

OPINION NO. 81-054**Syllabus:**

A special education program established pursuant to R.C. 3323.09 and operated by a county board of mental retardation and developmental disabilities does not qualify for funding paid pursuant to R.C. 3317.024(N) and (O).

To: Joseph L. Cain, Gallia County Pros. Atty., Gallipolis, Ohio
By: William J. Brown, Attorney General, September 23, 1981

I have before me your request for an opinion in which you ask whether a county board of mental retardation and developmental disabilities may obtain "04 units" for a special education program operated by the board. It is my understanding that an "04 unit" is a unit of funding paid by the state board of education pursuant to R.C. 3317.024(N) or (O). Because of the general applicability of your question, I have elected to respond by means of a formal opinion.

R.C. 3317.024 reads, in pertinent part, as follows:

To school districts meeting the requirements of section 3317.01 of the Revised Code, and in the case of division (I) of this section, to county and joint vocational school districts, and, in the case of divisions (N) and (O) of this section, to institutions providing special education programs under section 3323.091 of the Revised Code which are under the supervision of the division of special education of the state department of education and meet such standards and rules for such programs as are established by the state board of education. . .there shall be distributed monthly, quarterly, or annually as may be determined by the state board of education, moneys appropriated for the following education programs:

. . . .

(N) An amount for each approved unit for a deaf, blind, emotionally disturbed, crippled, neurologically handicapped, or

educable mentally retarded class in the district or in the institution. . . .

(O) An amount for each approved unit for the gifted, child study, occupational or physical therapy, speech and hearing, special education supervisors, and special education coordinators. (Emphasis added.)

Pursuant to this section, the unit funding to which you refer is paid either to school districts meeting the requirements of R.C. 3317.01 or to certain qualified institutions which provide special education programs under R.C. 3323.091 and which are supervised by the Division of Special Education of the State Department of Education.

Clearly, a county board of mental retardation and developmental disabilities is not a school district. See R.C. Chapter 3311. It is, therefore, necessary to determine whether a school operated by a county board of mental retardation and developmental disabilities is an "[institution] providing special education programs under section 3323.091 of the Revised Code." R.C. 3323.091 reads as follows:

(A) The department of mental health, the department of mental retardation and developmental disabilities, the youth commission, and the board of trustees of the Ohio veterans' children's home shall establish and maintain special education programs for handicapped children in institutions under their jurisdiction according to standards adopted by the state board of education. The superintendent of each institution providing special education under this chapter may apply to the state department of education for unit funding, which shall be paid in accordance with divisions (N) and (O) of section 3317.024 of the Revised Code.

(B) This division does not apply to the Ohio veterans' children's home. On or before the thirtieth day of June of each year, the superintendent of each institution that during the school year provided special education pursuant to this section shall prepare a statement for each handicapped child under twenty-two years of age who has received special education. The statement shall contain the child's name and the name of the child's school district of residence. Within sixty days after receipt of such statement, the department of education shall:

(1) Pay to the institution submitting the statement an amount equal to the normal tuition rate as calculated under sections 3317.05 and 3317.08 of the Revised Code, and deduct the same from the amount of state funds, if any, allocated under Chapter 3317. of the Revised Code, to the child's school district of residence; or

(2) If the amount of state funds to be allocated is insufficient, require the child's school district of residence to pay the institution submitting the statement an amount equal to the normal tuition rate as calculated under such sections. (Emphasis added.)

This section requires the Department of Mental Retardation and Developmental Disabilities to establish and maintain special education programs for handicapped children "in institutions under [its] jurisdiction." Although the term, "institutions under [the Department's] jurisdiction," is not defined for purposes of R.C. Chapter 3323, "institution" is defined in R.C. Chapter 5123, which governs the Department of Mental Retardation and Developmental Disabilities generally, as a "public or private facility, or part thereof which is licensed by the appropriate state department and is equipped to provide residential habilitation, care, and treatment for the mentally retarded." R.C. 5123.01(H). It is my understanding that your school is not equipped to provide "residential habilitation, care, and treatment," but is merely a day program. It appears, therefore, that the Guiding Hand School operated by the Gallia County 169 Board is not an "institution" under the Department's jurisdiction.

A special education program operated by a county board of mental retardation is established by R.C. 3323.09, which reads in part as follows:

The director of the department of mental retardation and developmental disabilities, as authorized by the state board of education, shall establish special education programs for handicapped children to be operated and maintained by county boards of mental retardation and developmental disabilities in accordance with a plan submitted to and approved by the director. Such plan shall include a request for funding that will allow the county board to provide special education to all handicapped children who, in accordance with section 3323.04 of the Revised Code, have been placed in special education programs operated by the county board. The director shall compile the plans submitted by county boards and shall submit a comprehensive plan to the state board of education.

A county board of mental retardation and developmental disabilities that during the school year provided special education pursuant to this section for mentally handicapped children shall prepare a statement for each mentally handicapped child under twenty-two years of age who has received such special education. (Emphasis added.)

It is pursuant to this section, rather than R.C. 3323.091, that the Director of the Department of Mental Retardation and Developmental Disabilities establishes the special education programs operated by county boards of mental retardation and developmental disabilities.

A special education program operated by a county board of mental retardation and developmental disabilities, not being an institution providing a special education program pursuant to R.C. 3323.091, does not qualify for funding under the provisions of R.C. 3317.024(N) and (O).

You have specifically mentioned 1980 Op. Att'y Gen. No. 80-009, which concluded that a county board must provide an appropriate public education for children placed in programs established pursuant to R.C. 3323.09. Although R.C. 3323.09 has been amended several times since issuance of Op. No. 80-009,¹ that section still imposes upon county boards the duty to operate special education programs. Nevertheless, for the reasons set forth above, a county board of mental retardation and developmental disabilities which operates a special education program established under R.C. 3323.09 does not qualify for the particular funding provided by R.C. 3317.024(N) and (O).

Therefore, it is my opinion, and you are advised, that a special education program established pursuant to R.C. 3323.09 and operated by a county board of mental retardation and developmental disabilities does not qualify for funding paid pursuant to R.C. 3317.024(N) and (O).

¹Am. Sub. H.B. 900, 113th Gen. A. (1980) (eff. July 1, 1980); Am. Sub. H.B. 550, 113th Gen. A. (1980) (eff. July 18, 1980); Am. Sub. S.B. 160, 113th Gen. A. (1980) (eff. Oct. 31, 1980); Am. S.B. 140, 114th Gen. A. (1981) (eff. July 1, 1981).