R.C. 3313.64(C)(1), “[i]f the child receives special education in accordance with [R.C. Chapter 3323], the school district of residence, as defined in [R.C. 3323.01¹¹], shall pay tuition for the child in accordance with [R.C. 3323.091, R.C. 3323.13, R.C. 3323.14, or R.C. 3323.141] regardless of who has custody of the child or whether the child resides in a home.” If the child does not receive special education, R.C. 3313.64(C)(2) provides:

except as otherwise provided in [R.C. 3313.64(C)(2)(d)], if the child is in the permanent or legal custody of a government agency or person other than the child’s parent, tuition shall be paid by:

(a) The district in which the child’s parent resided at the time the court removed the child from home or at the time the court vested legal or permanent custody of the child in the person or government agency, whichever occurred first;

(b) If the parent’s residence at the time the court removed the child from home or placed the child in the legal or permanent custody of the person or government agency is unknown, tuition shall be paid by the district in which the child

¹⁰ The Department of Education may designate a different school district to bear the cost of educating a child in the legal custody of a public children services agency, if the Department determines that the place of residence of the child’s parent has changed. R.C. 2151.362(A)(2).

¹¹ Under R.C. 3323.01(L), the “school district of residence” means:

(1) The school district in which the child’s natural or adoptive parents reside;

(2) If the school district specified in [R.C. 3323.01(L)(1)] cannot be determined, the last school district in which the child’s natural or adoptive parents are known to have resided if the parents’ whereabouts are unknown;

(3) If the school district specified in [R.C. 3323.01(L)(2)] cannot be determined, the school district determined under section 2151.362 of the Revised Code, or if no district has been so determined, the school district as determined by the probate court of the county in which the child resides.

(4) Notwithstanding [R.C. 3323.01(L)(1) to (3)], if a school district is required by section 3313.65 of the Revised Code to pay tuition for a child, that district shall be the child’s school district of residence.

resided at the time the child was removed from home or placed in legal or permanent custody, whichever occurred first;

(c) If a school district cannot be established under [R.C. 3313.64(C)(2)(a) or (b)], tuition shall be paid by the district determined as required by [R.C. 2151.362] by the court at the time it vests custody of the child in the person or government agency;

(d) If at the time the court removed the child from home or vested legal or permanent custody of the child in the person or government agency, whichever occurred first, one parent was in a residential or correctional facility or a juvenile residential placement and the other parent, if living and not in such a facility or placement, was not known to reside in this state, tuition shall be paid by the district determined under [R.C. 3313.65(D)] as the district required to pay any tuition while the parent was in such facility or placement;

(e) If the department of education has determined, pursuant to [R.C. 2151.362(A)(2)], that a school district other than the one named in the court's initial order, or in a prior determination of the department, is responsible to bear the cost of educating the child, the district so determined shall be responsible for that cost.

Therefore, when a child is committed to the temporary or permanent custody of a public children services agency, the court shall determine which school district shall pay the cost of educating the child. If the child receives special education, the cost of tuition for the child shall be paid by the school district of residence in accordance with R.C. 3323.091, R.C. 3323.13, R.C. 3323.14, or R.C. 3323.141. R.C. 3313.64(C)(1). If the child does not receive special education, tuition shall be paid by the school district identified by applying R.C. 3313.64(C)(2). To illustrate the application of R.C. 3313.64(C)(2), consider the following example. If a child who has been committed to the temporary custody of a public children services agency does not receive special education, and the residence of the child's parents at the time that he was removed is known, the juvenile court shall order the school district in which the child's parents resided when the child was removed to bear the cost of educating the child. R.C. 3313.64(C)(2)(a). If the parents' residence at the time of the child's removal is not known, tuition shall be paid by the school district in which the child resided upon his removal. R.C. 3313.64(C)(2)(b). Finally, if a school district cannot be identified under R.C. 3313.64(C)(2)(a) or (b), tuition shall be paid by the school district determined by the court. R.C. 3313.64(C)(2)(c).

It is unclear from R.C. 3313.64(C)(1) and (C)(2) whether an Ohio public school district may be required, pursuant to R.C. 2151.362(A), to pay tuition costs for education obtained from a private entity when a public children services agency has temporary or permanent custody of a child and has placed the child in a private facility. R.C. 3313.64(C)'s introductory language states, in pertinent part,

“[if] the district admits a child under [R.C. 3313.64(B)(2)¹²], tuition shall be paid to the district that admits the child as provided in [R.C. 3313.64(C)(1) to (3)], unless [R.C. 3313.64(C)(4)] applies to the child.” This language could be construed to mean that an Ohio public school district may pay tuition only to another public school district. *See* R.C. 3313.64(A)(3) (defining “school district” to mean “a city, local, or exempted village school district and excludes any school operated in an institution maintained by the department of youth services”).

However, R.C. 3313.64(C)(1) and (C)(2) must be read *in pari materia* with R.C. 2151.362(A). R.C. 2151.362(A) directs a court to determine which school district shall pay the cost of educating a child in the manner provided in divisions (C)(1) and (C)(2) of R.C. 3313.64. R.C. 2151.362(A) does not incorporate R.C. 3313.64 or division (C) in its entirety. The requirement to identify a school district in the manner set forth in R.C. 3313.64(C)(1) and (C)(2) is imposed by R.C. 2151.362(A) regardless of whether the child’s education is provided by a public or private school. Divisions (C)(1) and (C)(2) of R.C. 3313.64, as incorporated by R.C. 2151.362(A), simply state that “tuition” shall be paid by a particular district and do not distinguish between tuition costs incurred for a public school and a private school.

As discussed above, R.C. 5153.161(B) authorizes a public children services agency to place abused, neglected, or dependent children in public or private facilities. When interpreting a statute, it is presumed that when the statute was enacted, the General Assembly was aware of other existing statutes. *State v. Conyers*, 87 Ohio St. 3d 246, 250, 719 N.E.2d 535 (1999) (“[the court] must presume that the General Assembly is aware of previously enacted legislation”); *Meeks v. Papadopoulos*, 62 Ohio St. 2d 187, 191-92, 404 N.E.2d 159 (1980) (“the General Assembly, in enacting a statute, is assumed to have been aware of other statutory provisions concerning the subject matter of the enactment even if they are found in separate sections of the Code”). Therefore, we must presume that in enacting R.C. 2151.362(A), thereby requiring a court to determine which school district shall bear the cost of educating a child, the General Assembly was aware that the child may be placed in a private facility that provides education to the child. Despite being aware that a public children services agency may place a child in a private facility or institution that provides education to the child, the General Assembly, nevertheless, directed that the court determine which school district shall bear the cost of education for that child in accordance with divisions (C)(1) and (C)(2) of R.C.

¹² R.C. 3313.64(B)(2) provides:

Except as provided in [R.C. 2151.362(B)] and [R.C. 3317.30], a child who does not reside in the district where the child’s parent resides shall be admitted to the schools of the district in which the child resides if any of the following applies:

- (a) The child is in the legal or permanent custody of a government agency or a person other than the child’s natural or adoptive parent.
- (b) The child resides in a home.
- (c) The child requires special education.

3313.64. The General Assembly did not provide an alternative means of determining how education costs would be paid when the child is committed to the custody of a public children services agency and the public children services agency places the child in a private facility that provides education to the child.¹³ Cf. 1989 Op. Att’y Gen. No. 89-006, at 2-26 n.5 (“I find nothing in R.C. 3313.64(C)(2) which prevents making [tuition] payments to an out-of-state school”). Therefore, we conclude that when a court is determining which school district shall bear the cost of education for a child who has been committed to the temporary custody of a public children services agency and placed by the public children services agency in a private residential facility in another state, the court shall apply divisions (C)(1) and (C)(2) of R.C. 3313.64.¹⁴

¹³ If a child is placed *by the court* in a private institution, school, or residential treatment center or any other private facility, R.C. 2151.362(C) provides that the state shall pay a subsidy of up to \$2,500 per year per child to the court to help defray the cost of educating the child. R.C. 2151.362(C) applies when the court has ordered that a child be placed in a particular private institution or when the court has committed the child to the custody of a private institution. See 1989 Op. Att’y Gen. No. 89-006 (syllabus). Insofar as the child was placed in the facility in Virginia by a public children services agency rather than by the court, it appears that R.C. 2151.362(C) does not apply.

In addition, expenses ordered by the court for “the care, support, maintenance, education, orthopedic, medical, or surgical treatment, or special care” that are not “paid by the state or federal government or paid by the parents, guardians, or person charged with the child’s support pursuant to [R.C. 2151.36], shall be paid from the county treasury upon specifically itemized vouchers, certified to by the judge.” R.C. 2151.36.

We do not believe that the expenses contemplated by R.C. 2151.36 include ordinary costs of education that a court determines a school district shall bear pursuant to R.C. 2151.362(A). *But see In re Sanders*, 72 Ohio App. 3d 655, 659, 595 N.E.2d 974 (Cuyahoga County 1991) (because the court had no authority to order the Ohio Department of Youth Services to pay the cost of a delinquent child’s care in a private out-of-state facility when the Department had legal custody of the child, the costs of the placement should be assessed to the county treasury pursuant to R.C. 2151.36). If R.C. 2151.36 were interpreted to encompass the cost of education assigned to a school district pursuant to R.C. 2151.362(A), the application of R.C. 2151.36 would render meaningless the requirement of R.C. 2151.362(A) that the juvenile court determine which school district shall bear the costs of the child’s education.

¹⁴ A school district may be required to pay the costs of an out-of-state facility pursuant to R.C. 2151.362(A). See 1989 Op. Att’y Gen. No. 89-006, at 2-25 (the court’s responsibility to determine which school district shall bear the cost of education applies to any disposition the court may order, including an out-of-state disposition. In addition, “[t]he court’s authority to determine which school district should bear the educational costs of an out-of-state disposition implies a corresponding authority on the part of the school district to make such payments in response to the order”).

Reconsideration of 1965 Op. Att’y Gen. No. 65-16

In the syllabus of 1965 Op. Att’y Gen. No. 65-16, the Attorney General advised “[t]he school districts of Ohio are not empowered to make tuition payments pursuant to Section 3313.64, Revised Code, to schools or school districts outside the State of Ohio.” At the time, R.C. 3313.64 provided, in part:

“The board may admit the inmates of a private children’s home or institution located in the district, provided any child who is an inmate of such a home or institution and previous to admission was a school resident of the school district in which such home or institution is located shall be entitled to free education; and, *provided any such inmate who attends the public school was, prior to admission to such home or institution, a school resident of another school district of the state*, tuition shall be paid by such school district in the manner provided for the payment of tuition by section 3317.08 of the Revised Code.”

1965 Op. Att’y Gen. No. 65-16, at 2-41 (quoting R.C. 3313.64) (emphasis added). The Attorney General reasoned that references to the payment of school tuition in the version of R.C. 3313.64 in effect at that time were intended to apply only to public school districts in Ohio. 1965 Op. Att’y Gen. No. 65-16, at 2-43 (“[s]ince the language of the statute is ‘another school district in the state’, it is obvious that the legislature, in enacting [R.C. 3313.64], did not intend that tuition be paid to out-of-state private school authorities”). The Attorney General finally concluded that

the apparent lack of statutory authority in either [R.C. 3313.64], or elsewhere empowering school districts to pay tuition for students now attending school outside the state of Ohio leads to no other conclusion than that it is neither mandatory nor permissible for a school district of the state of Ohio to pay tuition for one of its former students who now attends school outside the state.

1965 Op. Att’y Gen. No. 65-16, at 2-43.

The statutes currently in effect that address the payment of the cost of education for a child removed from the child’s home are significantly different than those in effect when 1965 Op. Att’y Gen. No. 65-16 was issued. The General Assembly has substantially amended R.C. 3313.64 numerous times. In addition, statutory language requiring a court to determine the school district that shall bear the cost of educating a child removed from the child’s home was enacted in 1969. 1969-1970 Ohio Laws, Part II, 2040, 2066 (Am. Sub. H.B. 320, eff. Nov. 19, 1969).¹⁵ Ohio first enacted the Interstate Compact on the Placement of Children in 1975. Ohio Legislative Service Comm’n, Revised Final Analysis, Am. Sub. S.B. 238 (2006). The current versions of R.C. 5103.20 and R.C. 5103.23 were enacted in 2006 and 2008, respectively. 2005-2006 Ohio Laws, Part I, 1550, 1661,

¹⁵ R.C. 2151.357 is the predecessor of R.C. 2151.362(A).

(Am. Sub. S.B. 238, eff. Sept. 21, 2006); Am. Sub. H.B. 214, 127th Gen. A. (2008) (eff. May 14, 2008). Finally, in 1981, the General Assembly added a requirement that the court determine which school district shall bear the cost of education in accordance with R.C. 3313.64(C)(2). 1981-1982 Ohio Laws, Part I, 438 (Am. S.B. 140, eff. July 1, 1981).

Although the current version of R.C. 3313.64 does not expressly authorize the payment of tuition to a school outside Ohio, as explained earlier in this opinion, that authority is necessarily implied when R.C. 2151.362(A), R.C. 3313.64(C)(1) and (C)(2), R.C. 5103.23, and R.C. 5153.16(A)(4) are read *in pari materia*. See 1989 Op. Att’y Gen. No. 89-006, at 2-25 (“[t]he court’s authority to determine which school district should bear the educational costs of an out-of-state disposition implies a corresponding authority on the part of the school district to make such payments in response to the order”). In light of the changes in the law since the issuance of 1965 Op. Att’y Gen. No. 65-16, the opinion is no longer an accurate statement of the law. 1965 Op. Att’y Gen. No. 65-16, is overruled, as a result of legislative enactment.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that when an abused, neglected, or dependent child has been committed to the temporary or permanent custody of a public children services agency and placed by the public children services agency in a private residential facility in another state, and the other state is a member of the Interstate Compact on the Placement of Children, the costs of educating the child shall be paid by the school district determined by the court pursuant to R.C. 2151.362(A). The court shall determine which school district shall bear the cost of education by applying R.C. 3313.64(C)(1) or (C)(2). (1965 Op. Att’y Gen. No. 65-16, overruled, as a result of legislative enactment.)

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General