

OPINION NO. 84-006**Syllabus:**

1. When a mentally handicapped child resides in a group home, and his school district of residence is located in a different county, and he receives special education from the county board of mental retardation and developmental disabilities of the county in which the group home is located, that board may not charge tuition to the school district of residence in excess of the per capita payment amount determined under R.C. 3323.09.
2. The costs to a county board of mental retardation and developmental disabilities of providing special education to a child who is a school resident of a district outside the county, in excess of the amounts of financial assistance received from the school district of residence pursuant to R.C. 3323.09 and from the State of Ohio for providing special education to that child, may not be billed indirectly through the county board of education to the child's school district of residence pursuant to R.C. 3323.14.

To: Michael Ward, Athens County Prosecuting Attorney, Athens, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, February 21, 1984

You indicated that you have been presented with two questions involving the financial responsibility for providing special education to certain children at facilities maintained and operated by the Athens County Board of Mental Retardation and Developmental Disabilities. I have restated your questions as follows:

1. When a mentally handicapped child resides in a group home in Athens County and his school district of residence is located in an Ohio county other than Athens County, and he receives special education from the Athens County Board of Mental Retardation and Developmental Disabilities, may tuition be charged by the Board to the school district of residence in an amount in excess of the per capita tuition payment provided under R.C. 3323.09?
2. When the actual cost of providing special education to a mentally handicapped child who is a school resident of a district located outside Athens County exceeds the amount of funding received from the child's school district of residence under R.C. 3323.09 and amounts received from the State for the education of the child, may the excess cost of educating the child be billed indirectly through the Athens County Board of Education to the school district of residence pursuant to the "excess cost" provision of R.C. 3323.14?

A county board of mental retardation and developmental disabilities, as a creature of statute, has only those powers which are expressly granted or necessarily implied. See Ebert v. Board of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980). From this principle it follows that a county board of mental retardation and developmental disabilities may charge tuition to a handicapped child's school district of residence only in accordance with its statutory authority, and that tuition payments from the school district of residence may be required when authorized by statute, and only in the amount that is authorized.

County boards of mental retardation and developmental disabilities have a legally mandated duty, pursuant to R.C. 3323.09, to operate and maintain special education programs for mentally handicapped children. See 1980 Op. Att'y Gen. No. 80-009. The General Assembly intends special education programs established under R.C. 3323.09 to be an integral part of the education system of Ohio. Id.

Your questions concern the issue of the financial responsibility of the school district of residence for special education programs provided by a county board of mental retardation and developmental disabilities to children who actually reside in the county but whose school district of residence is located outside the county. Under R.C. 3323.01(1), the school district of residence means (1) the school district in which the child's parents reside, or if that cannot be determined, (2) the school district in which the parents were known to reside, or if that also cannot be determined, (3) the school district of residence that has been determined by a court.¹

A statutory scheme exists to provide financial support for special education programs operated by county boards of mental retardation and developmental disabilities. Such boards may receive payments from the state pursuant to R.C. 3323.09, R.C. 5126.12 and R.C. 5126.13. In addition, such boards may receive reimbursement for tuition costs from the board of education of a child's school district of residence pursuant to R.C. 3323.09 which provides, in pertinent part, as follows:

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. The statement shall contain the child's name, the name of his school district of residence, the name of the county board providing the special education, the number of months it was provided, and whether the child was enrolled in an approved unit under section 5126.13 of the Revised Code. Not later than the thirtieth day of June, the board shall forward a certified copy of such statement to both of the following:

(B) The treasurer of the board of education of the child's school district of residence or if the child is a resident of a home, as defined in section 3313.64 of the Revised Code, is not in the legal or permanent custody of an Ohio resident or a government agency in this state, and the child's parents are not known to have been residents of this state subsequent to the child's birth, to the home.

Within thirty days after the receipt of such statement the board of education shall, for each child who is a school resident of the district, who was placed in the county board's program in accordance with that portion of a school district's approved plan for special education adopted under division (B) of section 3323.08 of the Revised Code, and who was not enrolled in an approved classroom unit, pay tuition to the county board submitting the statement an amount equal to the computed amount of tuition, computed in the manner prescribed by section 3317.03 of the Revised Code, that would be due the district if a nonresident pupil attended the schools of the district.

¹ The school district of residence may be determined by a court pursuant to R.C. 2151.357, or if no district has been so determined, by the probate court of the county in which the child resides. Furthermore, the school district of residence may have been determined pursuant to former R.C. 3323.01, R.C. 3323.01(I)(3). The former statute set forth the additional alternatives for the determination of a school district of residence. Former R.C. 3323.01(I)(3) and (4) provided that, if the school district of residence could not be determined based upon the parents' current or last known residence, then the appropriate district was that in which the child's parents resided at the time the child was placed in a special education program of a county board of mental retardation; if this could not be determined, the probate court of the county from which admission or placement was made to an institution operated by the Ohio Department of Mental Health and Mental Retardation or a county board of mental retardation was to determine the handicapped child's school district of residence.

for the same period of time that the mentally handicapped child received special education. Within thirty days after receipt of the statement, the home shall pay tuition to the county board computed in the manner prescribed by section 3323.141 of the Revised Code. (Emphasis added.)

Thus, the board of education of the child's school district of residence is to pay to the county board of mental retardation and developmental disabilities an amount equal to that which would be due such district if a non-resident pupil had attended the schools of such district for the same time period. The tuition reimbursement is to be calculated in the manner set forth under R.C. 3317.08 which provides, in pertinent part:

Unless otherwise provided by law, tuition shall be computed in accordance with this section. A district's tuition charge for a school year shall be the quotient obtained by dividing:

(A) The district's total taxes charged and payable for current expenses for the tax year preceding the tax year in which the school year begins as certified under division (A)(3) of section 3317.021 of the Revised Code, by

(B) The district's average daily membership less one-half the kindergarten average daily membership certified pursuant to section 3317.03 of the Revised Code for the preceding school year.

Attendance for any fractional part of a month shall be regarded as attendance for a full month, unless the annual session is terminated before the end of a full month.

Thus, R.C. 3317.08 does not provide for calculation of tuition costs in excess of this per capita tuition payment.

I am not aware of any provisions of the Revised Code other than those discussed above that authorize a board of mental retardation and developmental disabilities to charge tuition to a school district. Although R.C. 3323.14 requires that in certain instances the school district of residence pay the "excess cost" of special education, that section only applies where a school district is "providing the [special] education" to the non-resident pupil and the school district has accepted the child for enrollment. Under your question, the Athens County Mental Retardation and Developmental Disabilities Board is providing the special education, not the school district. Furthermore, no school district has accepted the child for enrollment as required by R.C. 3323.14. Therefore, R.C. 3323.14 provides no authority for charging tuition in excess of the amount set forth in R.C. 3323.09.

I conclude, in answer to your first question, that a county board of mental retardation and developmental disabilities is authorized to charge the school district of residence of a mentally handicapped child only the per capita amount set forth in R.C. 3323.09, and that costs in excess of that amount may not be charged to the school district of residence.

Your second question raises the issue of whether the cost to a county board of mental retardation and developmental disabilities of providing special education to a non-resident mentally handicapped child may be billed to the school district of residence indirectly through the county board of education in order to take advantage of the "excess cost" provision of R.C. 3323.14. The answer to this question is also in the negative. As previously stated, the excess cost provision set forth in R.C. 3323.14 has no application where as here the special education is not being provided by the school district, and the handicapped child has not been accepted by the school district for enrollment. Furthermore, I am aware of no provision of the Revised Code that authorizes a county board of mental retardation and developmental disabilities to engage in this sort of indirect billing arrangement. See Ebert v. Board of Mental Retardation.

It is, therefore, my opinion, and you are advised, that:

1. When a mentally handicapped child resides in a group home, and his school district of residence is located in a different county,

and he receives special education from the county board of mental retardation and developmental disabilities of the county in which the group home is located, that board may not charge tuition to the school district of residence in excess of the per capita payment amount determined under R.C. 3323.09.

2. The costs to a county board of mental retardation and developmental disabilities of providing special education to a child who is a school resident of a district outside the county, in excess of the amounts of financial assistance received from the school district of residence pursuant to R.C. 3323.09 and from the State of Ohio for providing special education to that child, may not be billed indirectly through the county board of education to the child's school district of residence pursuant to R.C. 3323.14.