

July 3, 2014

The Honorable Nicholas A. Iarocci  
Ashtabula County Prosecuting Attorney  
Ashtabula County Courthouse  
25 West Jefferson Street  
Jefferson, Ohio 44047-1092

SYLLABUS:

2014-026

For the purpose of R.C. 3313.64(F)(1), the phrase “support themselves by their own labor” means finance or otherwise facilitate the furnishing of the necessities of life, including food, shelter, and clothing, by means of their own physical or mental effort. The phrase does not apply to a person who depends upon another for support.



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OPINION NO. 2014-026

The Honorable Nicholas A. Iarocci  
Ashtabula County Prosecuting Attorney  
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25 West Jefferson Street  
Jefferson, Ohio 44047-1092

Dear Prosecutor Iarocci:

You have requested an opinion on the meaning of the phrase “support themselves by their own labor” as used in R.C. 3313.64(F)(1). You seek clarification of this phrase because it is not defined by statute and its application affects school tuition liability and funding. You explain that the absence of a statutory definition for the phrase has led to differing views regarding the application of R.C. 3313.64(F)(1) to persons over the age of eighteen who seek to enroll or re-enroll in a public school, including an online community school. You cite, as an example, a twenty-year-old student who provides school authorities with an employer paycheck or a statement submitted by the head-of-household declaring that the adult student supports himself by performing chores in the residence. You indicate that submissions like these are sometimes deemed insufficient by school districts or community schools to satisfy the “support themselves by their own labor” requirement of R.C. 3313.64(F)(1).

Before we address your specific inquiry regarding language used in R.C. 3313.64(F)(1), we must first outline the characteristics of Ohio’s public school system, including admission and tuition requirements imposed therein. Article VI, § 2 of the Ohio Constitution requires the General Assembly to make provisions to “secure a thorough and efficient system of common schools throughout the state.” And Article VI, § 3 of the Ohio Constitution vests in the General Assembly the power to enact laws for the “organization, administration and control of the public school system of the state supported by public funds[.]” In exercising this power, the General Assembly has organized Ohio’s public school system into school districts. *See* R.C. 3311.01 (“[t]he school districts of the state shall be styled ‘city school districts,’ ‘local school districts,’ ‘exempted village school districts,’ and ‘cooperative education school districts’; and joint vocational school districts may be styled either ‘joint vocational school districts’ or ‘vocational school districts’”). Additionally, for the purpose of

R.C. Title 33, an “educational service center”<sup>1</sup> is a “school district,” and the governing board of an educational service center is a “school board” or “board of education,” when the statute does not expressly refer to types of school districts or school boards. R.C. 3311.055. The General Assembly has also enacted charter-school (also known as “community school”) legislation, thereby permitting the formation of community schools within existing school districts. *See* R.C. Chapter 3314.<sup>2</sup>

In Ohio, the management of schools is vested in boards of education. R.C. 3313.47 (“[e]ach city, exempted village, or local board of education shall have the management and control of all of the public schools of whatever name or character that it operates in its respective district”); *see also* R.C. 3301.01 (creating State Board of Education). The superintendent of a school district is the executive officer for the district’s board. R.C. 3319.01. Thus, the superintendent acts on behalf of the board. *Commons v. Westlake City Sch. Bd. of Edn.*, 109 Ohio App. 3d 706, 712-13, 672 N.E.2d 1098, 1102 (Cuyahoga County 1996) (“[s]ince the superintendent is the executive officer of the board of education, when the superintendent acts, she acts on behalf of the board”). The superintendent must “assign the pupils to the proper schools and grades, provided that the assignment of a pupil to a school outside of the pupil’s district of residence is approved by the board of the district of residence of such pupil.” R.C. 3319.01. “The superintendent shall perform such other duties as the board determines.” *Id.* The board of education of each city, exempted village, and local school district, is specifically charged with the duty of reviewing and verifying, on a monthly basis, the number of students enrolled in a community school but otherwise entitled to attend school in the district. 5A Ohio Admin. Code 3301-29-01. Conversely, the governing authority of each community school must report, on an annual basis, certain information to the Ohio Department of Education, including the school district in which the community school is located, and the school district each enrolled student is entitled to attend. *Id.*

R.C. 3313.64 and R.C. 3313.65 establish admission and tuition requirements for Ohio school districts. All children age five years or older (and children age three years or older with a disability), but younger than twenty-two years of age, are entitled to attend school in the district of their parents’

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<sup>1</sup> In general, an educational service center, formerly known as a county school district, consists of territory within a county that is not included in a city school district or exempted village school district. R.C. 3311.05(A); 2003 Op. Att’y Gen. No. 2003-009, at 2-59 n.1. Thus, it is composed of territory that constitutes local school districts. R.C. 3311.01; R.C. 3311.03; R.C. 3311.05; *see also* R.C. 3311.053; 1999 Op. Att’y Gen. No. 99-023, at 2-150 n.1. Rather than operating traditional schools, however, educational service centers provide a wide range of services and support to the school districts that they serve. *See* 2010 Op. Att’y Gen. No. 2010-028, at 2-203 (discussing specific services provided by educational service centers). Educational service centers may provide these services by agreement to city or exempted village school districts. R.C. 3313.843.

<sup>2</sup> Your inquiry refers to “online” community schools. An “Internet- or computer-based community school” is a community school that enrolls students who “work primarily from their residences on assignments . . . provided via an internet- or other computer-based instructional method that does not rely on regular classroom instruction[.]” R.C. 3314.02(A)(7).

residence without an obligation to pay tuition. *See* R.C. 3313.64 and R.C. 3323.02. R.C. 3313.64(B) provides that “a child who is at least five but under twenty-two years of age and any preschool child with a disability shall be admitted . . . to the schools of the school district in which the child’s parent resides.” R.C. 3313.64(B)(1). Except as provided in R.C. 2151.362(B) and R.C. 3317.30 (both concerning placement of a child in a detention or juvenile facility), 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 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, the child resides in a “home,” as that term is defined in R.C. 3313.64(A)(4), or the child requires special education. R.C. 3313.64(B)(2). A child who is not entitled to be admitted to the schools of the district where the child resides under R.C. 3313.64(B)(2), and who is residing with a resident of Ohio with whom the child has been placed for adoption, shall be admitted to the schools of the district where the child resides, unless the placement for adoption has been terminated, or another district is required to admit the child pursuant to R.C. 3313.64(B)(1). R.C. 3313.64(B)(3). A district cannot charge tuition for a child admitted under R.C. 3313.64(B)(1) or (B)(3). R.C. 3313.64(C). If a child is admitted under R.C. 3313.64(B)(2), however, the district of the child’s attendance is generally entitled to collect tuition from another school district, as determined pursuant to R.C. 3313.64(C)(1) through (4).<sup>3</sup>

R.C. 3313.65 addresses admission and tuition requirements for children whose parents are institutionalized or imprisoned. If R.C. 3313.65 applies, then the tuition obligation is governed therein, and not by R.C. 3313.64. *See* R.C. 3313.65(B). Furthermore, a school district may admit to its schools a non-resident child not otherwise entitled to attend school in the district under R.C. 3313.64 or R.C. 3313.65. R.C. 3317.08. In that situation, the school district is generally required to charge tuition for the admission, *id.*, and the tuition is collected from the student’s parents or guardian. R.C. 3327.06(B).<sup>4</sup>

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<sup>3</sup> In view of this statutory scheme, the financial burden associated with educating a child is generally placed on the district of the parents’ residence. Thus, the residency of a child’s parent is a central inquiry into determining the admission and tuition obligations relating to that child’s education. In the event there is a disagreement as to that issue, “the superintendent of public instruction [for the State Board of Education] shall determine the school district in which the parent resides.” R.C. 3313.64(K).

<sup>4</sup> Community schools are exempt from R.C. 3313.64 and R.C. 3313.65 insofar as these sections concern tuition payment and charging requirements between school districts. *See State ex rel. Ohio Cong. of Parents & Teachers v. State Bd. of Edn.*, 111 Ohio St. 3d 568, 2006-Ohio-5512, 857 N.E.2d 1148, at ¶93 (Resnick, J., dissenting) (citing Legislative Service Comm’n research memorandum, No. R-125-1824, on the “Laws from Which Community Schools Are Exempt and Specifically Not Exempt”). R.C. 3314.08 sets forth the mechanism for funding community schools. Even so, the school district in which a student is entitled to attend school under R.C. 3313.64 and R.C. 3313.65 is significant for the purpose of community school funding because this funding is accomplished by per capita subsidies taken from the state education aid of the districts in which students are otherwise

Notwithstanding the tuition obligations outlined in R.C. 3313.64(B)(2) and (C), the school district of an individual student's attendance shall not charge tuition, and no other school district shall be required to pay tuition for the individual student's attendance, if the individual student is entitled to attend school under one of the fourteen categories set forth in R.C. 3313.64(F). *See* R.C. 3313.64(F) (stating that "[i]n the case of any individual entitled to attend school under this division, no tuition shall be charged by the school district of attendance and no other school district shall be required to pay tuition for the individual's attendance" and that the division applies notwithstanding R.C. 3313.64(B) or R.C. 3313.64(C)). The categories set forth under R.C. 3313.64(F) address various factual circumstances, such as if the child is under eighteen and married, R.C. 3313.64(F)(2), the child's parent is serving outside Ohio in the United States military, R.C. 3313.64(F)(4), the child's parent dies, R.C. 3313.64(F)(5), or the child is homeless, R.C. 3313.64(F)(13). Of particular relevance here, however, is R.C. 3313.64(F)(1), which states as follows:

All persons at least eighteen but under twenty-two years of age<sup>5</sup> who live apart from their parents, *support themselves by their own labor*, and have not successfully completed the high school curriculum or the individualized education program developed for the person by the high school pursuant to section 3323.08 of the Revised Code, are entitled to attend school in the district in which they reside.

(Emphasis and footnote added.)

Pursuant to R.C. 3313.64(F)(1), persons who are eighteen to twenty-one years of age, live apart from their parents, "support themselves by their own labor," and have not completed high school or an applicable individualized education program, must be admitted tuition-free to attend school in the district in which they reside. Significantly, when R.C. 3313.64(F)(1) applies, no tuition obligation is placed upon any other school district. Thus, if the requirements of R.C. 3313.64(F)(1) are established, and R.C. 3313.65 does not apply to impose a tuition obligation, then the person must be admitted by the school district of his residence without any tuition obligation placed upon any other school district. If a student attends a community school, state funding to the school district in which the student is entitled to attend school under R.C. 3313.64 or R.C. 3313.65 is reduced pursuant to R.C. 3314.08. Therefore, applicability of R.C. 3313.64(F)(1) to a student, living away from his parents and attending a community school, is significant because it affects which school district's state funding is reduced in connection with that student's enrollment in a community school.

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entitled to attend under R.C. 3313.64 or R.C. 3313.65. *See* R.C. 3314.08(A)(6) and R.C. 3314.08(C)(1).

<sup>5</sup> In Ohio, eighteen years of age is the age of majority, and therefore "[a]ll persons of the age of eighteen years or more, who are under no legal disability, are capable of contracting and are of full age for all purposes." R.C. 3109.01. And as outlined above, a free public education remains available to each person until he reaches twenty-two years of age. *See* R.C. 3313.64.

The term “support themselves by their own labor” is not defined by statute for the purpose of R.C. 3313.64(F)(1). In the absence of a statutory definition, words and phrases must be “read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.” R.C. 1.42; *see State v. Dorso*, 4 Ohio St. 3d 60, 62, 446 N.E.2d 449, 451 (1983) (“any term left undefined by statute is to be accorded its common, everyday meaning”). As used in R.C. 3313.64(F)(1), “support” means to provide, or pay for, sustenance or maintenance in the form of food, clothing, shelter, and other necessities or conveniences, so as to enable a person to live in the degree of comfort to which he is accustomed. *See Black’s Law Dictionary* 1577 (9th ed. 2009) (defining “support” as “[s]ustenance or maintenance; esp., articles such as food and clothing that allow one to live in the degree of comfort to which one is accustomed.”); *Merriam-Webster’s Collegiate Dictionary* 1256 (11th ed. 2005) (defining “support” as “to pay the costs of”).<sup>6</sup> The word “labor” means “[w]ork of any type, including mental exertion.” *Black’s Law Dictionary* at 952; *see Merriam-Webster’s Collegiate Dictionary* at 694 (defining “labor” as the “expenditure of physical or mental effort esp. when difficult or compulsory”).

Applying these definitions, “support themselves by their own labor,” means, in the singular, providing one’s own necessities of life, such as food, shelter, and clothing, by means of one’s own work. When the phrase is read in context, it denotes a person who is not dependent on his parents (or others) for financing or furnishing the necessities of human existence. As noted above, the statutory scheme generally places the financial burden of educating a student on the school district of the parents’ residence. However, if a student meets the requirements of R.C. 3313.64(F)(1), the financial burden of educating the student is the obligation of the student’s school district of residence, and not that of the student’s parents’ district of residence (unless, of course, it is the same as the student’s).

The language “by their own labor” specifies how the students support themselves, and limits application of the phrase at issue to students who work to finance or otherwise facilitate their self-sufficiency. *See* 1974 Op. Att’y Gen. No. 74-076, at 2-315 (recognizing that a student who does not

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<sup>6</sup> In the context of family law, “child support” is a “parent’s legal obligation to contribute to the economic maintenance and education of a child until the age of majority, the child’s emancipation before reaching majority, or the child’s completion of secondary education.” *Black’s Law Dictionary* 274 (9th ed. 2009). “Emancipation is not susceptible of a finite definition; however, it generally refers to ‘the freeing of a \* \* \* child from parental control.’” *Risser v. Risser*, 173 Ohio App. 3d 430, 434, 878 N.E.2d 1073, 1076 (Hardin County 2007) (citing *In re Owens*, 96 Ohio App. 3d 429, 432, 645 N.E.2d 130 (Clark County 1994)). *Black’s Law Dictionary* at 598, defines “emancipation,” in part, as a “surrender and renunciation of the correlative rights and duties concerning the care, custody, and earnings of a child; the act by which a parent (historically a father) frees a child and gives the child the right to his or her own earnings.”

live with his parents may or may not “support himself by his own labor”). The fruits of labor can take different forms. For example, a person may receive wages or other form of monetary compensation when he performs work for another (such as when a tradesman receives cash for completing a project for another). A person receives imputed income when he performs services for his own benefit (such as when a homeowner paints his own house). Or, a person may receive compensation in kind for services performed for another (such as when a farmhand receives room and board in exchange for labor). The language of R.C. 3313.64(F)(1) does not limit its application to labor that is characterized by a particular manner of compensation. Therefore, regardless of how the student’s labor is compensated, the student’s labor must be the means of his self-sufficiency.

You express a general concern regarding an apparent lack of uniformity in the application of R.C. 3313.64(F)(1). School admission determinations are typically made at the local level by school district superintendents and school district boards of education. Consequently, variation in application of R.C. 3313.64(F)(1) to particular circumstances is to be expected and is not necessarily unreasonable. By not defining the phrase “support themselves by their own labor,” the General Assembly has delegated to local decision-makers the discretion to interpret and apply this provision. While it is the purpose of this opinion to flesh out, to the extent possible, the meaning of the phrase as used by the General Assembly, it should be noted that the phrase cannot be defined so as to apply seamlessly in every factual situation, or in a manner that ensures uniform application throughout Ohio. In other words, the provision is not susceptible to a definitional standard of comprehensive application.

Additionally, a concern has been expressed regarding varied application of R.C. 3313.64(F)(1) to situations involving students who provide their paychecks as proof of employment. The concern is whether evidence of wages at or beyond a certain amount demonstrates self-sufficiency. Certainly, evidence of employment for wages helps demonstrate self-sufficiency. But evidence that a person receives paychecks for employment only indicates self-sufficiency if the amount of money received enables the person to pay independently all the costs associated with providing the necessities of life consistent with the standard of living enjoyed by that person. You also cite a circumstance involving a head-of-household declaring that an adult student is self-supporting by performing chores in the residence. Such a declaration is not conclusive regarding whether the adult student is supporting himself by his own labor because the performance of chores in a household does not, in and of itself, demonstrate self-sufficiency. Thus, an inquiry into the nature of the chores performed and the relative value of the completion of the chores to the head-of-household, as well as any other factors relevant to the student’s living situation, would be appropriate in determining whether the student is supporting himself by his own labor, or whether he is dependent upon another for financing or otherwise furnishing the necessities of life. Thus, the applicability of R.C. 3313.64(F)(1) will depend on the particular facts and circumstances presented.

Based on the foregoing, it is my opinion, and you are hereby advised that, for the purpose of R.C. 3313.64(F)(1), the phrase "support themselves by their own labor" means finance or otherwise facilitate the furnishing of the necessities of life, including food, shelter, and clothing, by means of their own physical or mental effort. The phrase does not apply to a person who depends upon another for support.

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