

*OHIO COUNTY BOARD OF
DEVELOPMENTAL DISABILITIES*

Handbook

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Auditor of State

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COUNTY BOARDS OF DEVELOPMENTAL DISABILITIES

I. INTRODUCTION

On July 8, 2009, Governor Ted Strickland signed Ohio Senate Bill 79 which stated that the words “mental retardation” is to be dropped from those offices and agencies associated with developmental disabilities. The following handbook has incorporated the name change from Mental Retardation and Developmental Disabilities (MRDD) to Developmental Disabilities (DD) which will be effective October 6, 2009 for all County Boards.

County Boards of Developmental Disabilities (hereinafter may be referred to as “DD Boards”, or “Boards”) were created in 1967. These DD Boards are to administer and operate the facilities, programs, and services provided by Ohio Revised Code Chapters 3323 and 5126.

The following handbook has been prepared to assist DD Boards in keeping abreast of changes imposed upon the Boards by legislative changes through December 2007. In addition, this handbook is to serve as a guide to inform DD Boards of their statutory responsibilities set forth in Chapters 5126 and 3323 of the Ohio Revised Code.

This Handbook is not designed to provide legal interpretation or to answer every question which may affect DD Boards. Instead, it is a general reference guide for public officials who have a need for knowledge in this area. As particular problems arise, Board Members should seek the advice and opinion of their legal counsel or consult with the appropriate representative of the Auditor of State’s Office. The names of the representative of the Auditor of State’s Office to direct your questions to, including address and toll-free telephone numbers, are set forth in Appendix I.

II. ORGANIZATION AND RELATED MATTERS

A. AUTHORITY

The authority for the creation of DD Boards is found in Chapter 5126 of the Ohio Revised Code. The primary responsibility of a DD Board is to provide comprehensive education and rehabilitation programs and services to developmentally disabled individuals residing in the county. The term “developmental disability” is defined by Ohio Rev. Code §5126.01 as follows:

“Developmental disability” means a severe, chronic disability that is characterized by all of the following:

1. It is attributable to a mental or physical impairment or a combination of mental and physical impairments, other than a mental or physical impairment solely caused by mental illness as defined in Ohio Rev. Code §5122.01(A);

2. It is manifested before age twenty-two;
3. It is likely to continue indefinitely;
4. It results in one of the following:
 - a. In the case of a person under age three, at least one developmental delay or an established risk;
 - b. In the case of a person at least age three but under age six, at least two developmental delays or an established risk;
 - c. In the case of a person age six or older, a substantial functional limitation in at least three of the following areas of major life activity, as appropriate for the person's age: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and, if the person is at least age sixteen, capacity for economic self-sufficiency.
5. It causes the person to need a combination and sequence of special, interdisciplinary, or other type of care, treatment, or provision of services for an extended period of time that is individually planned and coordinated for the person.

The following is an overview in respect to duties and responsibilities DD Boards have pursuant to Chapters 5126, 3323, and other related provisions of the Ohio Revised Code.

B. ACCOUNTABILITY

1. General

The Comptroller General of the United States, in *Standards for Audit of Governmental Organizations, Programs, Activities and Functions* (2007 Revision) states:

The concept of accountability for public resources is key in our nation's governing processes. Legislators, other government officials, and the public want to know whether (1) government resources are managed properly and used in compliance with laws and regulations, (2) government programs are achieving their objectives and desired outcomes, and (3) government services are being provided efficiently, economically, and effectively. Managers of these programs are accountable to legislative bodies and the public.

It is firmly established in Ohio, that all public agencies, including DD Boards possess only such powers and authority as are expressly granted to them by statute, or necessarily implied therefrom. 1997 Op. Att’y Gen. No. 1997-051. Therefore, it is necessary that officials of a DD Board, when contemplating a course of action, find express or implied authority for such action in the Ohio Revised Code. If there is any doubt as to the authority for a contemplated action, or for the expenditure of funds, it is to be resolved against the exercise of such authority or the expenditure of funds. *State, ex rel. Locher v. Menning* (1916), 95 Ohio St. 97.

DD Boards are specifically accountable to numerous public agencies for the manner of their operation. These include for example, the Public Employees Retirement System, the State Board of Education and the Ohio Ethics Commission. There are, however, three agencies which must be considered in detail; (1) the Department of Developmental Disabilities; (2) the Board of County Commissioners; and (3) the Office of the Auditor of State.

It should be noted that this Handbook generally does not extend to rules of the Department of Developmental Disabilities or of the Department of Education, but is instead limited to fiscal and legal restrictions imposed upon DD Boards as interpreted by statute, judicial opinions, opinions of the Attorney General and rulings of the Auditor of State. A contemplated action not prohibited by this handbook may in fact be prohibited by the rules of the Department of Developmental Disabilities or the Department of Education. In case of doubt, the rules of the Department of Developmental Disabilities and the Department of Education should be consulted, and prior approval of the county prosecutor should be sought.

2. Department of Developmental Disabilities

Pursuant to Chapters 5123 and 5126 of the Ohio Revised Code the Director of Developmental Disabilities is vested with rulemaking authority, in accordance with Chapter 119 of the Ohio Revised Code, and regulatory responsibility to effectuate the purpose of the County Boards.

Ohio Rev. Code §5126.08 outlines the Director’s rulemaking authority. The Director shall adopt rules in accordance with Chapter 119 of the Revised Code for all programs and services offered by a county board of Developmental Disabilities. Such rules shall include, but are not limited to, the following: (1) Determination of what constitutes a program or service; (2) Standards to be followed by a board in administering, providing, arranging, or operating programs and services; (3) Standards for determining the nature and degree of developmentally disabled, including mild developmental disability; (4) Standards for determining eligibility for programs and services under sections 5126.042 and 5126.15 of the Revised Code; (5) Procedures for obtaining consent for the arrangement of services under section 5126.31 of the Revised Code and for obtaining signatures on individual service plans under that section; (6) Specification of the service

and support administration to be provided by a county board and standards for resolving grievances in connection with service and support administration; (7) Standards for the provision of environmental modifications, including standards that require adherence to all applicable state and local building codes; (8) Standards for the provision of specialized medical, adaptive, and assistive equipment, supplies, and supports. Ohio Rev. Code §5126.08. In addition, Ohio Rev. Code §5126.10 requires the Director to adopt rules in accordance with Chapter 119 of the Revised Code establishing standard cost allocation procedures and shall require county boards of Developmental Disabilities to use such procedures to allocate all indirect costs to services provided pursuant to Chapter 3323 and 5126 of the Revised Code. Pursuant to Ohio Rev. Code §5126.25 the Director is also required to adopt rules in accordance with Chapter 119 of the Revised Code establishing uniform standards and procedures for the certification of persons employed in programs serving the developmentally disabled.

The Director must also adopt rules regarding the DD Board's reimbursements to developmentally disabled persons or their families for expenses incurred for services rendered which promote self-sufficiency, normalization and unity of the family. Ohio Rev. Code §5126.11.

Finally, other duties of the Director include operating and licensing residential facilities for the developmentally disabled and acting as final authority in determining the nature and degree of an individual's developmental condition. Ohio Rev. Code § 5123.19(C), licensing, (H) operation, and 5126.08(B).

3. Board of County Commissioners

The Board of County Commissioners does not possess operational control over the DD Board. The Commissioners appoint five of the seven members of a single County DD Board. Ohio Rev. Code §5126.028. For a multicounty DD Board, the Commissioners appoint members pursuant to Section 5126.028 of the Revised Code. The Commissioners have the responsibility for fiscal appropriations for both single and multicounty DD Boards. The Board of County Commissioners has the authority to appropriate money to the DD Board and to levy taxes, including seeking a tax levy in excess of ten mills. Ohio Rev. Code §5705.222, allows the Board of County Commissioners, by majority vote of full membership to declare by resolution and certify to the Board of Elections of the county that the amount of taxes which may be raised within the ten mill limitation by levies on the current tax duplicate will be insufficient to provide the necessary requirements of the county board of Developmental Disabilities established pursuant to Chapter 5126 of the Revised Code, and that it is necessary to levy a tax in excess of such limitation for the operation of programs and services by county boards of Developmental Disabilities and for the acquisition, construction, renovation, financing, maintenance, and operation of Developmental Disabilities facilities.

In addition, in accordance with Ohio Rev. Code §5126.05(A)(6), the DD Board is required to submit annual reports of its work and expenditures, pursuant to Ohio Rev. Code § 3323.09 and 5126.12, to the director, the superintendent of public instruction, and the board of county commissioners at the close of the fiscal year and at such other times as may reasonably be requested.

C. ESTABLISHMENT OF THE BOARD

In accordance with Ohio Rev. Code §5126.02(A)(1), each county shall either have its own County Board of Developmental Disabilities or, pursuant to Ohio Rev. Code §5126.021, or 5126.022, be a member of a multicounty Board of Developmental Disabilities. Subject to Ohio Rev. Code §5126.02(B):

- (1) A County Board shall be operated as a separate administrative and service entity.
- (2) The functions of a County Board shall not be combined with the functions of any other entity of county government.

Ohio Rev. Code §5126.02 does not prohibit or restrict any County Board from sharing administrative functions or personnel with one or more other County Boards, including entering into an arrangement authorized by Ohio Rev. Code §5126.0226(B).

Ohio Rev. Code §5126.021 provides that subject to Sections 5126.024 and 5126.025 of the Revised Code, a multicounty board of Developmental Disabilities may be created if each of the following, before January 1, 2007, and within a one-hundred-eighty-day period, adopt an identical resolution or issue an identical order providing for the creation of the multicounty board:

- (A) A majority of the members of each of the board of county commissioners seeking to create the multicounty board;
- (B) The senior probate judge of each county served by those boards of county commissioners;

There were no counties that created multi-county boards prior to January 1, 2007.

D. APPOINTMENT OF BOARD MEMBERS

Ohio Rev. Code §5126.028 sets forth the criteria for the number and appointment of board members as follows:

Each County Board of Developmental Disabilities shall consist of seven (7) members. The board of county commissioners of the county shall appoint five members and the senior probate judge of the county shall appoint two members.

The types of individuals to be included on the Board of Developmental Disabilities, pursuant to Ohio Rev. Code §5126.029 (A), are as follows:

- (1) Appoint only individuals who are residents of the county the appointing authority serves, citizens of the United States, and interested and knowledgeable in the field of developmental disabled and other allied fields;
- (2) If the appointing authority is a board of county commissioners, appoint, subject to Division (B) of Section 5126.029, at least two individuals who are immediate family members of individuals eligible for services provided by the County Board and, whenever possible, ensure that one of those two members is an immediate family member of an individual eligible for adult services and the other is an immediate family member of an individual eligible for early intervention service or services for preschool or school-age children;
- (3) If the appointing authority is a senior probate judge, appoint, subject to Division (B) of Section 5126.029, at least one individual who is an immediate family member of an individual eligible for residential or supported living;
- (4) Appoint, to the maximum extent possible, individuals who have professional training and experience in business management, finance, law, health care practice, personnel administration, or government service;
- (5) Provide for the County Board's membership to reflect, as nearly as possible, the composition of the county or counties the County Board serves.

In accordance with Ohio Rev. Code § 5126.0212, all DD Board appointments must be for the term of four (4) years. Members may be reappointed, except as provided in sections 5126.0213 and 5126.0225 of the Revised Code. Prior to making a reappointment, the appointing authority shall ascertain, through written communication with the board, that the member being considered for reappointment meets the requirements of sections 5126.029 and 5126.0225 of the Revised Code. A member who has served during each of three consecutive terms shall not be reappointed for a subsequent term until two years after ceasing to be a member of the board, except that a member who has served for ten years or less within three consecutive terms may be reappointed for a subsequent term before becoming ineligible for reappointment for two years. Ohio Rev. Code §5126.0213. Appointments other than an appointment to fill a vacancy will be made no later than the last day of November of each year. The term of office for the Board member will commence on the date of the stated annual organizational meeting which will be held no later than the thirty-first day of January each year.

E. ORGANIZATIONAL MEETING

No later than the thirty-first day of January each year, the Board must hold an organizational meeting for the election of a president, vice president, and recording secretary. Ohio Rev. Code § 5126.0216.

Furthermore, in addition to the Board's annual organizational meeting, the Board must conduct at least ten regularly scheduled meeting sessions. The first regularly scheduled meeting may be held at the same time as the annual organizational meeting if it is convened after the annual meeting and the seating of any new members; provided that Board Policy states that the annual meeting would count as one of the ten meetings. In-service training sessions may not count toward the ten regularly scheduled sessions. The Board must keep records of the meetings and provide to the public for their inspection, a copy of these records. Additionally, the Board's meetings must be conducted in accordance with Ohio Rev. Code §121.22, the "Sunshine Law."

Finally, a quorum is necessary for the Board to conduct business. In accordance with Ohio Rev. Code §5126.0216, a majority of the Board constitutes a quorum.

F. OATH OF OFFICE

As public officers within the scope of Article XV, Section 7, Ohio Constitution, DD Board members are subject to Ohio Rev. Code §3.22, which requires any person appointed to a public office under the laws of this state to take an oath of office before entering upon the performance of his or her duties. Pursuant to Ohio Rev. Code §3.22, each Board member must take on an oath to support the Constitution of the United States and the Constitution of the State of Ohio, and to faithfully execute the duties of his office. In addition, Ohio Rev. Code §5126.0211, indicates that each individual who serves as a member of a county board of Developmental Disabilities shall provide to the superintendent of the county board a written declaration specifying both of the following:

- (1) That no circumstance described in section 5126.029 of the Revised Code exists that bars the individual from serving on the county board;
- (2) Whether the individual or an immediate family member of the individual has a ownership interest in or is under contract with an agency contracting with the county board, and, if such ownership interest or contract exists, the identity of the agency and the nature of the relationship to that agency.

See Appendix III for sample documentation of the written declaration.

The oath of office may be administered by a person generally authorized to administer oaths, such as a notary public, judge, or clerk of courts, by any elected official within the subdivision in which he serves, or by a member of the General Assembly. Ohio Rev. Code §3.24. Once completed, the oath should be filed with the records of the Board.

G. VACANCY ON THE BOARD

Within sixty (60) days after a vacancy occurs on the Board, pursuant to Ohio Rev. Code §5126.0214, the vacancy should be filled by the appointing authority (either the Board of County Commissioners or the County Probate Judge) for the unexpired term. Any member appointed to fill a vacancy will hold office for the remainder of that term.

H. COMPENSATION OF BOARD MEMBERS

In accordance with Ohio Rev. Code §5126.0215, Board members will serve without compensation but will be reimbursed for necessary expenses incurred during the conduct of Board business, including those incurred within the county of residence. A detailed discussion regarding the reimbursement of expenses will follow in the Officers/Employees section of the Handbook.

I. EDUCATIONAL REQUIREMENT

Ohio Rev. Code §5126.0217 requires that Board members annually attend at least four hours of in-service training session provided or approved by the Department of Developmental Disabilities. These training sessions should not be considered regularly scheduled meetings of the Board. Failure to attend at least four hours of in-service training sessions, provided or approved by the Department each year, is grounds for removal, as set forth in Ohio Rev. Code §5126.0220.

J. RESIGNATION FROM OFFICE

As a public officer, a Board member may resign from office if he or she so desires. A formal resignation should be directed, in writing, to the Board with copies to the appointing authority. The Board should formally accept the resignation, and place the letter of resignation with the Board member's records.

K. REMOVAL FROM OFFICE

In accordance with Ohio Rev. Code §5126.0220, an DD Board member shall be removed from the Board by the appointing authority for: (1) Neglect of duty; (2) Misconduct; (3) Malfeasance; (4) Ineligibility to serve on the county board pursuant to section 5126.210 of the Revised Code; (5) Failure to attend annually at least four hours of in-service training, a violation of Section 5126.0217 of the Revised Code; (6) Failure to attend within one year four regularly scheduled board meetings; (7) Failure to attend within one year two regularly scheduled board meetings if the member gave no prior notice of the member's absence. (8) Consistently poor performance on the county board, as demonstrated by documentation that the president of the county board provides to the appointing authority and the appointing authority determines is convincing evidence. This removal provision does not apply to absences from special meetings or work sessions. In all cases, the Board member must be removed contingent upon following the

procedures set forth below. It is recommended if prior notice has been provided by the absent Board member, such notice must be reflected in the Board's minutes of the meeting.

In all cases of removal under Ohio Rev. Code §5126.0220, the member sought to be removed and the member's appointing authority must receive written notice of the charges and be afforded an opportunity for a hearing. Upon determining that the charges are accurate, the appointing authority must remove the member and appoint another person to complete the member's term.

Removal proceedings may also be brought pursuant to Ohio Rev. Code §3.07, for the willful and flagrant exercise of authority or power not authorized by law, refusal or willful neglect to enforce the law or to perform an official duty imposed by law, gross neglect of duty, gross immorality, drunkenness, malfeasance, non-feasance, or misfeasance in office.

Procedures for the removal of a public officer on any of the grounds enumerated in Ohio Rev. Code § 3.07, are set forth in Ohio Rev. Code Sections 3.07 to 3.10, inclusive.

L. CONFLICT OF INTEREST

Ohio Rev. Code §5126.0210,, specifically states who may not serve as a member of a DD Board. It includes the following:

(A) The following individuals shall not serve as members of county boards of Developmental Disabilities:

- (1) Elected public officials, except for township trustees, township clerks, and those excluded from the definition of public official or employee in division (B) of section 102.01 of the Revised Code;
- (2) Members of the immediate family of another board member;
- (3) Board employees and members of the immediate family of board employees;
- (4) Former board employees within one calendar year of the termination of employment with the board on which the former employee would serve. (Note: members of the immediate family of a county commissioner of the county served by the Board may not be a member or employee of the County Board of Developmental Disabilities if the employee was hired after October 31, 1980). (1981 Op. Att'y Gen. No. 1981-067).

Furthermore, when an individual or member of his family is either an employee or a board member of any agency which has a contract with the Board, that individual may not be appointed to the Board unless, in the case of an employee conflict, the Board passes a resolution establishing eligibility, or in the case of a Board member conflict, a determination that a conflict does not exist is made by the local prosecuting attorney and the Ohio Ethics Commission. See

also: 1984 Op. Att’y Gen. No. 1984-019. If this is the case, it is strongly urged that any potential conflict of interest involving a Board member be submitted to the above-mentioned officers in writing with a request for a written response.

Finally, the Attorney General has determined that other positions are in conflict with a Board member position. The Attorney General held in 1983 Op. Att’y Gen. No. 1983-030 that an assistant county prosecutor may not serve as a Board member since the county prosecutor’s office serves as the Board’s legal advisor, and as a result the assistant prosecutor may act for the county prosecutor. Also, the Attorney General has held that a member of City Council may not serve on a DD Board. 1983 Op. Att’y Gen. No. 1983-028.

For a more detailed discussion of conflicts of interest, see “Conflicts of Interest” in the Officers/Employees section of the Handbook.

III. POWERS AND DUTIES OF THE BOARD

The powers and duties of the County DD Board are specifically set forth in Ohio Rev. Code §5126.05. The Board shall:

1. Administer and operate facilities, programs, and services as provided by Ohio Rev. Code Chapters 3323 and 5126, and establish policies for their administration and operation, subject to available resources;
2. Coordinate, monitor, and evaluate existing services and facilities available to individuals with Developmental Disabilities;
3. Provide early childhood services, supportive home services, adult services, according to the plan and priorities developed under section 5126.04 of the Revised Code;
4. Provide or contract for special education services pursuant to Chapters 3317. and 3323. of the Revised Code and ensure that related services, as defined in section 3323.01 of the Revised Code, are available according to the plan and priorities developed under section 5126.04 of the Revised Code;
5. Adopt a budget, authorize expenditures for the purposes specified in this chapter and do so in accordance with section 319.16 of the Revised Code, approve attendance of board members and employees at professional meetings and approve expenditures for attendance, and exercise such powers and duties as are prescribed by the director;
6. Submit annual reports of its work and expenditures, pursuant to sections 3323.09 and 5126.12 of the Revised Code, to the director, the superintendent of public instruction, and the board of county commissioners at the close of the fiscal year and at such other times as may be reasonably requested;

7. Authorize all positions of employment, establish compensation, including but not limited to salary schedules and fringe benefits for all board employees, approve contracts of employment for management employees that are for a term of more than one year, employ legal counsel under section 309.10 of the Revised Code, and contract for employee benefits;
8. Provide service and support administration in accordance with section 5126.15 of the Revised Code;
9. Certify respite care homes pursuant to rules adopted under section 5123.171 of the Revised Code by the director of developmental disabilities.

Subject only to rules established by the Director of Developmental Disabilities and the State Board of Education, the aforementioned duties are mandatory, and therefore, are not left to the discretion of the Board.

A DD Board possesses other duties and responsibilities, in addition to those enumerated in Ohio Rev. Code §5126.05. Set forth below is a summary of these additional duties and responsibilities imposed upon a DD Board by Ohio Revised Code Chapters 3323 and 5126.

A. SUPERINTENDENT

The most important officer appointed by the Board is the superintendent. This individual is responsible for the day-to-day administration of the services and facilities of the Board. Ohio Rev. Code §5126.0226. Included within this authority, is the superintendent's power to authorize, (with approval of the Board), the payment of Board obligations by the County Auditor. However, the superintendent has no voting privileges on the DD Board.

1. Appointment and Qualifications

Ohio Rev. Code § 5126.0226, requires the Board to employ a qualified superintendent or obtain the services of the superintendent of another county board of Developmental Disabilities. Each county board that employs its own superintendent shall employ the superintendent under a contract with the Board for not less than one (1) year nor more than five (5) years. The County Board must also prescribe his performance standards.

In accordance with Ohio Rev. Code §5126.0226, at the expiration of this superintendent's current term of employment, the superintendent is deemed reemployed for a term of one (1) year at the same salary plus any increments which may be authorized by the Board. This is the case unless the Board on or before ninety (90) calendar days prior to its current contract expiration date, either reemploys the superintendent for a succeeding term or gives the superintendent written notification regarding its decision not to employ him. The Board must give a superintendent in his first year of employment with the

Board written notification sixty (60) days prior to his current contract expiration date if the contract is for one (1) year.

Additionally, at all times during his employment, the superintendent must hold a valid certificate issued in accordance with the standards adopted by the Director of Developmental Disabilities as set forth in Ohio Rev. Code §5126.25. For a more detailed discussion, see the “Certification of Employees” section of the Handbook.

2. Compensation

The compensation of the superintendent is fixed by the Board. Ohio Rev. Code §5126.0226. Since there is no statutory limitation, the amount paid to the superintendent is a matter left to the sound discretion of the Board.

In addition to his salary, the superintendent must be reimbursed for all actual and necessary expenses that he incurs in the performance of his official duties. (For a detailed discussion on allowable expenses, see the Compensation section of the Handbook).

3. Powers and Duties of Superintendent

Ohio Rev. Code §5126.0227, sets forth the statutory powers and duties of the superintendent of the County Board of Developmental Disabilities. These duties include the following:

- a. Administering the work of the County Board of Developmental Disabilities subject to the Board’s rules;
- b. Recommending to the Board any changes necessary to increase the effectiveness of programs and service offered pursuant to Chapters 3323 and 5126 of the Revised Code;
- c. Employing persons for all positions authorized by the Board; approve management employment contracts if the contract is for a term of one year or less; approve personnel actions of classified civil service employees;
- d. Approving compensation for employees within the limits set by the salary schedule and budget as determined by the Board, and in accordance with Ohio Rev. Code §5126.26; and ensure that all employees are properly reimbursed for actual and necessary expenses incurred in the performance of official duties; and
- e. Providing consultation to public agencies as defined in Ohio Rev. Code §102.01(C), including other county boards of Developmental Disabilities and to individuals, agencies, or organizations providing services supported by the board.

Besides the duties set forth in Ohio Rev. Code §5126.0227, the superintendent of the County Board of Developmental Disabilities has additional responsibilities. If the superintendent establishes a volunteer bus rider assistance program in accordance with Ohio Rev. Code §5126.052(A), then he is responsible for ensuring that all pupils receiving this transportation are instructed in school bus safety, proper bus rider behavior and the potential problems and hazards associated with school bus ridership. The instruction must be provided within two weeks after the pupil first receives such transportation per Ohio Rev. Code §5126.052(B). The superintendent may assign volunteers responsibilities, including but not limited to the following:

- a. Authorizing the volunteers to ride with pupils to and from the special education programs;
- b. Assisting pupils in embarking and disembarking from buses and crossing streets where necessary to ensure the safety of the pupils;
- c. Assisting the bus driver; and
- d. Engaging in other activities as set forth by the superintendent which will aid in the safe and efficient transportation of the pupils.

The volunteers selected by the superintendent of the County Board of Developmental Disabilities are not to be compensated for their services. In addition, Ohio Rev. Code §5126.052(A), specifically states that the volunteers are not to be designated as employees for purposes of Ohio Rev. Code Chapters 4117 and 4123.

Pursuant to Ohio Rev. Code §5126.24(C), on or before the fifteenth day of October of each year, the superintendent must certify to the State Board of Education the name of each teacher employed, on an annual salary, during the first school week in October who is teaching in a special education program as set forth in Ohio Rev. Code §3323.09. The superintendent must also certify the teacher's training experience at a recognized college, the degrees earned from a college recognized by the State Board of Education, the type of license held, the number of months employed by the Board, the teacher's annual salary, and any information that the State Board of Education may request.

Finally, if the superintendent must be removed, suspended or demoted, the process for this action is discussed in Ohio Rev. Code §5126.23. (See "Removal" under the Management employees section).

4. Conflicts of Interest

As with all other Board members and employees, the superintendent is subject to the various conflict of interest provisions in the Ohio Revised Code. There have been various Attorney General opinions discussing various superintendent conflicts of interest. Most notably, the Attorney General held in 1986 Op. Att’y Gen. No. 1986-016 that a superintendent may not simultaneously serve as a member of a Board of Education of a city school district. In a case with similar facts, it was determined by the Attorney General in 1972 Op. Att’y Gen. No. 1972-011 that an acting administrator of a county board of developmental disabilities may not simultaneously serve as a full-time teacher at a school over which the board has supervision.

B. REVIEWING OF RESIDENTIAL SERVICE PLANS

Ohio Rev. Code §5123.042(B), mandates that DD Boards review all plans submitted to them by any person or agency who wishes to provide residential services to the developmentally disabled. This section requires the Board to review all proposals for the development of residential services, and if such proposals are acceptable, recommend service providers to the director for the development of residential services within the County. Upon the Board’s recommendation and the availability of funds, the Department will approve a proposal for the development of residential services.

If the Board is an applicant to provide such services, then the Board is prohibited from making a recommendation to the Director. In such cases the Director will appoint a committee who will recommend to him providers for the services in accordance with the approved county comprehensive plan. The director may establish residential services development goals for the county board based on documented needs if a county board fails to establish a comprehensive plan.

C. RIGHTS OF DEVELOPMENTALLY DISABLED PERSONS

DD Boards must ensure that the rights of developmentally disabled persons are protected. Set forth in Ohio Rev. Code §5123.62, is a “Bill of Rights” for those with a developmental disability. These rights which must be protected by the Board include, but are not limited to, the following:

1. The right to be treated at all times with courtesy and respect and with full recognition of their dignity and individuality.
2. The right to an appropriate, safe, and sanitary living environment that complies with local, state, and federal standards and recognizes a persons need for privacy and independence.
3. The right to food adequate to meet accepted standards of nutrition.

4. The right to practice the religion of choice or to abstain from the practice of religion.
5. The right to timely access to appropriate medical and dental treatment.
6. The right of access to necessary ancillary services, including, but not limited to, occupational therapy, physical therapy, speech therapy, and behavioral modification and other psychological services.
7. The right to receive appropriate care and treatment, in the least intrusive manner.
8. The right to privacy, including both periods of privacy and places of privacy.
9. The right to communicate freely with persons of their choice in any reasonable manner they choose.
10. The right to ownership and use of personal possessions in order to maintain individuality and personal dignity.
11. The right to interact socially with other members of society.
12. The right of access to opportunities that will enable individuals to develop their full human potential.
13. The right to pursue vocational opportunities that will promote and enhance economic independence.
14. The right to be treated equally as citizens under the law.
15. The right to be free from emotional, psychological and physical abuse.
16. The right to participate in educational training, social development, habilitation and recreational programs.
17. The right to participate in decisions that affect their lives.
18. The right to select a parent or advocate to act on their behalf.
19. The right to manage their personal financial affairs, based on individual ability to do so.
20. The right to confidential treatment of all information in their personal and medical records except as provided in sections 5123.89 and 5126.044 of the Revised Code.

21. The right to voice grievances or recommend changes in policies and services without restraint, interference, coercion, discrimination or reprisal.
22. The right to be free from unnecessary chemical or physical restraints.
23. The right to participate in the political process.
24. The right to refuse to participate in medical, psychological or other research or experiments.

Additionally, in accordance with Ohio Rev. Code §5123.63, each Board that directly, or through a contract, provides services to developmentally disabled persons must ensure that each patient receives a copy of their “Bill of Rights.” In addition, each provider must follow any other posting or notification requirements imposed by local, state, or federal law or rules. If the individual is unable to read this list of rights, then the Board or the contracting service provider must communicate the contents of the list to the individual in a manner which the individual may have to understand these rights.

Individuals receiving services or the parent, guardian or advocate of the individual must sign an acknowledgment of receipt of a copy of the list of rights which must then be placed in the individual’s file. Providers must post in a place accessible to all persons receiving services and all employees or visitors, a copy of the list of rights and the addresses and telephone numbers of the Legal Rights Service, the Department of Developmental Disabilities and the County Board of Developmental Disabilities of the county in which the provider provides services.

The County Board or the contracting service provider must ensure that all staff members are familiar with the individual’s Bill of Rights. Ohio Rev. Code §5123.64. The Board or the contracting service provider must also establish written procedures for resolving complaints of violations of an individual’s “Bill of Rights.”

A copy of such procedures must be provided to any person receiving services, or the guardian or advocate of a person receiving services. Ohio Rev. Code §5123.64.

D. FILING COMPLAINTS

A County Board of Developmental Disabilities, among others, has the authority to file a complaint with the Department of Developmental Disabilities when conditions in any residential facility are in violation of a State statute or department rules. Ohio Rev. Code §5123.19(L). All complaints by the Board must be in writing and must state the facts which constitute the basis of the allegation. Unless the complainant waives the right to confidentiality, the Department of Developmental Disabilities must not reveal the source of complaint, unless instructed to do so by a court of competent jurisdiction.

Once the complaint has been filed with the Department, the Department will acknowledge receipt of the complaint and notify the complainant of any action that will be taken with respect to the complaint within five (5) working days of receiving it. The complaint resolution process can be found in Ohio Administrative Code §5123:2-17-01.

E. IDENTIFYING, LOCATING AND EVALUATING HANDICAPPED CHILDREN

In accordance with Ohio Rev. Code §3323.03 the State Board of Education is required to consult with the DD in its district to assist in the identification, location and evaluation of all handicapped children residing within the district. The Board of Education of each school district in consultation with DD shall determine which handicapped children are not receiving appropriate special education and related services. Ohio Rev. Code §3323.03. All County Boards and contract agencies which perform these evaluation services may transmit to the Board of Education in that particular district, the names and addresses of handicapped children who are not receiving appropriate special education and related services.

F. COMPLIANCE DOCUMENTATION

All educational programs for handicapped children must be operated in accordance with the procedures, standards and guidelines promulgated by the State Board of Education. Ohio Rev. Code §3323.02. Therefore, upon request by the State Board of Education, a DD Board must provide documentation to the State Board of Education that the programs established for the handicapped are in compliance with such rules and regulations as promulgated by the State Board of Education.

G. PLACEMENT OF HANDICAPPED CHILDREN

Ohio Rev. Code §3323.04 requires the Board of Education of each district to consult with the DD Board concerning the placement of handicapped children into appropriate education programs. If an Agency directly affected by the placement decision objects to the placement decision, an independent hearing officer will conduct a hearing to review the placement decision. The hearing officer will be appointed by the school district and the objecting Agency from a list prepared by the State Department of Education in a consultation with the Department of Developmental Disabilities. The decision regarding placement rendered by the hearing officer will be final unless any child or his parents affected by the decision presents a complaint as set forth in Ohio Rev. Code §3323.05. The cost of the hearing will be divided equally between the agencies that are parties to the hearing.

H. CONTRACTS

Authority

A DD Board has the authority to contract with any other board, agency or organization to provide facilities, programs, and services authorized in Ohio Revised Code Chapters 3323 and 5126. One exception is set forth in Ohio Rev. Code §5126.037, which prohibits the Board from contracting with an agency whose board includes either a county commissioner of the county served by the Board or an employee of the Board. (See also the discussion on “Conflict of Interest”).

All contracts entered into by the DD Board with any other board, agency or organization to provide the services authorized in Ohio Revised Code Chapters 3323 and 5126, must be between the contractor and the DD Board. In *C.B. Transportation, Inc. v. Butler County Board of Mental Retardation* (1979), 60 Ohio Misc. 71, the Court held that the Board of County Commissioners lacks the necessary authority to enter into contracts for the DD Board. Thus, the DD Board may not delegate its authority to contract to the Board of County Commissioners, and the DD Board must make the final determination in regard to which bid it will accept. The Board of County Commissioners may, however, handle the ministerial aspects (e.g., advertising) of the bidding process on behalf of a DD Board, if the respective boards desire such an arrangement. In this situation, the DD Board would still determine the “lowest and best bidder” under Ohio Rev. Code §307.90. (See Section (e), “Competitive Bidding”).

1. General Form and Procedure

Every contract entered into by the Board must be reduced to writing and formally executed. It should be clear and definite regarding each item, including the duties of all parties, the amount of each payment to be made (or the bases upon which each payment is to be calculated), the total amount to be expended under the contract, any preconditions to payment and the time at which payments are to be made. If any other documents, programs, or plans are incorporated by reference into the contract, they should be clearly identified and, if they cannot be attached to the contract, their location should be clearly stated in the contract.

All contracts should be approved as to form by the Board’s legal advisor. If it proves impractical to have contracts approved individually, consideration should be given to preparation of a standard contract, approved by the Board’s legal advisor, which may be used in most instances. Deviations from this standard contract may then be approved by the legal advisor on an individual basis.

2. Certification

Ohio Rev. Code §5705.41(D) requires that before any contract is entered into, it must be presented to the county auditor serving as fiscal officer of the district for his certification and that the amount required for expenditure under the contract has been lawfully appropriated for that purpose and is in the treasury or in the process of collection to the credit of an appropriate fund free from any other previous encumbrance. In the case of a continuous contract to be performed in whole or in part in an ensuing fiscal year, the amount required to meet the obligation in the fiscal year must be certified. This certification need only be signed by the county auditor. Any contract entered into without the required certification is void. This section also provides two exceptions to the above requirements: (1) Then and Now Certificate - If no certificate is furnished as required, upon receipt of the fiscal officer's certificate that a sufficient sum was appropriated and free from any previous encumbrances, the taxing authority may authorize the issuance of a warrant in payment of the amount due upon such contract or order by resolution within 30 days from the receipt of such certificate; and (2) If the amount involved is less than one hundred dollars, the fiscal officer may authorize it to be paid without the affirmation of the taxing authority if such expenditure is otherwise valid.

Where a contract is entered into on a per unit basis, the superintendent is to certify to the fiscal officer an estimate of the total amount to become due on the contract. A certificate of the fiscal officer as to the availability of funds for the amount of the estimate, or so much of this estimate as may be due during the current fiscal year, will satisfy the Ohio Rev. Code § 5705.41(D) certification requirements.

In addition, fiscal officers may prepare a "blanket" or "super blanket" certificate. A blanket certificate may not exceed an amount established by resolution or ordinance adopted by a majority of the legislative authority of the subdivision or taxing unit and may not extend beyond the end of the fiscal year. Only one blanket certificate may be outstanding at any time for any one particular line-item appropriation. A super blanket certificate may be issued for expenditures and contracts from a specific line-item appropriation account in a specified fund for most professional services, fuel, oil, food items, roadway materials and utilities, and any purchases exempt from competitive bidding under section 125.04 of the Revised Code, and other specific recurring and reasonably predictable operating expense. This certification is not to extend beyond the quarterly spending plan established by the county commissioners, and more than one super blanket certificate may be outstanding at one time for a particular line-item appropriation account.

3. Adoption and Execution

After certification by the fiscal officer, the contract must be formally adopted by resolution of the Board and duly entered upon its journal of proceedings. The resolution

should designate by name those representatives of the DD Board who are to sign the contract on behalf of the Board.

The contract must be signed by authorized representatives of all parties to the contract. An executed copy of the contract should be retained by all parties. It is suggested that the DD Board retain the original copies of all contracts in a central location where they are easily accessible when needed.

4. Terms

The DD Board is vested with broad authority in specifying the terms of contracts, as long as all expenditures are for public purposes within the general authority of the Board to contract for such facilities, programs and services.

Although the Auditor of State is not authorized to prescribe contract terms, an audit of the DD Board will include a review of the form and procedural adoption and execution of contracts, and, to the extent required by circumstances, an evaluation of the effectiveness with which the Board exercises its contracting authority. The following is a summary of contractual terms which should be addressed in each contract.

a. Property

It is recommended that all contracts with contract agencies include a provision that title to all tangible personal property identifiable as purchased with public funds be in the name of the DD Board, and that if the relationship between the Board and contract agency is terminated, such property be returned to the Board. If the property is purchased in part with Board funds and in part with agency funds, the contract must provide for a settlement with the agency of a proportionate amount of the market value of the property. Property purchased with agency funds, the expense of which is not reimbursed or otherwise supported by the Board, will, of course, remain with the agency. A DD Board may also lease tangible personal property to contract agencies; however, if the relationship between the Board and the contract agency is terminated, such property must be returned to the Board or purchased by the agency for the market value of the property.

b. Insurance for Contract Agencies

Pursuant to Ohio Rev. Code §5126.09, the DD Board is authorized to act as principal for contract agencies in the procurement of insurance coverage for contract agency employees. The advantage is clear, due to the savings available in purchasing for a larger group. The contract should specify the insurance coverage, the basis for allocation and the cost for the Board and contract agencies involved. Provision should also be made for the payment of each agency's share.

c. Civil Rights

Ohio Rev. Code §5126.07 mandates that neither DD Boards nor agencies under contract with such boards discriminate in the provision of services under its authority or contract on the basis of race, color, sex, creed, disability, national origin or inability to pay. Therefore it is recommended that each contract include a provision prohibiting such discrimination, with the ramification of such discrimination being cancellation of the contract. (See also the “Affirmative Action” and “Set Aside Program” sections of the Handbook).

d. Method of Payment

The contract may provide for payment on a grant, reimbursement, or per unit basis, or combination thereof. Ohio Rev. Code §5126.05 does mandate that each method of payment for contract services provided by a contract agency be made in accordance with guidelines issued by the Department of Developmental Disabilities. Therefore, before initiating a payment method of contract services, the Board must verify that they are in compliance with department guidelines.

Advanced funding may be used to avoid cash flow problems, but the terms and conditions of advance funding must be specifically provided for in the contract. Any expenditure to a contract agency which are not pursuant to a properly adopted contract may result in a finding for recovery directed against the contract agency, members of the DD Board, and other officials who authorized or participated in authorizing payment.

5. Competitive Bidding

DD Boards are subject to the competitive bidding requirements of Ohio Rev. Code §307.86, for all contracts in excess of twenty-five thousand dollars (\$25,000) unless such contracts fall within a recognized exception. Pursuant to Ohio Rev. Code §307.86, exempt from competitive bidding are the following: the purchases of program services, such as direct and ancillary client services, case management services, residential services, and family resource services which are purchased for provision by an DD Board. Contracts between the Board and contract agencies for the provision of these services will be exempt from the competitive bidding laws. Other exemptions from bidding include the services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser.

Bids in excess of twenty-five thousand dollars which are not exceptions to the competitive bidding requirements, including non-program contracts, supplies and equipment, will be accompanied by a bond or certified check, cashiers check, or money order on a solvent bank or savings and loan association. The bond or check will be for a reasonable amount as stated in the advertisement but will not exceed five percent (5%) of

the bid. If his bid is accepted, the bidder will execute a contract in conformity to the invitation and his bid. Ohio Rev. Code §307.88.

When competitive bidding is required, notice will be published once a week for not less than two consecutive weeks preceding the day of the opening of the bids in a newspaper of general circulation within the county for any purchase, lease, a lease with option or agreement to purchase, or a construction contract in excess of \$25,000. Such notice will state a general description of the proposed contract, the time and place where bids will be opened, the time and place for filing bids, the terms of the proposed purchase, conditions under which bids will be received, and notice regarding the existence of a system of preference. Ohio Rev. Code §307.87 also specifies how notice can be given by the contracting authority in trade papers, or other publications designated by it or by electronic means including the world wide web. The DD Board should also maintain, in a public place, a bulletin board upon which it will post and maintain a copy of such notice for at least two (2) weeks preceding the day of the opening of the bids. Ohio Rev. Code § 307.87.

6. Unresolved Findings for Recovery

Ohio Rev. Code §9.24 prohibits a state agency or political subdivision from awarding a contract for goods, services or construction, paid in part or whole with state funds, to a person against whom a finding for recovery has been issued, unless the finding has been resolved. Information on unresolved findings can be located on a database, accessible in the Auditor of State web site at www.auditor.state.oh.us. A public office may search the data to determine if Ohio Rev. Code §9.24 would prevent an award of a contract. (refer to Auditor of State Bulletin 2003-009)

7. Consultants

In general, under Ohio Rev. Code §5126.0227 authorizes the superintendent of the Board may employ persons for all positions authorized by the Board, and approve contracts of employment for management employees of one year or less, including consultants, and approve compensation as appropriate. It is recommended that any contract entered into between the parties state that any consultant is serving as an independent contractor, and clearly set forth what fringe benefits, if any, the independent contractor is entitled to.

I. ANNUAL PLAN

DD Boards are required to submit annually to the Department of Education a plan for the provision of special education programs for preschool and school age children in a request for approval of classroom units for preschool and school age children. The Superintendent of Public Instruction will review the plan and approve or modify it in accordance with the rules adopted by the State Board of Education. The Superintendent of Public Instruction will compile the plan submitted by the Board, and submit a comprehensive plan to the State Board of Education. Ohio

Rev. Code §3323.09. In addition, Ohio Rev. Code §3323.09(C) requires the DD Board to submit the following reports regarding special education provided to children under twenty-two years of age:

1. The board shall prepare a statement for each child who, at the time of receiving such special education, was a resident of a home and was not in the legal or permanent custody of an Ohio resident or a government agency in this state, and whose parents are not known to have been residents of this state subsequent to the child's birth. 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, and the number of months, including any fraction of a month, it was provided. Not later than the thirtieth day of June, the board shall forward a certified copy of such statement to both the Director of Developmental Disabilities and to the home.

Within thirty days after its receipt of a statement, the home shall pay tuition to the county board computed in the manner prescribed by section 3323.141 of the Revised Code.

2. The board shall prepare a report for each school district that is the school district of residence of one or more of such children for whom statements are not required by division (C)(1) of this section. The report shall contain the name of the county board providing special education, the name of each child receiving special education, the number of months, including fractions of a month, that he received it, and the name of the child's school district of residence. Not later than the thirtieth day of June, the board shall forward copies of each report to the school district named in the report, the Superintendent of Public Instruction, and the Director of Developmental Disabilities.

In addition to the annual plan that has to be submitted to the Ohio Department of Education, there is another report that has to be submitted to the Auditor of State's Office, as well as other offices. Ohio Revised Code Sections 3701.93, 3701.931 and 3701.932 states that each board of health is required to inspect each public and non-public school building and associated grounds, pursuant to guidelines established by the Ohio Director of Health. The purpose of the inspection is to identify conditions dangerous to the public health and safety. The findings from each inspection are to be reported to the following entities:

- The principal or chief administrator of the building;
- The administrator responsible for facility operations and maintenance;
- The superintendent and board of education of a school district;
- The educational service center or board of Developmental Disabilities, for a school operated by one of those entities; and
- The Auditor of State

Please refer to Auditor of State Bulletin 2006-005 for additional information.

J. ACQUIRING PROPERTY

1. Real Property

DD Boards may receive by gift, grant, devise or bequest real property to hold and utilize in accordance with the terms of the gift, grant or bequest. However, Ohio Rev. Code §5126.05(F), does not provide authority for the DD Boards independently to purchase real estate, 1982 Op. Att’y Gen. No. 1982-018. Nevertheless, Ohio Rev. Code §307.02 authorizes the Board of County Commissioners to “purchase, for cash or by installment payments, enter into lease-purchase agreements, leases with option to purchase, lease, appropriate, construct, enlarge, improve, rebuild, equip, and furnish . . . [a] community developmental disabled facility.” Hence, real estate for DD Board facilities may be purchased by the Board of County Commissioners. See also 1970 Op. Att’y Gen. No. 1970-062 authorizing the Board of County Commissioners to purchase real estate to construct a developmental disability facility.

2. Personal Property

There is no express statutory authority for a DD Board to acquire personal property. However, the Attorney General in 1978 Op. Att’y Gen. No. 1978-027 held that the Board has the implied power to acquire personal property where the purchase of such property is related to the Board’s express duties. Therefore, as long as the purchase of such property is necessary for the Board to perform its express duties, the authority to purchase such property can be implied. See also: *State ex rel. Bentley and Sons Co. v. Pierce* (1917), 96 Ohio St. 44; and *State ex rel. Hunt v. Hildebrant* (1915), 93 Ohio St. 1.

3. Inventory

It is essential for both auditing and management purposes that a perpetual inventory is maintained of personal property titled in the name of the Board. All property with a cost in excess of a threshold figure selected by the Board, and a useful life in excess of one (1) year, should be listed. Inventory records should include, for each item, the date of acquisition, the cost, the manufacturer’s serial number, if any, an identifying tag number attached to the property and assigned serially to the equipment, the individual, division, or office to which the equipment is assigned, the location of the equipment, the date of Board action for disposal of property, the date of disposal, the amount, if any, realized on disposal, and the fund to which such proceeds were credited. In addition, an annual inventory shall be filed with the Board of County Commissioners and County Auditor by the second Monday in January of each year. Ohio Rev. Code §305.18.

4. Disposal of Personal Property

In accordance with Ohio Rev. Code §5126.05, property of the DD Board acquired by gift, grant, devise, or bequest will be disposed of according to the terms of the gift, grant or bequest. However, except for property acquired by gift, grant or bequest, there is no express statutory authority for the disposition of Board-owned obsolete property.

The Attorney General held in 1984 Op. Att’y Gen. No. 1984-054 that a DD Board has a restricted implied power to dispose of personal property. The proceedings for the disposition of personal property are set forth in Ohio Rev. Code §307.12, which reads, in part:

- a. Except as otherwise provided in division (B) of this section, when the board of county commissioners finds, by resolution, that the county has personal property, including motor vehicles acquired for the use of county officers and departments, and road machinery, equipment, tools, or supplies, which is not needed for public use, or is obsolete or unfit for the use for which it was acquired, and when the fair market value of the property to be sold under this division is, in the opinion of the board, in excess of two thousand five hundred dollars, the board may do either of the following:

1. Sell such property at public auction or by sealed bid to the highest bidder. Notice of the time, place, and manner of the sale shall also be published in a newspaper of general circulation in the county at least ten days prior to the sale, and a typewritten or printed notice of the time, place, and manner shall be posted at least ten days before the sale in the offices of the county auditor and the board of county commissioners.

If a board conducts a sale of personal property by sealed bid, the form of the bid shall be as prescribed by the board, and each bid shall contain the name of the person submitting it. Bids received shall be opened and tabulated at the time stated in the notice. The property shall be sold to the highest bidder, except that the board may reject all bids and hold another sale, by public auction or sealed bid, in the manner prescribed by this section.

2. Donate any motor vehicle that does not exceed four thousand five hundred dollars in value to a nonprofit organization exempt from federal income taxation pursuant to 26 U.S.C. 501(a) and (c)(3) for the purpose of meeting the transportation needs of participants in the Ohio Works First Program established under Chapter 5107 of the Revised Code and participants in the Prevention, Retention, and Contingency Program established under Chapter 5108 of the Revised Code.

- b. When the board of county commissioners finds, by resolution, that the county has personal property, including motor vehicles acquired for the use of county officers and departments, and road machinery, equipment, tools, or supplies, which is not needed for public use, or is obsolete or unfit for the use for which it was acquired, and when the fair value of the property to be sold under this division is, in the opinion of the board, two thousand five hundred dollars or less, the board may sell the property by private sale, without advertisement or public notification.

Notwithstanding anything to the contrary in Ohio Rev. Code §307.12(A) and regardless of the property's value, the board may sell or donate personal property, including motor vehicles, of the county or federal government, the state, or any political subdivision of the state without advertisement or public notification.

- c. When a county officer or department head determines that county-owned personal property under the jurisdiction of the officer or department head, including motor vehicles, road machinery, equipment, tools, or supplies, is not of immediate need, the county officer or department head may notify the board of county commissioners, and the board may lease such personal property to any municipal corporation, township, or other political subdivision of the State. Such lease shall require the county to be reimbursed under terms, conditions, and fees established by the board of county commissioners, or under contracts executed by the board.

The Attorney General in 1984 Op. Att'y Gen. No. 1984-054 determined that Ohio Rev. Code § 307.12, addresses separately the scope of authority of the Board of County Commissioners and the various county officers and department heads regarding the disposition of unneeded personal property. The authority to sell personal property is limited to the Board of County Commissioners as set forth in Sections 307.12(A) and (B) of the Revised Code. Therefore, a DD Board is restricted to the provisions of Ohio Rev. Code §307.12, when disposing of personal property.

K. DIRECT SERVICES CONTRACTS

Pursuant to Ohio Rev. Code §5126.03 a “direct services contract” is defined as:

“...any legally enforceable agreement with an individual, agency, or other entity that, pursuant to its terms or operation, may result in a payment from a county board of Developmental Disabilities to an eligible person or to a member of the immediate family of an eligible person for services rendered to the eligible person. “Direct services contract” includes a contract for supported living pursuant to sections 5126.40 to 5126.47 of the Revised Code, family supported services under section 5126.11 of the Revised Code, and reimbursement for transportation expenses.”

Each direct services contract is to be reviewed by the Ethics Council, in light of the “conditions for direct services contracts” as described in Ohio Rev. Code §5126.033. Ohio Rev. Code

§5126.032(A). The DD Board is required to appoint members to the Ethics Council at the annual organizational meeting. The chairperson of the Board may be appointed to the council, and the superintendent of the board is to be a nonvoting member of the council. The council is to hold regular open, public meetings to review direct services contracts, as directed by the Board. Ohio Rev. Code §5126.031(A).

If the Board established a policy that it will not enter into any direct services contracts with any board member, former board member, or a member of either immediate family, the board is not required to create an Ethics Council. In that event, the Board will perform the duties of the Ethics Council. Such a policy must be adopted by resolution by a majority of the members of the Board, and is to be effective for a period of one year.

L. REVIEW OF REPORTS OF ABUSE AND NEGLECT

Pursuant to Ohio Rev. Code §5126.31, DD Boards are required to review all reports of abuse and neglect made under Ohio Rev. Code §5123.61, or referred to it under Ohio Rev. Code §5101.611, to determine whether the subject of the report is developmentally disabled and in need of services. If the report alleges that there is a risk of death or immediate physical harm to the subject of the report, the Board is to begin review within 24 hours of receiving the report.

Upon determination that the subject of the report is a developmentally disabled adult, the board shall:

- (1) Give both written and oral notice of the purpose of the review to the adult and, if any, to the adult's legal counsel or caretaker, in simple and clear language;
- (2) Visit the adult, in the adult's residence if possible, and explain the notice given under division (B)(1) of this section;
- (3) Request from the registry office any prior reports concerning the adult or other principals in the case;
- (4) Consult, if feasible, with the person who made the report under section 5101.61 or 5123.61 of the Revised Code and with any agencies or persons who have information about the alleged abuse or neglect;
- (5) Cooperate fully with the law enforcement agency responsible for investigating the report and for filing any resulting criminal charges and, on request, turn over evidence to the agency; and
- (6) Determine whether the adult needs services, and prepare a written report stating reasons for this determination. No adult shall be determined to be abused, neglected, or in need of services for the sole reason that, in lieu of medical treatment, the adult relies on or is being furnished spiritual treatment through prayer alone in accordance with the tenets and

practices of a church or religious denomination of which the adult is a member or adherent. Ohio Rev. Code §5126.31(B).

If the Board determines the need for services exists and the individual consents to receive them, the Board is to arrange for the subject of the report to receive services for the prevention, correction, or discontinuance of the abuse or neglect. Ohio Rev. Code §5126.31. The Board is to ensure the services are provided, or are terminated if the consent is withdrawn. Ohio Rev. Code §5126.31(D). If the Board is unable to secure consent, the Board may file a complaint with the probate court of the county within which the individual resides, for an order authorizing the services. Ohio Rev. Code §5131.33. The Board is to file a written report, upon completion of the review, to the law enforcement agency responsible for investigating the report and to the registry office of the Department of Developmental Disabilities. This report is deemed to *not* be a public record. Ohio Rev. Code §5126.31(E).

M. MEDICAL SERVICE PROVIDED BY COUNTY BOARD WORKERS

The Board of Nursing shall adopt rules as it considers necessary to govern nursing delegation as it applies to DD personnel who administer prescribed medication, perform health-related activities, and perform tube feedings pursuant to the authority granted under section 5123.42 of the Revised Code. If the DD Board adopts a policy authorizing such tasks, the policy must specifically state the circumstances under which employees are authorized to give prescription medication and perform delegated nursing duties. This policy must also identify, by name, training, qualifications, or similar designation, the Board workers who will be allowed to perform these tasks, and require that these employees meet the training requirements established by the Board of Nursing under Ohio Rev. Code §4723.69

Ohio Rev. Code §5123.42(C) authorizes DD personnel to administer prescribed medications, perform health-related activities, and perform tube feedings pursuant to this section is subject to all of the following:

- (1) To administer prescribed medications, perform health-related activities, or perform tube feedings for individuals in the categories specified under divisions (A)(1) to (8) of this section, DD personnel shall obtain the certificate or certificates required by the department of Developmental Disabilities and issued under section 5123.45 of the Revised Code. DD personnel shall administer prescribed medication, perform health-related activities, and perform tube feedings only as authorized by the certificate or certificates held.
- (2) To administer prescribed medications, perform health-related activities, or perform tube feedings for individuals in the category specified under division (A)(9) of this section, DD personnel shall successfully complete the training course or courses developed under section 5123.43 of the Revised Code for the DD personnel. DD personnel shall administer prescribed medication, perform health-related activities, and perform tube feedings only as authorized by the training completed.

- (3) If nursing delegation is required under division (B) of this section, DD personnel shall not act without nursing delegation or in a manner that is inconsistent with the delegation.
- (4) The employer of DD personnel shall ensure that DD personnel have been trained specifically with respect to each individual for whom they administer prescribed medications, perform health-related activities, or perform tube feedings. DD personnel shall not administer prescribed medications, perform health-related activities, or perform tube feedings for any individual for whom they have not been specifically trained.
- (5) If the employer of DD personnel believes that DD personnel have not or will not safely administer prescribed medications, perform health-related activities, or perform tube feedings, the employer shall prohibit the action from continuing or commencing. DD personnel shall not engage in the action or actions subject to an employer's prohibition.

Ohio Rev. Code §5123.42(D), provides that the department of Developmental Disabilities shall adopt rules governing the implementation of the administration of prescribed medications, health-related activities, and tube feedings in accordance with the rules adopted by the board of nursing and the Ohio Nurses Association. The rules shall include the following:

- (1) Requirements for documentation of the administration of prescribed medications, performance of health-related activities, and performance of tube feedings by DD personnel pursuant to the authority granted under this section;
- (2) Procedures for reporting errors that occur in the administration of prescribed medications, performance of health-related activities, and performance of tube feedings by DD personnel pursuant to the authority granted under this section;
- (3) Other standards and procedures the department considers necessary for implementation of this section.

There is an exception to the requirements for those receiving services from unlicensed in-home care workers, under Ohio Rev. Code §5123.47. When an individual is receiving funding from a county board for services within the home by an unlicensed in-home care worker, the individual's immediate family may authorize the unlicensed in-home care worker to give prescribed medication or perform other healthcare tasks as part of the services, so long as the family member selects and supervises the worker. The family member is to prepare written document authorizing the care. This family member retains full responsibility for the care provided by the worker. Ohio Rev. Code §5123.47(E), gives the DD Board authority to evaluate the authority granted by the family member at any time, and requires evaluation upon a complaint.

Ohio Rev. Code §5123.422, provides immunity for DD Board workers who are authorized to administer prescribed medications, perform health-related activities, or perform tube feedings pursuant to the authority granted under Ohio Rev. Code §5123.42, are not liable for any injury caused by administering the medications, performing the health-related activities, or performing the tube feedings, if both of the following apply:

- (1) The DD personnel acted in accordance with the methods taught in training completed in compliance with section 5123.42 of the Revised Code;
- (2) The DD personnel did not act in a manner that constitutes wanton or reckless misconduct.

N. SUPPORTED LIVING

Each DD Board is required to plan and develop supported living for individuals who are residents of the county, with developmental disabilities. This plan shall be in accordance with Sections 5126.41 through 5126.47 of the Revised Code. Ohio Rev. Code § 5126.40. The Board is to identify residents of the county for whom supported living will be provided; assist these individuals in identifying their needs and developing an individual service plan. The Board is to obtain the signature of the individual or the individual's guardian on the plan, and the plan is to remain in effect for a period agreed upon by the individual and the Board. Ohio Rev. Code §5126.41.

The DD Board shall establish an advisory council to provide on-going communication among all persons concerned with supported living. The board shall consist of board members or employees of the board, individuals receiving supported living, providers of supported living, and advocates for the individuals. The Board must create a system whereby the individual may choose to keep the same provider or change providers. The Board is to create a pool of providers from which individuals may select a provider, or, if the individual so chooses, the individual may choose a provider that is not part of the pool so long as the provider has been certified by the Department of Developmental Disabilities. Ohio Rev. Code §5126.42(C).

The Board is to arrange for supported living in one or more of the following ways:

- (1) By contracting under section 5126.45 of the Revised Code with providers selected by the individual to be served;
- (2) By entering into share funding agreements with state agencies, local public agencies, or political subdivisions at rates negotiated by the boards;
- (3) By providing direct payment or vouchers to be used to purchase supported living, pursuant to a written contract in an amount to be determined by the board, to the individual person providing the individual with protective services as defined in section 5123.55 of the Revised Code. Ohio Rev. Code §5126.43(A).

If no certified provider is able to provide the required services, the DD Board may provide those services directly. Additionally, a Board may contract to provide services without certification for an individual it determines is in emergency need for a period of ninety days. Ohio Rev. Code §5126.43.

The contract with a provider is to be in writing, with the individual service plan submitted as an addendum to the contract, and the individual being considered a third-party beneficiary. The contract is to be negotiated between the provider and the DD Board. Ohio Rev. Code § 5126.45.

IV. OFFICERS AND EMPLOYEES OF THE BOARD

A. GENERAL

Chapter 124 of the Ohio Revised Code establishes the Civil Service System, which governs the appointments, employment and removal of employees of the State, County, City and other political subdivision.

County Boards of Developmental Disabilities are employers of persons governed by the Civil Service Laws. Ohio Rev. Code §124.01(A), defines “Civil Service” as follows:

Civil Service includes all *offices and positions of trust or employment in the service of the State and the Counties*, cities, city health districts, general health districts, and city school districts thereof. [Emphasis added]

Thus, employees of the DD Board of Developmental Disabilities may not be appointed, removed, laid off, suspended, promoted, reinstated or reduced, other than as provided in Chapter 124 of the Ohio Revised Code, or pursuant to the rules promulgated there under by the State Department of Administrative Services or as provided in applicable collective bargaining agreements pursuant to Chapter 4117 of the Ohio Revised Code, except as otherwise noted below.

Ohio Rev. Code §124.11, provides that all employees in the civil service are either in the unclassified or the classified service. All civil service employees not specifically placed in the unclassified service by Ohio Rev. Code §124.11, are automatically in the classified service.

The status of unclassified employees differs from that of classified employees. Unclassified employees serve at the pleasure of the appointing authority and may be terminated at will for any cause or for no cause. Unclassified employees are appointed without taking civil service examinations and may take part in partisan political activity.

B. UNCLASSIFIED EMPLOYEES

Ohio Rev. Code §124.11(A)(19), sets forth which employee positions of the DD Board are to be deemed unclassified.

Superintendents and management employees as defined in Ohio Rev. Code §5126.20 of County Boards of Developmental Disabilities.

The rights and privileges that accompany classified status do not apply to these positions.

The Revised Code provides for three (3) categories of DD Board employees in addition to the superintendent. These categories include: (1) management employees; (2) professional employees; and (3) service employees.

1. Management Employees - General

Ohio Rev. Code §124.11(A)(19), states that management employees of the Board are unclassified. Ohio Rev. Code §5126.20(C), defines a management employee to mean “a person employed by the board in a position having supervisory or managerial responsibilities and duties.” Ohio Rev. Code §5126.22, lists the different occupations which are classified as management positions. It includes the following: assistant superintendent, director of business, director of personnel, adult services director, workshop director, habilitation manager, director of residential services, principal (director of children services), program or service supervisor, plant manager, service and support administration supervisor, investigative agent, production manager, confidential employees as defined in Section 4117.01 of the Ohio Revised Code, other positions that the DD Board or the director designates as having supervisory or managerial responsibilities and duties, or any management positions designated by the Board in accordance with Ohio Rev. Code §5126.22(D).

2. Contracts and Benefits

Ohio Rev. Code §5126.20(D), and (E), establish two types of contracts for management employees: (1) continuing contracts; and (2) limited contracts. A “continuing contract” is defined as a contract of employment issued prior to June 24, 1988, to a classified employee whereby the employee has completed his probationary period and the employee retains employment until he retires, resigns, is removed or laid off. Though these management employees are no longer in a classified position, Ohio Rev. Code §5126.20(E), preserves the employees’ property rights by placing the employees in an unclassified position with a continuing contract status. This classification protects the employee as if he were in a classified position.

Any employee who was a probationary employee on June 24, 1988, will be granted a continuing contract status upon successful completion of his probationary period. Ohio Rev. Code §5126.21(F).

Ohio Rev. Code § 126.20(D) defines a “limited contract” as a contract of limited duration which is renewable at the discretion of the superintendent. Board management employees hired on or after June 24, 1988 are deemed limited contract employees. In accordance with Ohio Rev. Code §5126.21(A)(1), limited contract employees are under contract with the Board for a minimum of one year or a maximum five year period except that a management employee hired after the beginning of the year may be employed under a limited contract expiring at the end of the program year. Contracts of one year in length would only need to be approved by the superintendent; however, contracts in excess of one year would need to be approved by the Board. Ohio Rev. Code 5126.05(A)(7).

A management employee with a limited contract must receive, ninety (90) days prior to expiration of his employment contract, notice from the superintendent that he will not be rehired. If the management employee is not notified, then the employee must be reemployed under another limited contract of one (1) year at the same salary plus any authorized salary increases. Ohio Rev. Code §5126.21 (A)(1). In addition, during the term of an original limited contract or any limited contracts entered into subsequently, the Board may not reduce the management employee’s salary unless such reduction is part of a uniform plan affecting all employees of the Board. Ohio Rev. Code §5126.21 (A)(2).

It is recommended that the DD Board consider awarding limited contracts in excess of one year so that the contracts have a common expiration date with other management employee contracts. Awarding annual contracts from the date of hire may cause problems for Boards with a large number of management employees.

Since all management employees maintain an unclassified status, statutory employee benefits established for classified employees do not pertain to management employees. Instead, the Board must establish for its management employees benefits which shall include sick leave, vacation leave, and other benefits as designated by the Board. Ohio Rev. Code §5126.21 (C).

3. Removal, Suspension and Demotion of Management Employees

Ohio Rev. Code §5126.23(B) states that a superintendent or management employee may be removed, suspended, or demoted for violation of a written rule of the Board, incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteousness treatment of the public, neglect of duty or other acts of misfeasance, or nonfeasance.

When charges have been filed against a management employee, the employee must be provided a predisciplinary conference within thirty (30) days. The superintendent or his designee must conduct the predisciplinary conference at which time the employee will have the opportunity to refute the charges. Beforehand, the superintendent must give the employee a copy of all charges within seventy-two (72) hours of the conference. Within fifteen (15) days after the conference the superintendent must notify the employee of his decision to remove, suspend, or demote him. Ohio Rev. Code §5126.23(C).

Once the employee has received notification of the results of the predisciplinary conference, the employee within fifteen (15) days is permitted to file with the Board a written demand for a hearing before the Board or before a referee. The hearing must be held within thirty (30) days from the date the Board receives the written demand. The Board must also give the management employee at least twenty (20) days written notice of the time and place of the hearing. Ohio Rev. Code §5126.23 (D).

If a referee is demanded by the management employee, or requested by the DD Board, the hearing will be conducted by a referee selected in the manner described below; otherwise, the hearing must be conducted by a majority of the members of the Board. The hearing also must be confined to the charges brought at the predisciplinary conference. Ohio Rev. Code §5126.23 (E).

Referees must be selected from a list of names compiled for this purpose by the Superintendent of Public Instruction, pursuant to Ohio Rev. Code §3319.161. Upon receipt of notice that a referee has been demanded by a management employee or an DD Board, the Superintendent of Public Instruction must designate three persons from such list from which the referee for the hearing must be chosen, and immediately notify the designees, the DD Board, and the management employee. If within five (5) days of receipt of the notice, the Board and the employee fail to agree upon one of the designees to serve as the referee, then the appointment must be made by the Superintendent of Public Instruction. The referee will be paid his usual and customary fee for attending the hearing by the County Board of Developmental Disabilities. Ohio Rev. Code §5126.23(F). Additionally, the Board will provide for a complete stenographic record of the proceedings, and a copy of the record must be furnished to the management employee. Ohio Rev. Code §5126.23 (G).

Both parties are permitted to attend the hearing, be represented by counsel, cross-examine witnesses, request a record of the proceedings, and require the presence of witnesses on their behalf pursuant to subpoenas issued by the DD Board. In case of the failure of any person to comply with a subpoena, a judge of the court of common pleas of the county in which the person resides, upon application of any interested party, will compel attendance of the person by attachment proceedings as for contempt. After the referee conducts the hearing, he must file his report within ten (10) days with the Board. The Board, by a majority vote, may accept or reject the referee's recommendation. If the decision is in favor of the management employee, the charges and the record of the

hearing will be physically expunged, and if the management employee suffered any loss of salary by reason of being suspended, he would be paid his full salary for the period of the suspension.

Any employee affected by a determination of the Board under this decision may appeal to the Court of Common Pleas of the county in which the Board is located within thirty (30) days after receipt of notice of the entry of such determination. The appeal will be an original action in the court and would be commenced by the filing of a complaint against the Board. Upon service or waiver of a summons in that appeal, the Board immediately will transmit to the clerk of the court for filing, a transcript of the original papers filed with the Board, a certified copy of the minutes of the Board into which the determination was entered, and a certified transcript of all evidence adduced at the hearing or hearings. The court would then examine the transcript and record of the hearing and hold such additional hearings as is considered advisable.

Upon final hearing, the court will grant or deny the relief prayed for in the complaint, and either the employee or the Board would be permitted to appeal such decision pursuant to the Rules of Appellate Procedure and Chapter 2505 of the Ohio Revised Code.

As an alternative, to Ohio Rev. Code §5126.23(C) to (G) DD Boards may consider implementing a binding arbitration clause in all management employee contracts to ensure quicker resolution of employee disputes as permitted by Ohio Rev. Code §5126.23 (H).

C. CLASSIFIED EMPLOYEES

1. Professional Employees and Service Employees

All other employees of the Board including professional employees and service employees are deemed classified civil service employees. Ohio Rev. Code §5126.22(B), defines a professional employee as an individual for which a bachelor's degree from an accredited college or university, or license or certificate issued under Title 47 of the Ohio Revised Code is required, and includes persons who hold one of the enumerated positions listed in Ohio Rev. Code §5126.22(B).

Ohio Rev. Code §5126.20 (A), sets forth the definition of a service employee. A service employee is defined as a person employed by an DD Board in a position that may require registration under Section 5126.25 of the Revised Code, but that does not require the employee to have a bachelor's degree, and include the employee positions listed in Section 5126.22 (C) of the Revised Code. Positions included in Ohio Rev. Code §5126.22 (C) are workshop specialist, workshop specialist assistant, contact procurement specialist, community employment specialist, an assistant to a professional who is providing or supervising those providing adult services or case management, and other services positions that are designated by the DD Board or director.

Neither professional employees nor registered service employees are subject to certification examinations normally required for employees of developmental disability boards. Ohio Rev. Code §124.241, specifically states that those individuals *may* be hired on the basis of their qualifications rather than on the basis of the results of an examination administered by the Director of Administrative Services pursuant to Ohio Rev. Code §124.23. Nevertheless, it should be noted that the DD Boards may subject these individuals to such an examination; however, Ohio Rev. Code §124.241, authorizes a Board to disregard this procedure if the Board so chooses.

2. Other Employees

Other than the noted exceptions and subject to any collective bargaining agreements, all other employees of the County Board of Developmental Disabilities are classified service employees and therefore possess important rights such as tenure of office and appeal of personnel actions. (Employees in the classified service may be further characterized as certified, provisional and probationary employees, with different status attached to each type.)

Pursuant to Ohio Rev. Code §124.27, the Director of Administrative Services will certify to the appointing authority the names and addresses of the ten (10) highest candidates upon the results of a civil service examination for the class or grade of the position in question; any of the three (3) may then be selected by the appointing authority. The person selected becomes a certified employee with probationary status. When less than ten (10) names are certified to the appointing authority, appointment from that list is not required.

If there is a need to fill a vacancy for which the Director of Administrative Services is unable to certify a list of eligible persons for appointment, the appointing authority may nominate an individual for noncompetitive examination, and may be appointed provisionally until the vacancy can be filled through competitive examination. Any employee in the classified service who is appointed to a position under section 124.30 of the Revised Code, and either demonstrates merit and fitness for the position by successfully completing the probationary period for the position or remains in the position for a period of six months of continuous service, whichever period is longer, shall become a permanent appointee in the classified service at the conclusion of that period. Ohio Rev. Code § 124.271.

All classified employees, provisional or certified are required to serve a probationary period of sixty (60) days to one (1) year, as set by rules of the Director of Administrative Services. Ohio Rev. Code §124.27. If the service of the probationary employee is unsatisfactory, the employee may be removed or reduced at any time during the probationary period. If the appointing authority's decision is to remove the appointee, the appointing authority's communication to the director shall indicate the reason for that

decision. A probationary employee duly removed or reduced in position for unsatisfactory service does not have the right to appeal the removal or reduction under Section 124.34 of the Revised Code. Ohio Rev. Code §124.27(C).

3. Removals and Disciplinary Action

[NOTE: As in the case with other terms and conditions of employment, the disciplinary process is subject to the provisions of collective bargaining agreements entered into pursuant to Chapter 4117 of the Revised Code. With some exceptions, Chapter 4117 “prevails over any and all other conflicting laws, resolutions, provisions, present or future, except as otherwise specified in this chapter of the Revised Code or as otherwise specified by the General Assembly” Ohio Rev. Code §4117.10. The following discussion applies to those classified employees who are “exempt” from applicable collective bargaining agreements and to those employees who are subject to a collective bargaining agreement which is silent regarding the terms and conditions of employment covered by applicable statutes and laws.]

A classified employee may have his employment terminated through layoff or job abolishment. Ohio Rev. Code §124.321. Applicable rules of the Department of Administrative Services provide detailed procedures for determining the order of layoff, displacement rights, and seniority. The Department of Administrative Services should be consulted if a situation involving these matters arises.

Possible disciplinary actions against a classified employee include removal, reduction in pay or position, suspension and reprimands. After a classified employee has completed his probationary period, such actions may be undertaken only as provided in Ohio Rev. Code §124.34. Grounds for such actions are specified in the statute, and include “incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of this chapter or the rules of the director of administrative services or the commission, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony.” A finding by the ethics commission for violations of Chapter 102 of the Ohio Revised Code, Ohio Rev. Code §2921.42, or Ohio Rev. Code §2921.43, may also constitute grounds for dismissal.

In the case of a suspension for more than three days, a fine in excess of three days’ pay, a reduction, or removal, the appointing authority must serve upon the employee a copy of the order causing such action, including a statement of the reasons for such action. A copy of the order is to be filed with the Director of Administrative Services and the State Personnel Review board or the Commission as may be appropriate. Within ten days the employee may file an appeal order with the State Personnel Review Board or the Commission, and a hearing is to be held within 30 days. Either party may appeal the result of the hearing to the common pleas court in the county within which the employee resides.

In the event an appeal is filed, the State Personnel Board of Review or the Commission must notify the appointing authority and will hear the appeal within thirty (30) days from the date of filing. The Board or Commission may affirm, modify, or disaffirm the action.

If the action is disaffirmed, the employee will be reinstated to this position with full pay for the period for which he was off work. In cases of removal or reduction in pay for disciplinary reasons, the appointing authority or the officer or employee may appeal the decision of the Personnel Board of Review or the Commission to the Court of Common Pleas in the county in which the employee resides. Irrespective, in all employee termination cases or actions appealable by the employee, the DD Board pursuant to Ohio Rev. Code §124.20, must submit personnel action forms to the Department of Administrative Services.

It should be noted, that in cases of removal of civil service employees, the court in *Cleveland Board of Education v. Loudermill* (1985), *et al*, 470 U.S. 532, held that before an employee can be removed or discharged, the employee must be given an opportunity for a hearing *prior* to being discharged or removed. Failure to provide the employee an opportunity for a hearing before he is removed or discharged is in violation of his due process rights.

4. Restriction on Political Activity

Ohio Rev. Code §124.57, provides that no employee in the classified civil service may “take part in politics other than to vote as the employee pleases and to express freely political opinion.” The Ohio Supreme Court has ruled in *Heidtman v. City of Shaker Heights* (1955), 163 Ohio St. 109, that Ohio Rev. Code §124.57 prohibits only partisan political activity. Therefore, if such activity is undertaken, it is grounds for removal for a classified employee. If questions arise as to whether a particular activity is “partisan political activity,” the advice of counsel should be sought.

D. COMPENSATION

1. Authority

The DD Board’s authority to determine the compensation of its employees is set forth in Ohio Rev. Code §5126.05(A)(7), which requires the Board to establish salary schedules and fringe benefits for all its employees.

While the statute provides authority for the Board to compensate its employees, it does not specifically set forth the manner in which employees of the Board are to be paid. This lack of specificity has raised various issues regarding the payment of Board employees and will be discussed below.

2. Retroactive Compensation

The Attorney General, in 1981 Op. Att’y Gen. No. 1981-011, overruled prior opinions which held that Article II, Section 29 of the Ohio Constitution prohibited units of local government from granting retroactive increases in compensation to employees. Such increases may be granted to employees by a County Board of Developmental Disabilities.

3. Salary Schedule

The Attorney General in 1982 Op. Att’y Gen. No. 1982-055 held that full-time employees of DD Boards may be paid in twenty-six (26) biweekly installments even if the employees only work nine (9) months of the year. The Attorney General stated that the authority of the Board to adopt salary schedules for its employees provides not only the power to specify the amount but also the frequency of such salary payments. The Attorney General has held that the only limitation upon the Board’s authority to determine payroll periods is that the system it establishes must be reasonable. *See also Jewett v. Valley Railway Company* (1878), 34 Ohio St. 601, 608.

4. Overtime Pay

Pursuant to Ohio Rev. Code §4111.03 employees are entitled to compensation at one and one-half (1-1/2) times their normal rate of pay for hours actually worked in excess of forty (40) hours per week, subject to the exemptions of Section 7 and Section 13 of the “Federal Fair Labor Standards Act of 1938”, 52 Stat. 1060, 29 U.S.C. 207, 213, as amended. Of particular importance to DD Boards is the exemption from coverage of executive, administrative and professional employees as defined by the Federal Fair Labor Standards Act of 1938. Additional information as to the classification of positions for purposes of this exemption may be obtained from the Wage and Hour Division of the Employment Standards Administration within the United States Department of Labor.

5. Fringe Benefits

Ohio Rev. Code §5126.05(A)(7), specifically authorizes the Board to establish and provide to its employees fringe benefits. It is clear that insurance benefits, holidays, and vacation benefits are within the discretionary authority of the Board and the superintendent to jointly determine. 1984 Op. Att’y Gen. No. 1984-071. The Board should formally adopt policies in each of these areas.

6. Sick Leave

The authority of the DD Board to grant sick leave to the Board’s classified employees is set forth in Ohio Rev. Code §124.38, which prescribes the amount of sick leave which must be granted and regulates its use. Each employee is entitled to accrue 4.6 hours of sick leave per eighty hour biweekly pay period, on the basis of time in active pay status.

Unused sick leave may accumulate without limit, and may be used by the employee, on approval of the proper administrative officer, for absence due to personal illness, pregnancy or injury, and illness, injury or death in the employee's immediate family.

The appointing authority may require an employee to furnish a written, signed statement justifying the use of sick leave and, if medical attention is required, a certificate from the licensed physician stating the nature of the illness. The Board must keep a record for each employee showing the amount of sick leave accrued by pay period and the amount of sick leave used by pay period. Falsification of any written statement or a physician's certificate is grounds for disciplinary action, including dismissal.

Ohio Rev. Code §124.38, establishes only *minimum* sick leave benefits. A Board may establish greater benefits if it desires to do so. *Ebert v. Stark County Board of Mental Retardation* (1980), 63 Ohio St. 2d 31. However, if the Board establishes benefits in excess of the statutory minimum, any increased benefits, once earned by the employee become vested rights. *Id.*

Finally, employees who are paid in twenty-six (26) installments, but who work only nine (9) months of the year are not entitled to accrue sick leave or vacation benefits during the time the employee is not actually scheduled to work. 1982 Op. Att'y Gen. No. 1982-055.

Revised Code Section 124.39 establishes the procedures for paying accrued, unused sick leave to employees of political subdivisions. Revised Code Section 124.39(C) authorizes a political subdivision to adopt a policy "permitting an employee to receive payment upon a termination other than retirement," and specifically requires that a policy offering sick leave payout under division (C) of this section must be adopted in one of the following ways:

- 1) By resolution of the board of county commissioners for any office, department, commission, or board that receives at least one-half of its funding from the general revenue fund;
- 2) By order of any appointing authority of a county office, department, commission, or board that receives less than one-half of its funding from the county general revenue fund. Such office, department, commission, or board shall provide written notice to the board of county commissioners of such order; or
- 3) As part of a collective bargaining agreement.

Therefore, if you are a county office, department, commission, or board that receives more than one-half of your funding from the county general fund and you wish to 1) modify the statutory entitlement to the payout for accrued, unused sick leave as provided in Revised Code Section 124.39(B), or 2) allow a payout of additional accrued, unused sick leave for non-union employees pursuant to Revised Code Section 124.39(C), you

must have a policy approved by resolution of your county board of commissioners. Additionally, pursuant to Revised Code Section 124.39(C)(3), an office, department, commission, or board with authority to negotiate and enter into collective bargaining may adopt provisions that alter statutory sick leave provisions through an agreement for employees covered by the agreement. Please refer to Auditor of State Bulletin 2005-004 for additional information.

E. EXPENSES

The County Board of Developmental Disabilities members and employees are authorized to be reimbursed for actual and necessary expenses incurred in the performance of their official duties, pursuant to Ohio Rev. Code §5126.0215. As to public employees, generally it is stated that:

... [A] public officer or public employee may lawfully be reimbursed from public funds for traveling and other personal expenses actually and necessarily incurred by him in the performance of a public duty...

[T]he determination of the lawfulness of the allowance of traveling and other personal expenditures of a public officer or employee when in the performance of his public duties requires consideration of pertinent questions of fact, *and is thereby reduced to a pure question of auditing*. [Emphasis added]. 1930 Op. Att’y Gen. No. 1930-2170, syllabus paragraph 2 and 3.

1. Reimbursement

Reimbursement for personal expenses of a public officer or employee is limited to expenses actually incurred. Satisfactory evidence that an expenditure was actually incurred can usually consist of an official receipt, which should be presented in accordance with the policy adopted by the Board. The Board should also in its policy make reference to the reimbursement of items for which it is impracticable to obtain receipts, such as bridge and highway tolls, taxi fares, etc. In addition, the Board may adopt a policy whereby an officer or an employee is given an advancement. Even with an advancement, the officer or employee must substantiate all expenditures with a receipt. Arrangements may be made where upon presentation of a receipt, the officer or employee is reimbursed for any expense in excess of the advancement, or returns the advanced excess funds.

2. Necessary and Proper Expenses

Expenditures to be eligible for reimbursement must be necessary to the performance of the duties of the public officer or employee. Ohio Rev. Code §5126.0215. In determining whether an expenditure is necessary, the Attorney General in 1982 Op. Att’y Gen. No. 1982-006 stated that such expenditures must be: (1) necessary to perform a

function or duty of the Board which is expressly granted by statute or is necessarily implied therefrom; and (2) such expenditures serve a valid public purpose.

For example, in 1981 Op. Att’y Gen. No. 1981-048, the Attorney General held that employees of a County Board of Developmental Disabilities may be reimbursed for damage to eyeglasses, clothing, or other personal property caused by clients of the Board during the course of the employee’s duties.

Other reimbursements of expenses that the Auditor of State has not taken exception to include the reimbursement of Board member expenses for dinner at meetings within the district and reimbursing board members and employees for the use of automobiles on public business, as long as there is proper and sufficient documentation.

3. Limitation on Amount

There is no statutory dollar limitation upon the amount of expenses that may be reimbursed to Board employees and members, as long as the expenses are otherwise reimbursable. A Board may, of course, impose its own limitations upon the amounts it will reimburse. Such limitations should be pursuant to a formal policy of the Board. In formulating a policy, the Board may wish to consult with the Office of Budget and Management to review guidelines that are used for state employees.

4. Other Limitations

It should be noted that there is no authority for the reimbursement of expenses incurred by a spouse, relative, or any other traveling companion of a Board member or employee. Accordingly, the Auditor of State recommends use of the following guidelines. When the traveler (i.e., Board member, superintendent, or employee who is on official business) stays in a hotel or motel, he should inquire as to the rate of double occupancy in comparison to single occupancy. Only the single occupancy rates should be submitted with the expense voucher for reimbursement, with the difference between the single and double occupancy rates being paid by the traveler. Failure to adhere to the aforementioned guidelines may result in a finding for recovery for the difference.

5. Expenditures of Public Funds for a Proper Public Purpose

With regard to expenses incurred for the attendance of a DD Board member or employee at an association meeting or professional convention, Ohio Rev. Code §5126.05(A)(5) requires the Board to approve expenditures for attendance at such meetings. There is no definite sum set to determine the allowance of DD Board members or employees for meals and lodging. The only yardstick used in determining the legality of the amount of expenses which can be charged is the application of the United State Code S. U.S. App Section 505(3) ((1998 ed.) SuppV) which states: “The expense must be actual and

necessary.” Receipts for expenditures are necessary. However, the DD Board may establish a reimbursement policy which states the following:

- a. A dollar limit which receipts are not needed; for example parking below \$1.00.
- b. A total maximum limit on expenditures; for example no more than \$300 each to attend the annual convention of the Ohio Association of County Boards of Developmental Disabilities.
- c. Any policies covering travel and expenses for officials and/or employees; i.e., reimbursement for meals or trips. Alcoholic beverages are **not** reimbursable expenditures.

Please refer to Auditor of State Bulletin 2004-002 for additional guidance relating to expenditures of public funds for a proper public purpose.

F. PUBLIC EMPLOYEES AND STATE TEACHERS RETIREMENT SYSTEMS

1. Exclusions and Exemptions

A County Board of Developmental Disabilities is considered an employer for purposes of Ohio Rev. Code Chapter 145 and therefore, those employees which come under the definition of “public employees” in Ohio Rev. Code §145.01(A), (See section below on “State Teachers Retirement System”), must be members of the Public Employees Retirement System (PERS) unless specifically exempted. Op. 1980 Gen. No. 1980-063. Thus, membership in PERS is compulsory upon appointment, subject only to the exclusions from membership set forth in Ohio Rev. Code §145.02(A), and exemptions from membership set forth in Ohio Rev. Code §145.03. Ohio Rev. Code §145.03(B) sets forth an exception for students. A student who is not a member at the time of his employment with the school, college, or university in which he is enrolled and regularly attending classes may elect to be exempted from compulsory membership and a student who is a member may elect to have his employment with the school, college, or university in which he is enrolled and regularly attending classes exempted from contribution to the retirement system. An election to be exempted from membership or contribution shall be made by signing a written application with the public employees retirement board. All applications, when approved by the public employees retirement board and filed with the employer, shall be irrevocable while the employee is continuously employed by the school, college, or university and regularly attending classes.

Public employees who were excluded from membership for contributing to or receiving disability benefits from a municipal retirement system established prior to June 30, 1938 or have been granted disability retirement allowance by the State Teachers System or School Employees Retirement System or who are contributing to the Police and

Firemen's Disability Pension Fund or the State Highway Retirement System may purchase credit by paying into the saving fund pursuant to Ohio Rev. Code §145.02.

In addition, there are individuals who are excluded from the definition of a public employee. These include the following:

1. A public employee who is employed by a private temporary health service;
2. A public employee who is employed on a contractual basis only under a personal service contract. Ohio Rev. Code §145.012.

2. Funding and Service

PERS is funded by employee and employer contribution investment income, and limited appropriations by the Ohio General Assembly. Benefits include retirement, disability, death and survivor benefits. Additional information concerning funds, benefits, and PERS in general may be obtained from the Public Employees Retirement System, whose address is listed at the front of this Handbook.

3. Contract Agencies

Employees of agencies contracting with an DD Board pursuant to Ohio Rev. Code §5126.05(C), to provide developmental disability services and facilities, may become members of PERS only if they are "public employees" as defined in Ohio Rev. Code §145.01(A). In most instances, this will not be the case, as the contracting agencies are private organizations. Attention is directed, however, to Ohio Rev. Code §145.01(A)(2), which states that a "public employee" is:

"A person who is a member of the public employees retirement system and who continues to perform the same or similar duties under the direction of a contractor who has contracted to take over what before the date of the contract was a publicly operated function. The governmental unit with which the contract has been made shall be deemed the employer for the purposes of administering this chapter."

Thus, where developmental disability services have been provided by a facility operated directly by the DD Board pursuant to Ohio Rev. Code §5126.05 and the service is subsequently taken over by a contract agency, with employees of the Board carried over to service the contract agency and perform the same or similar duties, such employees retain their PERS membership, and the Board is responsible for administering Ohio Rev. Code Chapter 145 as it applies to such employees.

It is important to note that this provision applies only where such a transfer of responsibility from the Board to a contract agency occurs, and affects only those employees working for the Board who are transferred at the time the contract agency

assumes responsibility for operating the facility. Any subsequent employees hired by the contract agency are not eligible for PERS membership under this provision, as they are not “public employees.” 1972 Op. Att’y Gen. No. 1972-055.

Similarly, employees of a DD Board who transfer their employment to a contract agency do not necessarily retain their PERS membership. Membership is retained only if a contract agency is taking over activities of the Board including those of the individual in question. Thus, a Board may not routinely hire individuals as Board employees to qualify them for PERS with the intention of immediately thereafter transferring them to a contract agency, retaining their PERS membership. The membership will, in fact, be retained only if the facts of the particular case fall within the reasoning of 1972 Op. Att’y Gen. No. 1972-055. In case of doubt, questions as to eligibility should be submitted to the Public Employees Retirement System for resolution.

4. State Teachers Retirement System

In its definition of “public employees,” Ohio Rev. Code §145.01(A) specifically excludes those persons covered by Ohio Rev. Code §3307.01 (members of the State Teachers Retirement System) from membership in the Public Employees Retirement System. In 1988 Op. Att’y Gen. No. 1988-069, the Ohio Attorney General concluded that teachers employed in education programs operated by County Boards of Developmental Disabilities pursuant to Ohio Rev. Code Chapter 3323 (Education of Handicapped Children) are members of the State Teachers Retirement System. Therefore, teachers are not members of PERS.

G. CERTIFICATION OF EMPLOYEES

In accordance with Ohio Rev. Code §5126.25 the Director of Developmental Disabilities must set up rules establishing standards for certification of persons to be employed by the Board, including, but not limited to, persons to be employed as superintendents, management employees, and professional employees and uniform standards and procedures for the registration of persons for employment by county boards as registered service employees. The Director must also establish the standards for courses of study to prepare persons to meet the certification requirements. All persons who have completed an appropriate course of study and have met the Director’s standards for certification must be granted a certificate of employment. Ohio Rev. Code §5126.26, specifically precludes Boards from employing any person who does not hold a valid certificate.

In addition, Ohio Rev. Code §5126.26 prohibits a County Board from compensating any employee who does not hold the proper certificate or license required for the position under the rules of the Department of Developmental Disabilities or the State Department of Education. There are two exceptions to this. First, a superintendent can employ, and the Board is to compensate, an employee pending the issuance of any initial certificate or license if that person

meets the requirements for, has applied for, and the application has not been denied for certification.

Second, Ohio Rev. Code §5126.27 provides an exception for professional employees, employed prior to July 17, 1990, that allows such an employee to remain in the same position by following the professional development plan prescribed by the Director of Developmental Disabilities.

It is important that all employees are notified of this requirement to ensure that all employees' certificates/licenses are current. Also, it is recommended that a notification policy be implemented regarding the renewal of certificates and licenses.

H. BONDING

There is no statutory requirement set forth in Ohio Rev. Code Chapter 5126, which requires that members or employees of the County Board of Developmental Disabilities be bonded. However, in order to ensure against a loss that might occur as a result of fraudulent or dishonest acts, failure to perform duties faithfully, or failure to account for all monies received in the performance of their duties by Board members or employees, **it may be to the advantage of the Board to obtain adequate bonding.**

Bonding of employees whose position requires them to handle a substantial amount of money will ensure against any losses caused by a dishonest employee.

Purchase of a blanket bond for employees is authorized by Ohio Rev. Code §3.06. The bond should be approved as to form and sufficiency by the Board and will be filed with the records of the Board.

I. CONFLICT OF INTEREST

The subject generally referred to as "conflict of interest" includes four main areas of concern to public officers and employees. These are (1) criminal liability for an unlawful interest in a public contract, comprehensively treated in Ohio Rev. Code §2921.42; (2) criminal liability for soliciting or receiving improper compensation; (3) criminal liability for violation of the Ohio Ethics Law, Ohio Rev. Code Chapter 102; and (4) the concept of incompatibility of office, judicial in origin, and a possible threat to one's eligibility for office.

1. Unlawful Interest in Public Contract

Criminal liability for an unlawful interest in a public contract may arise in unexpected circumstances. A "public official" for purposes of Ohio Rev. Code §2921.42, includes not only elected and appointed public officials, but also employees and agents of political subdivisions. Thus, both Board members and their employees are subject to possible criminal liability under this provision of law, and should be familiar with its provisions. For purposes of Ohio Rev. Code §2921.42 "public contract" means any of the following:

- a. The purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state, any of its political subdivisions, or any agency or instrumentality of either including the employment of an individual by the state, any of its political subdivisions, or any agency or instrumentality of either;
- b. A contract for the design, construction, alteration, repair or maintenance of any public property.

It is important to stress that it is not necessary that a public official be aware of the illegality of his interest in the contract, so long as he is aware that the interest does exist. If such an interest exists, criminal liability may result from any of the following activities:

- a. Using of one's office to obtain a contract for oneself, a member of his family, or a business associate, or to obtain the investment of public funds for which oneself, a member of his family, or a business associate has an interest. (Note: For purposes of Ohio Rev. Code §2921.42, the term "a member of his family" includes, but is not limited to: grandchildren, brothers and sisters, or any person related by blood or marriage and residing in the same household. Ohio Ethics Commission Opinion 80-001);
- b. Authorize, or employ the authority or influence of his office to secure the investment of public funds in any share, bond, mortgage, or other security, with respect to which he, a member of his family, or any of his business associates either has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees;
- c. During one's tenure of office, or within one (1) year thereafter, having any interest in a contract let by oneself, or a board or commission on which one has served unless the contract was let by competitive bidding to the lowest and best bidder;
- d. Having an interest in a contract for any agency in which one serves; or
- e. Having an interest in a public contract not let by competitive bidding when required by law and which involves more than one hundred fifty dollars (\$150).

The purpose of this section is to ensure that public agencies stand on at least an equal footing with others with respect to necessary business dealings. Accordingly, the section does not prohibit public servants from all dealings in which they may have some interest, no matter how remote. It prohibits only those dealings in which there is a risk that private considerations may detract from serving the public interest. Thus, in the absence of bribery or intent to defraud, a public servant, members of his family, or any of his associates are *not* considered as having an interest in a public contract when *all* of the following apply:

1. The interest is limited to ownership or control of shares of the corporation, or being a creditor of the corporation or organization which is the contractor on the public contract, or issuer of securities which are the subject of the investment of public funds;
2. Shares owned or controlled do not exceed five (5) percent of that outstanding, or the amount due such person as creditor does not exceed five (5) percent of the total indebtedness of the corporation; and
3. Prior to the date the contract is entered into, the individual files with the governmental entity involved an affidavit of his status with the corporation or organization.

Finally, even if the requisite action and interest for criminal liability is present, this section is inapplicable to a public contract in which a private servant, a member of his family, or a business associate has an interest, if *all* of the following are present:

1. The subject of the contract is necessary services or supplies for the governmental entity involved;
2. The supplies or services are unobtainable elsewhere for the same or lower cost, or are furnished as part of a continuing course of business established prior to the public official's association with the governmental entity;
3. The treatment accorded the governmental entity is preferential to or the same as that accorded others in similar transactions; and
4. The transaction is conducted at arms' length with the full knowledge of the governmental entity as to the interest involved, and the public official takes no part in the deliberation or discussion with respect to the contract.

Violations of Ohio Rev. Code §2921.42 are either a fourth degree felony or a first degree misdemeanor depending on the division violated. As a result, it is firmly advised that all public officials seek the advice of counsel before entering into a contract with a potential conflict of interest.

2. Soliciting or Receiving Improper Compensation

In addition to the actions made criminal under Ohio Rev. Code §2921.42 soliciting or receiving improper compensation is a criminal activity pursuant to Ohio Rev. Code §2921.43. This section states:

(A) No public servant shall knowingly solicit or accept and no person shall knowingly promise or give to a public servant either of the following:

(1) Any compensation, other than as allowed by divisions (G),(H), and (I) of section 102.03 of the Revised Code or other provisions of law, to perform the public servant's official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation;

(2) Additional or greater fees or costs than are allowed by law to perform the public servant's official duties.

(B) No public servant for the public servant's own personal or business use and no person for the person's own personal or business use or for the personal business use of a public servant or party official, shall solicit or accept anything of value in consideration of either of the following:

(1) Appointing or securing, maintaining, or renewing the appointment of any person to any public office, employment, or agency;

(2) Preferring, or maintaining the status of, any public employee with respect to compensation, duties, placement, location, promotion, or other material aspects of employment.

(C) No person for the benefit of a political party, campaign committee, legislative campaign fund, political action committee, or political contributing entity shall coerce any contribution in consideration of either of the following:

(1) Appointing or securing, maintaining, or renewing the appointment of any person to any public office, employment, or agency;

(2) Preferring, or maintaining the status of, any public employee with respect to compensation, duties, placement, location, promotion, or other material aspects of employment.

A violation of this section is a first degree misdemeanor. Ohio Rev. Code §2921.43 (D)

3. Ohio Ethics Law

The Ohio Ethics Law, Chapter 102 of the Ohio Revised Code, was enacted by the General Assembly in 1973 to protect the integrity of government. It applies to public officials and employees, and is, therefore, applicable to county board members and employees. Provisions of the law include public official and employee restrictions and limits on outside compensation. These restrictions may be summarized as follows:

- (a) They are forbidden, during public employment and for twelve (12) months thereafter, from representing a client or acting in a representative capacity for any person on any matter in which the official or employee personally participated through decision, approval, disapproval, recommendation, the rendering of advice, investigation or other “substantial exercise of administrative discretion.” (Note: The above does not include the performance of ministerial functions, such as filing tax returns, applications for permits and licenses, incorporation papers, and other similar documents. It also does not prohibit a former official or employee from being retained to represent that public agency by which he was employed or on which he served);
- (b) They may not during public service or employment, or any time thereafter without appropriate authorization, disclose or use any information acquired in the course of official duties which is confidential because of statutory provisions, or which has been designated to them as confidential and preserving that confidentiality is necessary to the proper conduct of government business;
- (c) At no time during their tenure of office or employment may they participate in a license proceeding which affects the license of any person to whom they, their immediate family, or a business association of which they own or control more than five (5) percent has sold goods or services totaling more than one thousand (\$1,000.00) dollars or more in the preceding year, unless they have filed the proper statement with the public agency involved;
- (d) They are prohibited from using or attempting to use their official position to secure anything of value to them which they would not ordinarily secure in the performance of their official duties. Ohio Rev. Code §102.03.
- (e) They are prohibited from soliciting or accepting anything of value that is of such a character that it would manifest a substantial and improper influence upon the individual; and
- (f) They may accept travel, meals, and lodging expenses or reimbursement of these items, in connection with a seminar, conference, etc., related to the official duties of the individual, so long as such items do not manifest a substantial and improper influence upon the individual.

Public officials and employees are also subject, pursuant to Ohio Rev. Code §102.04, to a prohibition on outside compensation. They may not “receive or agree to receive directly or indirectly compensation other than from the agency with which he serves for any service rendered or to be rendered by him personally in any case, proceeding, application,” or perform duties or fail to account for all monies received in the performance of their duties, as Board members or employees. Bonding of employees will reduce the possibility that Board members will be held personally liable for a loss caused by a dishonest employee, and bonding of Board members will insure that the district will not suffer financial loss due to actions of Board members.

Purchase of a blanket bond for employees is authorized by Ohio Rev. Code §3.06. The bond will be approved as to form and sufficiency by the Board and should be filed with the records of the Board.

4. Incompatibility of Office

It is well established in Ohio by court decisions that certain positions of public employment or public office are inherently incompatible and that one person cannot serve in both positions. This common law rule was set forth in *State, ex rel. Attorney General v. Gebert* (1909), 12 Ohio C.C.R. (N.S.) 274, at page 275:

Offices are considered incompatible when one is subordinate to, or in any way check upon, the other; or when it is physically impossible for one person to discharge the duties of both.

Physical incompatibility is a matter of fact to be determined on the particular circumstances of each case. Incompatibility of office requires that the duties, responsibilities, and authority of each position be evaluated to determine if incompatibility is in fact present. A clear example of incompatibility would occur when one individual is serving both as a member of a DD and as an employee of the Board. Since one position is answerable to the other, they are incompatible under the *Gebert* definition.

It should also be noted that certain positions are incompatible by statutory provision. In the event that doubt exists as to the compatibility of positions, the advice of legal counsel should be sought. Alternatively, the Board may wish to seek a written opinion from the Ohio Ethics Commission.

The Attorney General, in 1979 Op. Att’y Gen. No. 1979-111, has set forth seven (7) basic questions to be addressed when a question of compatibility of office arises. These are:

- (1) Is either of the positions a classified employment within the terms of 124.57, Revised Code?

- (2) Do the empowering statutes of either position limit the outside employment permissible?
- (3) Is one office subordinate to or in any way a check upon the other?
- (4) Is it physically possible for one person to discharge the duties of both positions?
- (5) Is there a conflict of interest between the two positions?
- (6) Are there local charter provisions or ordinances which are controlling?
- (7) Is there a federal, state, or local departmental regulation applicable?

5. Other Limitations

In order to round out the discussion of conflicts of interest by DD Board members and employees, the provisions of Ohio Rev. Code §5126.021, should be considered. This section has been discussed in detail in Part II of the Handbook in the Conflicts of Law section.

J. LEGAL COUNSEL

In accordance with Ohio Rev. Code §309.09 the county prosecutor will be the legal advisor of all county officers and boards. The county prosecuting attorney has the responsibility of representing the County Board of Developmental Disabilities. The Board may require written opinions or instructions from the prosecutor in matters connected with their official duties. In addition, Ohio Rev. Code §309.09 provides that the prosecutor will prosecute and defend all suits and actions which any officer or Board directs or to which the Board is a party.

A County Board of Developmental Disabilities may also, in accordance with Ohio Rev. Code §305.14 (C) employ legal counsel to represent it or any of its members or employees on business related matters or in the prosecution or defense of any action in which the Board, a member or an employee acting in his official capacity is a party or has an interest. The employment of legal counsel by the Board does not require the authorization of the Court of Common Pleas. However, if the Board desires to hire special legal counsel to represent it, the Board must get the prior written consent of the prosecuting attorney unless the prosecutor is unable for any reason to represent the Board. In that instance, the prosecuting attorney must notify the Board of his inability to provide representation, whereby the Board may hire special legal counsel without the county prosecuting attorney's approval.

Any special legal counsel hired pursuant to Ohio Rev. Code §305.14(C), must be paid out of DD Board funds in accordance with Sections 5126.05(A)(7) and 309.10, of the Revised Code. The Board, as a good management practice should budget for this expenditure of special counsel and have the auditor encumber the funds for this purpose.

The compensation to be paid to private counsel is a matter left to the discretion of the Board, with the assistance of the superintendent. It need not be set at a specific dollar amount, so long as some clear standard by which the amount of compensation is to be calculated is contained within the order of compensation made by the Board. (Such compensation may include fringe benefits.) For example, an agreement that compensation is to be at a rate of one hundred dollars (\$100) per hour for a set maximum number of hours would be sufficiently specific.

When a Board retains private counsel, it is imperative that the nature of the relationship between the Board and the attorney is clearly established at the outset. This involves a determination of whether the attorney will serve the Board as an “employee” or an “independent contractor.” This distinction may become critical later on because the status of the attorney may determine the extent to which the Board is obligated to pay fringe benefits to the attorney, as well as the extent to which immunity from suit will be applied.

A very important decision in this area was handed down by the Attorney General in 1980 Op. Att’y Gen. No. 1980-098. Although that decision dealt with private counsel retained by a board of township trustees, arguably, the same principals would apply to a DD Board. The opinion was important because it stated that the compensation and fringe benefits due an attorney from a public agency was determined by the *status* of the attorney, i.e., whether he was an “employee” or an “independent contractor.” Where private counsel is deemed an “employee” of the public agency, he is entitled to whatever discretionary fringe benefits the agency grants to its other employees, provided that he qualifies for such benefits. Those benefits may include sick leave, vacation, hospitalization and life insurance coverage. However, an attorney who is only an independent contractor is only entitled to be compensated pursuant to contract; he is not entitled to discretionary fringe benefits.

As to statutory fringe benefits, an attorney-employee is entitled to those benefits for which he qualifies, including holiday pay, membership in PERS and workers’ compensation. But an attorney-independent contractor is not entitled to holiday pay under Ohio Rev. Code §325.19. He *may* be covered by workers’ compensation or unemployment compensation, but only if the agency procures such coverage for him. Whether an attorney-independent contractor is included in the PERS system is a matter for determination by the Public Employees Retirement Board.

With references to the attorney’s eligibility for these benefits based upon status, 1980 Op. Att’y Gen. No. 1980-098 delineates the standards for determining such status. First, all of the relevant facts and circumstances surrounding the agreement between the agency and the attorney must be examined. These factors include:

- (1) The degree of independence which the attorney possesses;
- (2) Whether the attorney performs legal services *solely* for that public agency;
- (3) Whether the attorney is paid for particular services or is paid a yearly salary;

(4) Whether the public agency provides office space and/or supplies for the attorney; and

(5) Whether the attorney has the right to hire assistants and the obligation to pay such assistants.

Thus, the importance of the employee/independent contractor distinction is clear. If a Board desires to avoid obligations that would accrue to an attorney-employee, then certain formalities should be observed. The Board should spell out, *in a written contract*, the attorney's status as an independent contractor, the total compensation to be paid (i.e., that there are no fringe benefits, or, if fringe benefits are to be given, the agreement should specify and limit them), and that the attorney is being compensated only for particular services and only pursuant to the terms of the contract. This procedure will help to avoid potential liability on the part of the Board and the state for unintended fringe benefits.

The Auditor of State may refrain from issuing a finding for recovery for illegal expenditures of public funds where the expenditure in question is undertaken pursuant to a formal, written good faith opinion of the legal advisor to the Board. It is essential that the opinion be presented to the Auditor before the conclusion of the audit.

K. AFFIRMATIVE ACTION

Each DD Board will have a written affirmative action program describing the Board's goals and methods for the provision of equal employment opportunities for all persons under its authority and will ensure nondiscrimination in employment under its authority or contract on the basis of race, color, sex, creed, disability, national origin, or the inability to pay. Ohio Rev. Code §5126.07.

Additionally, as stated earlier, no DD Board or any contracting agency of the Board will discriminate in the provision of services under its authority or contract on the basis of race, color, sex, creed, disability, national origin or inability to pay.

Set Aside Programs

DD Boards must set aside a portion of the contracts they award for bidding exclusively by minority business enterprises. Ohio Rev. Code §5126.071. To be classified as a minority business enterprise an application should first be made to the Equal Employment Opportunity Coordinator in the Department of Administrative Services in order to obtain certification as a minority business enterprise. The coordinator must approve the application of any minority business enterprise that complies with the rules adopted under Ohio Rev. Code §122.71.

Minority business enterprises include those which are owned and controlled by United States citizens, who are residents of Ohio, or nonresidents with a significant presence in Ohio, who are Black, American Indian, Hispanic, or Oriental. The DD Boards must set aside contracts totaling

approximately fifteen (15) percent of the value of all Board contracts for purchases of equipment, materials, supplies, insurance and non-program services and contracts totaling approximately five (5) percent of the value of any contracts the Board awards for construction. Contracts for the purpose of program services such as direct and ancillary client services, or care management, residential and family resources services are excluded from the set aside requirement.

If a contract is set aside and no bid is submitted by the minority business enterprises, the contract should be awarded according to normal bidding procedures. The Board must from time to time set aside such additional contracts as are necessary to replace those contracts previously set aside on which no minority business enterprise bid.

Within ninety (90) days after the beginning of each calendar year, each Board must file a report with the Department of Developmental Disabilities that show for that fiscal year the name of each minority business enterprise with which the Board entered into a contract, the value and type of such contract, the total value of contracts awarded to minority business enterprises, the total value of contracts awarded for the purpose of equipment, materials, supplies, or services other than those services exempt from competitive bidding and the total value of contracts entered into for construction.

L. COLLECTIVE BARGAINING

In order for the public employee's Collective Bargaining Act to apply, the employer must be a "public employer," and the employee must be a "public employee," as defined by Ohio Rev. Code Sections 4117.01(B) and 4117.01(C). "Public employers" are defined in Ohio Rev. Code §4117.01(B), as follows:

"Public employer" means the state or any political subdivision of the state located entirely within the state, including, *without limitation*, any municipal corporation with a population of at least five thousand according to the most recent federal decennial census; county; township with a population of at least five thousand in the unincorporated area of the township according to the most recent federal decennial census; school district; governing authority of a community school established under Chapter 3314. of the Revised Code; state institution of higher learning; *public or special district*; state agency, authority, commission, *or board; or other branch of public employment* [Emphasis added].

Although County Boards of Developmental Disabilities are not specifically enumerated in Ohio Rev. Code §4117.01(B) as a public employer, the board definition of a public employer will allow employees working directly for the County Boards of Developmental Disabilities to be included within the Collective Bargaining Act.

However, a more complex situation arises when determining whether a person working pursuant to a contract between a County Board of Developmental Disabilities and a private employer falls within the status of a public employee as defined by Ohio Rev. Code §4117.01(C). The wording

of the statute which defines a public employee creates the ambiguity. Ohio Rev. Code §4117.01(C) states in part:

“Public employee” means any person holding a position by appointment or employment in the service of a public employer, *including any person working pursuant to a contract between a public employer and a private employer and over whom the national labor relations board has declined jurisdiction on the basis that the involved employees are employees of a public employer, except...* [Emphasis added].

Thus, in order for the employees of a contracting agency to be considered public employees, the National Labor Relations Board must decline jurisdiction on the basis that the employees are employees of a public employer.

M. LIABILITY

Chapter 2744 of the Ohio Revised Code, which defines the scope of tort liability of political subdivisions, provides for the defense and indemnification of DD Board employees. Ohio Rev. Code §2744.07(A), states in part the following:

- (1) Except as otherwise provided in this division, *a political subdivision shall provide for the defense of an employee, in any state or federal court, in any civil action or proceeding which contains an allegation for damages for injury, death, or loss to person or property caused by an act or omission of the employee in connection with a governmental or proprietary function. The political subdivision has the duty to defend the employee if the act or omission occurred while the employee was acting both in good faith and not manifestly outside the scope of employment or official responsibilities. Amounts expended by a political subdivision in the defense of its employees shall be from funds appropriated for this purpose or from proceeds of insurance. The duty to provide for the defense of an employee specified in this division does not apply in a civil action or proceeding that is commenced by or on behalf of a political subdivision* [Emphasis added].

- (2) Except as otherwise provided in this division, *a political subdivision shall indemnify and hold harmless an employee in the amount of any judgment, other than a judgment for punitive or exemplary damages, that is obtained against the employee in a state or federal court or as a result of a law of foreign jurisdiction and that is for damages for injury, death, or loss to person or property caused by an act or omission in connection with a governmental or proprietary function, if at the time of the act or omission the employee was acting in good faith and within the scope of employment or official responsibilities* [Emphasis added].

Ohio Rev. Code §2744.01(B), defines an employee for purposes of this Chapter in part, as follows:

“Employee” means an officer, agent, employee, or servant, whether or not compensated or full-time or part-time, who is authorized to act and is acting within the scope of the officer’s, agent’s, employee’s, or servant’s employment for a political subdivision. “Employee” does not include an independent contractor and does not include any individual engaged by a school district pursuant to Section 3319.301 of the Revised Code. “Employee” includes any elected or appointed official of a political subdivision [Emphasis added]. “Employee” also includes a person who has been convicted of or pleaded guilty to a criminal offense and who has been sentenced to perform community service work in a political subdivision whether pursuant to section 2951.02 of the Revised Code or otherwise, and a child who is found to be delinquent child and who is ordered by a juvenile court pursuant to section 2152.19 or 2152.20 of the Revised Code to perform community service or community work in a political subdivision.

Employees of a DD Board have been recognized as employees of the County. See: *Ebert v. Stark County Board of Mental Retardation* (1980), 63 Ohio St. 2d 31, where the court held that Ohio Rev. Code §124.38, entitling employees to sick leave benefits, applies to employees of DD Boards. See also 1982 Op. Att’y Gen. No. 1982-055 which recognized that employees of DD Boards are entitled to vacation benefits under Ohio Rev. Code §325.19 which provides for vacation leave for employees in the County service.

As a result, Board members and officers may be indemnified for acts or omissions that occur within the scope of their employment or official responsibilities if such acts or omissions were committed in good faith.

In addition to the indemnification provisions of Chapter 2744 of the Revised Code, the DD Board may also procure liability insurance for its Board members and employees. Ohio Rev. Code §5126.09.

N. CRIMINAL RECORDS CHECK

Ohio Rev. Code §5126.28 requires the superintendent of the DD Board to request a criminal records check of any applicant who has applied for employment with the Board for any position. This request is to be sent to the superintendent of the Bureau of Criminal Identification and Investigation. If the applicant is unable to show that he or she has been a resident of Ohio for the past five years, the criminal records check is to include a check by the Federal Bureau of Investigation. The superintendent of the Board has the option to request this federal records check regardless of whether the applicant has proof of residency. Exempted from these criminal records check requirement are current employees being considered for a different position or who are returning to employment as long as the superintendent does not have any reason to believe the individual has committed any of the offenses listed in division (E) of this section.

The DD Board is not to hire any individual who has pleaded guilty or been convicted of any of the sections listed in Ohio Rev. Code §5126.28(E). In addition, any applicant that fails to produce the information requested in order to process the criminal records check may not be

employed by the Board. This section also provides that any report obtained pursuant to this section is not a public record for the purposes of Ohio Rev. Code §149.43.

Pursuant to Ohio Rev. Code §5126.281, and except as provided in division (B)(2), entities under contract with an DD Board to provide specialized services are to conduct background investigations of applicants for employment in the same manner as the Boards under Ohio Rev. Code §5126.28.

O. BUSINESS MANAGER

Pursuant to Ohio Rev. Code §5126.121 each County Board of Developmental Disabilities is authorized to employ a business manager. The Board may be eligible to receive a subsidy from the Department of Developmental Disabilities for the cost of employing a business manager. The department is to adopt rules for specifying standards for employment, including minimum education and experience requirements, as well as annual requirements, for such individuals. Boards that employ a business manager that meets these requirements shall be eligible for the subsidy.

V. ADMINISTRATION AND FINANCE OF BOARD MEETINGS

A. PROCEDURE (Organizational Meeting)

A Board of Developmental Disabilities, upon its creation and annually thereafter, by January 31, shall elect its officers including a president, vice-president, and a secretary. Ohio Rev. Code §5126.0216. As no specified procedural rules have been designated for such boards, the Board should adopt as quickly as possible its own rules, which should be entered into the record. Ohio Rev. Code §5126.0216. It is suggested that a common authority, such as Robert's Rules of Order, be selected.

B. EXECUTIVE SESSION

Meetings of the Board, as a public agency, are required to be open to the public, unless the subject matter under consideration permits an executive session, as provided in Ohio Rev. Code §121.22(G)(1). Permissible subjects for an executive session include:

- (1) Personnel matters (unless the employee or official requests a hearing, i.e., promotion, appointment, demotion, dismissal . . . of public employee);
- (2) Purchase or sale of property, where premature disclosure of information would give advantage to an individual;
- (3) Conferences with legal counsel concerning pending or imminent court action;
- (4) Collective bargaining;

(5) Matters required by federal law or state statutes to be kept confidential; or

(6) Discussion of security measures, disclosure of which could cause a violation of law or avoidance of prosecution.

It should be noted that consideration of at least one of the above-listed matters must be the *sole* purpose for the executive session. Consideration of other subject matter not exempt from the “open meeting” requirement would be improper. In addition, before the Board may hold an executive session, a majority of a quorum of the Board must determine by roll call vote to hold such a session. Ohio Rev. Code §121.22(G).

If the Board meets in an executive session to consider the appointment, employment, dismissal, discipline, promotion, demotion or compensation of a public employee, official, licensee or regulated individual who did not request a public hearing, then the Board’s motion and vote to hold the executive session must state which one or more of the approved aforementioned purposes are the purposes for which the executive session is to be held; but need not include the name of any person being considered at the meeting. Ohio Rev. Code §121.22(G)(1).

If the Board holds an executive session to consider any other matters authorized by existing law (numbers 2-6 see above), then Ohio Rev. Code §121.22(G) requires that the Board’s motion and vote to hold the executive session state which one or more of the approved matters are to be considered at the session.

Any formal action of the Board as to matters discussed in executive session must be taken in an open meeting. If the statutory requirements of Ohio Rev. Code §121.22, are not followed as to matters discussed in executive session, such formal action is invalid. Minutes of a meeting need only generally reflect matters discussed in an authorized executive session. However, they must be *promptly* recorded and open to public inspection. Ohio Rev. Code §121.22(C).

C. MINUTES

DD Boards must keep minutes of all meetings of the Board, which are to be promptly recorded and available for public inspection. Ohio Rev. Code §121.22. Such minutes should be recorded in a journal of proceedings.

The journal of proceedings is an important record for the Board, as it serves as the formal record of action by the Board. Incompleteness or obscurity of the record inevitably creates doubt as to the quality of the Board’s work, or its willingness to submit its actions to scrutiny. In addition, all drafts preceding the final recording in the journal of proceedings are deemed public record.

All formal actions of the Board, particularly all action involving the expenditures of public monies, should be set forth in detail in the record. This would include, but is not limited to: details of all contracts entered into by the Board; employment, appointment, or delegation of

duties to the superintendent; adoption of compensation and fringe benefit schedules; submission and acceptance of reports; appropriation measures; transfers of funds; large purchases of materials and supplies; leasing and purchasing of personal property; and approval of bills for payment.

1. Approval of Bills for Payment

A DD Board must authorize the payment of a bill and recommend payment by the county auditor *before* any funds of the Board may be expended. The responsibility for the approval of payment may be delegated to the superintendent if the Board so desires. Ohio Rev. Code §5126.05.

Approval of payment must be taken at a regular or special meeting of the Board, supported by a resolution duly adopted by the Board. The following is recommended:

- (a) A list of bills to be approved should be prepared setting forth the name of each vendor, voucher number, purpose of expenditure, appropriate code, fund to be charged and the amount due for payment. The listing should contain a statement approving the vouchers for payment and ordering the auditor to issue his warrant;
- (b) The itemized list, together with the vouchers drawn to the individual vendors, should be presented to the Board. The vouchers should contain invoices supporting the items for which payment is claimed, the fund, appropriation code, date of allowance and a reference identifying the resolution approving same;
- (c) Upon approving the vouchers, the Board members should sign the itemized list, instead of each voucher. *The secretary of the Board should then record the approved itemized list in the record of proceedings;* and
- (d) The reference identifying the approving resolution should be placed upon each voucher. One copy of the approved itemized list, together with the vouchers drawn to the individual vendors, should be presented to the county auditor. The county auditor must then prepare and issue his warrant on the treasurer.

If the Board desires the superintendent to approve bill payments, it must pass a resolution authorizing him or her to do so or include this authorization in its adopted policies. It is also suggested that a list of bills approved by the superintendent since the last meeting be presented at each business meeting for formal ratification by resolution of the Board. The secretary of the Board should then record the approved itemized list in the record of proceedings.

With regard to these procedures, the attention of the Board is directed to Ohio Rev. Code §5705.45 which imposes personal liability upon any public officer or employee for wrongful payment of public money. Irrespective of Ohio Rev. Code §5705.45 the

determination as to whether an expenditure constitutes a valid purpose is to be made solely by the DD Board. The county auditor must not substitute his judgment for that of the Board's regarding what constitutes an expenditure for a public purpose. As a result, the responsibility of assuming the correctness and appropriateness of Board expenditures is with the Board not the county auditor. If the Board determines that an expenditure is within the Board's appropriation and the county auditor refuses to issue the appropriate warrant on the county treasury to pay the voucher, the Board, pursuant to Ohio Rev. Code §319.16 may seek a writ of mandamus from the court to compel the auditor to issue the warrant.

2. Formal Action by Superintendent

Although not required by statute, it is recommended that all formal action by the superintendent, particularly significant personnel actions, be reported to the Board and entered into the journal in some detail. This will not only protect the superintendent from any subsequent misunderstandings, but will facilitate audits of the Board, thereby reducing the time and expense involved.

D. NOTICE OF MEETINGS

The Board, pursuant to Ohio Rev. Code §121.22(F) must establish a method by which any person may determine the time and place of all regularly scheduled meetings, and the time, place, and purpose of any special meeting. A special meeting may not be held unless twenty-four (24) hour notice is given to all news media that have requested notification. If an emergency meeting is called, those members calling the meeting must notify such news media of the time, place, and purpose of the meeting.

E. RECORDS

1. Maintenance of Records

A number of other records are required to be kept by the Board in addition to minutes of meetings. Virtually every public entity to which the Board is accountable requires that records be kept. To protect the interest of the public and of the individuals about whom reports are maintained, laws have been enacted governing the destruction, disclosure, and confidentiality of public records. A "record" is defined by Ohio Rev. Code §149.011, to include:

Any document, device, or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

2. Destruction of Public Records

Destruction of public records of the Board is subject to the rules and regulations of the county records commission established pursuant to Ohio Rev. Code §149.38. This commission consists of the president of the Board of County Commissioners, prosecuting attorney, auditor, recorder, and the clerk of the court of common pleas.

If the records are approved for destruction, it is necessary to obtain approval of the Auditor of State. If the Auditor of State disapproves, she will inform the commission within sixty (60) days, and the records shall not be destroyed. In addition, the archivist of the Ohio Historical Society is to be notified of the proposed action and given sixty (60) days to select for custody records of continuing historical value. Ohio Rev. Code §149.38(C).

3. Availability of Public Records

Ohio Rev. Code §149.43 provides that all public records will be open, at reasonable times, for inspection. Upon request, the individual responsible for the records must make copies available, at cost, within reasonable times. "Public records" for such purposes include any records required to be kept by any governmental unit, except medical records, trial preparation records, confidential law enforcement records, adoption, probation and parole proceedings, and records the release of which is prohibited by state or federal law.

VI. TEMPORARY FUNDING

A DD Board may be able to receive temporary funding from the community Developmental Disabilities trust fund, upon approval of the director of the Department of Developmental Disabilities. Ohio Rev. Code §5126.19. Grants may be made under this section for the following purposes:

- (1) Behavioral or short-term interventions for persons with developmental disabilities that assist them in remaining in the community by preventing institutionalization;
- (2) Emergency respite care services, as defined in Section 5126.11 of the Revised Code;
- (3) Family support services provided under section 5126.11 of the Revised Code;
- (4) Supported living, as defined in section 5126.01 of the Revised Code;
- (5) Staff training for county board employees, employees of providers of residential services as defined in section 5126.01 of the Revised Code, and other personnel under contract with a county board, to provide the staff with necessary training in serving developmentally disabled persons in the community;

- (6) Short-term provision of early childhood services provided under section 5126.05, adult services provided under section 5126.05 and 5126.051, and service and support administration provided under section 5126.15 of the Revised Code, when local moneys are insufficient to meet the need for such services due to the successive failure within a two-year period of three or more proposed levies for the services;
- (7) Contracts with providers of residential services to maintain persons with Developmental Disabilities in their programs and avoid institutionalization.

VII. RESIDENTIAL FACILITY LINKED DEPOSIT PROGRAM

The DD Board may pass a resolution requesting the County Commissioners implement a residential facility linked deposit program under Ohio Rev. Code Sections 5126.51 through 5126.62 if the DD Board determines:

- (1) There is a shortage of residential facilities in the county for individuals with developmental disabilities;
- (2) Eligible organizations, otherwise willing and able to develop residential facilities in the county, have been unable to do so because of high interest rates; and
- (3) Placement of residential facilities linked deposits will assist in financing the development of residential facilities that otherwise would not have been developed because of high interest rates.

A certified copy of this resolution is to be forwarded to the board of county commissioners. Ohio Rev. Code §5126.49.

VIII. FUNDING, TUITION, REIMBURSEMENT

A. FUNDING

In accordance with Ohio Rev. Code §5126.05(G) the Board of County Commissioners has the duty to levy taxes and make appropriations to enable the DD Board to perform its statutory duties and may utilize any available local, state and federal funds for such purposes. Proceeds from a special levy for the purpose of supporting a Board must be placed in a separate fund. Ohio Rev. Code §5705.09(D). Additionally, DD Boards are entitled to a state subsidy which is disbursed pursuant to the procedures set forth in Ohio Rev. Code §5126.12.

Ohio Rev. Code §5126.12(B)(1) requires each Board to certify to the Director of Developmental Disabilities, on or before October 15 of each year, the average daily memberships for the following:

- (1) Early childhood services for children who are less than three (3) years of age on September 30th of the academic year;
- (2) Special education for handicapped children in approved school age classrooms;
- (3) Adult services for persons sixteen (16) years and older for which separate counts shall be made for the following:
 - (i) persons enrolled in traditional adult services who are eligible for but not enrolled in active treatment under the community alternative funding system;
 - (ii) persons enrolled in traditional adult services who are eligible for and enrolled in active treatment under the community alternative funding system;
 - (iii) persons enrolled in traditional adult services but who are not eligible for active treatment under the community alternative funding system;
 - (iv) persons participating in community employment services. To be counted as participating in community employment services, a person must have spent average of no less than ten hours per week in that employment during the preceding six months; and
- (4) Other programs in the county for individuals with Developmental Disabilities that have been approved for payment by the Department of Developmental Disabilities.

In addition, by December 15, the DD Board must certify the number of children that were enrolled on December 1 in approved preschool units. Ohio Rev. Code Sections 5126.12(B)(2), (3) and (4).

The department shall pay each county board for each fiscal year an amount that is computed by the Department of Developmental Disabilities. Each year, in accordance with Ohio Rev. Code §5126.18 (C), the Department of Developmental Disabilities shall compute the following:

- (1) For each county board, the amount, if any, by which the statewide yield per enrollee (sum of the county yields for all county boards divided by the sum of the adult enrollments of all county boards) exceeds the county yield per enrollee (county yield of the county board divided by the adult enrollment of the county board);
- (2) For each county board, the amount of any excess computed under Ohio Rev. Code §5126.18 (C)(1) multiplied by the adult services enrollment of the county board;
- (3) The sum of the amounts computed under Ohio Rev. Code §5126.18 (C)(2) for all county boards.

From money appropriated for the purpose, the department shall provide for payment to each county board of the amount computed for that county board under Ohio Rev. Code §5126.18 (C)(2) subject to any reduction or adjustments under division (E), (F), or (G) of this section. These payments are to be made in quarterly installments of equal amounts no later than September 30, December 31, March 31 and June 30. Ohio Rev. Code §5126.18 (C) and (D).

B. REIMBURSEMENT TO FAMILIES

Subject to the rules adopted by the Director of Developmental Disabilities and the availability of state and federal funds, the DD Board must reimburse a developmentally disabled person or his family if they are residents of the county, for all or part of the expenditures of the person or family, for services that promote self-sufficiency and normalization, prevent or reduce inappropriate institutional care, and further the unity of the family. Pursuant to Ohio Rev. Code §5126.11(D) reimbursement may be for the following services:

- (1) Respite Care, in or out of the home;
- (2) Counseling, supervision training, and education of the individual, the individual's caregivers and family members of a developmentally disabled person when such assistance aids the family in providing proper care for the disabled;
- (3) Special diets, modification of the home, and the purchase or lease of special equipment if necessary to improve or facilitate the care of a developmentally disabled persons; and
- (4) Providing support necessary for the individual's continued skill development, including such services as development of interventions to cope with unique problems that may occur within the complexity of the family, enrollment of the individual in special summer programs, provision of appropriate leisure activities, and other social skills development activities;
- (5) Any other services that are consistent with the purposes specified in Ohio Rev. Code § (B) of 5126.11.

In order to be eligible for reimbursement, Ohio Rev. Code §5126.11(E), requires that the person be in need of such habilitation and reside in the county. Furthermore, reimbursement will be adjusted for income and be made only after the Board has taken into account all other available assistance for which the person or family is eligible.

Before incurring expenses for which reimbursement is sought, the developmentally disabled person or his family must seek a determination from the DD Board regarding eligibility and approval of the type of services to be obtained. The services provided to the individual and subsequently reimbursed by the Board need not be provided in the County served by the Board. Ohio Rev. Code §5126.11(F).

Reimbursements must be made within forty-five (45) days of receiving vouchers or receipts that are in compliance with the requirements of Ohio Rev. Code §5126.11(G). Ohio Rev. Code §5126.11(C) does not authorize reimbursement to a person or family of a person living in a residential facility which provides services under a contract with the Department of Developmental Disabilities or a County Board. As mentioned earlier, the reimbursement for the aforementioned services is contingent on the availability of state and federal funds. Ohio Rev. Code §5126.11(L).

C. TUITION

Tuition is also paid to DD Boards by the residential facility where a pupil resides if the pupil is not in the legal or permanent custody of an Ohio resident or government agency and has parents not known to have been residents of Ohio subsequent to the child's birth. Ohio Rev. Code §3323.09(C)(1). In order to receive tuition, the Board must prepare a statement for each pupil containing the child's name, his school district of residence, the name of the Board providing the special education and the number of months, including any fraction of a month, special education was provided. By June 30, the Board must forward a certified copy of the statement to both the Director and the pupil's residential facility, whereby within thirty (30) days of receipt of such statement the residential facility must pay tuition to the Board in the manner prescribed by Ohio Rev. Code §3323.141.

Ohio Rev. Code §3323.142, allows an DD Board to impose a charge upon the school district when a school district places a child with the Board and that district is not the child's school district of residence. The charge is made to the child's school district of residence and is the difference between the cost of educating the child in the Board program and the amount the Board received for that child in state subsidies for classroom units. The difference will be calculated through a formula established by rule by the Department of Education under Ohio Rev. Code §3323.14 and will be paid directly to the Board by the school district.

When the school district that places a child in a Board program is the child's school district of residence, and the child is a resident of the county served by the Board, the DD Board may contract with the school board of education to pay the DD Board an amount not to exceed the amount by which the per pupil cost for the child's education program exceeds the average per pupil expenditures of the Board. This amount will be reported in the Board's annual report for the previous year under Ohio Rev. Code §5126.12, and verified by the Department of Education. Payments made under the contract are made by the school board of education to the DD Board.

D. GIFTS

In accordance with Ohio Rev. Code §5126.05(F) an DD Board may receive a gift, grant, devise, bequest, any monies, land or properties for the benefit and purposes for which the Board is established and hold, apply and dispose of the same according to the terms of the gift, grant or bequest. All money received by gift, grant, devise or bequest must be deposited in the county treasury to the credit of the Board and will be available for use by the Board for the purposes

determined or stated by the owner or grantor. Any interest or earnings accruing from a gift are subject to the same provisions as the gift, grant or bequest.

A DD Board may donate money received through a bequest to a nonprofit foundation, established to aid the developmentally disabled, as long as the money is used to carry out the purposes of the Board. 1985 Op. Att’y Gen. No. 1985-031. But see also: 1997 Op. Att’y Gen. No. 1997-051 which concludes that a Board may not donate to a private, nonprofit entity for the development of residential services or supported living, moneys that have been appropriated to the Board by the county commissioners.

Interest on earnings accruing or monies received by gift, grant, or bequest will be deposited in the county treasury to the credit of the Board. However, Ohio Rev. Code §135.351(A) which states that all interest earned on money in the county treasury must be included in the general fund, except as otherwise provided, no longer recognizes Ohio Rev. Code §5126.05, as an exception. Ohio Rev. Code §135.351 only recognizes an exception for Sections 135.352 and 1545.22 of the Ohio Revised Code. Yet, the Attorney General in 1985 Op. Att’y Gen. No. 1985-055, held that the interest exception set forth in Ohio Rev. Code §5126.05 will remain in effect by way of statutory construction. Therefore, interest or earnings accruing on monies received by gift, grant or bequest will be credited to the Board.

E. TRANSPORTATION COSTS

In regard to the transportation of preschool and school age children attending special education programs administered by the Board, money will be distributed to the DD Board pursuant to standards adopted by the State Board of Education. Ohio Rev. Code §3317.07. Consequently, transportation operations for preschool and school age children have been transferred to the State Board of Education.

Regardless, Ohio Rev. Code §5126.05 and 3323.09 authorize an DD Board to combine transportation of preschool and school age children with children ages zero to three (0-3) and adults enrolled in programs and services offered by the Board pursuant to Ohio Rev. Code §5126.12.

The purchase of school buses for transportation of children in special education programs operated by the DD Board is not governed by Ohio Rev. Code §3317.07. This section requires the State Board of Education to promulgate rules for the purchase of school buses under Ohio Rev. Code §3317.024(D) which allows for an amount needed for emergency purchase of school buses, as provided for in Ohio Rev. Code §3317.07, to be distributed.

Ohio Rev. Code §3317.07 states that the amount paid to an DD Board for buses purchased to transport children in special education programs operated by the Board will be based on a per pupil allocation for eligible students. This section also states that the Board may use money received under this section to offset the cost of contracting for services, rather than purchasing buses.

F. OTHER APPLICABLE PROVISIONS

Pursuant to Ohio Rev. Code §3317.052 a County Board of Developmental Disabilities may be eligible to receive additional monies for the following purposes in the following amounts:

- (A)(1) The Department of Education shall pay each school district, educational service center, institution eligible for payment under Ohio Rev. Code §3323.091 or county DD Board an amount for the total of all classroom units for handicapped preschool children approved under division (B) of Section 3317.05 of the Revised Code. For each unit, the amount shall be the sum of the minimum salary for the teacher of the unit, calculated on the basis of the teacher's training level and years of experience pursuant to section 3317.13 of the Revised Code, plus fifteen percent of that minimum salary amount, and eight thousand twenty-three dollars.
- (2) The Department shall pay each school district, educational service center, institution eligible for payment under section 3323.091 of the Revised Code, or county DD Board an amount for the total of all related services units for handicapped preschool children approved under division (C) of section 3317.05 of the Revised Code. For each such unit, the amount shall be the sum of the minimum salary for the teacher of the unit calculated on the basis of the teacher's training level and years of experience pursuant to section 3317.13 of the Revised Code, fifteen percent of that minimum salary amount, and two thousand one hundred thirty-two dollars.
- (B) If a school district or educational service center has had additional handicapped preschool units approved for the year under division (F)(2) of section 3317.03 of the Revised Code, or if an DD Board has had additional handicapped preschool units approved under division (G)(3) of section 3317.03 of the Revised Code, the district, educational service center, or board shall receive an additional amount during the last half of the fiscal year. For each district, center, or board, the additional amount for each unit shall equal fifty percent of the amounts computed for the unit in the manner prescribed by division (A) of this section and division (C) of section 3317.053 of the Revised Code.
- (C) The department shall pay each institution approved for vocational education units under division (A) of section 3317.05 of the Revised Code an amount for the total of all the units approved under that division. The amount for each unit shall be the sum of the minimum salary for the teacher of the unit, calculated on the basis of the teacher's training level and years of experience pursuant to the salary schedule prescribed in the version of section 3317.13 of the Revised Code in effect prior to July 1, 2001, plus fifteen per cent of that minimum salary amount, and nine thousand five hundred ten dollars. Each institution that receives units funds under this division annually shall report to the department on the delivery of services and the performance of students and any other information required by the department to evaluate the institution's vocational education program.

(D) Effective July 1, 2005, the Medicaid Community Alternative Funding System (CAFS), part of CFDA #93.778 ended. Though DD Boards can no longer bill for CAFS services, some Boards are still receiving CAFS settlement payments from the Ohio Department of Developmental Disabilities (ODDD).

CAFS payments received after 2005 generally result from ODDD's reconciliation of prior years' activities and do not represent payments for current CAFS services. Therefore, the method of reporting ODDD CAFS receipts and disbursements in federal award expenditure schedules described in Audit Division Advisory Memo 2007-003 requires revision.

Because of the lag in settlement payments, the guidance set forth in Audit Advisory Memo 2007-003 result in misleading reporting on federal awards expenditure schedules. That is, under *Prior Guidance*, federal award expenditure schedules may still report significant CAFS disbursements, implying the CAFS program still exists and could be subject to OMB Circular A-133 audit testing as a major program. After discussion with ODDD, Federal Awards Expenditure Schedules should now report CAFS Medicaid settlement payments as follows:

- Report CAFS receipts but no disbursements for entities such as schools that present federal receipts and disbursements in their federal schedule.
- Report no CAFS disbursements for entities that only report disbursements in the federal schedule.
- Include a footnote to the federal schedule disclosing the CAFS settlement amount received during the fiscal year. The note need only explain that these amounts relate to settlements for CAFS service provided during prior years.

The above guidance only applies to CAFS. It does **not** apply to receipts from other Medicaid sources.

The revised guidance above applies to schools, county DD Boards, and others who provided CAFS Medicaid services prior to June 30, 2005 and are subsequently receiving ODDD Medicaid CAFS settlement payments. *This change in federal award expenditure reporting is effective immediately for all unreleased 2006 and subsequent audits.*

Please refer to Auditor of State Bulletin 2007-011 for additional information and guidance.

Additionally, DD Boards may be eligible for monies for the cost of transporting children attending special education programs operated by the board under section 3323.09 of the Revised Code, or for supportive home services for preschool children. Ohio Rev. Code §3317.024(J).

IX. FISCAL AFFAIRS

A. TAX LEVY

Ohio Rev. Code §5705.19(L) authorizes the submission of a property tax levy to the voters for Developmental Disabilities programs and services. Though Ohio Rev. Code §5705.19, authorizes the levying of a tax in excess of the ten-mill limitation for Developmental Disabilities programs and services, the procedure for such levies is set forth in Ohio Rev. Code §5705.222.

As stated earlier, the Board of County Commissioners, by a majority vote of full membership may declare by resolution and certify to the Board of Elections that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicates will be insufficient to meet the County Board of Developmental Disabilities obligations set forth in Chapter 5126 of the Revised Code. The Board of County Commissioners may determine that it is necessary to levy a tax in excess of the ten-mill limitations for the operations of Board programs and services and for the acquisition, construction, renovation, financing, maintenance and operation of Board facilities. Unlike Ohio Rev. Code §5705.19(L) whereby the levy could run for a maximum five (5) year period, the increased rate provided for in the resolution can be in effect for ten (10) years or for a continuing period of time. The resolution will be placed on the ballot in any election and must be certified by the Board of Election not less than seventy-five (75) days before the election at which it will be voted upon. Ohio Rev. Code §5705.222(A).

If a majority of voters vote in favor of the tax to support the programs and services of the DD Board, then the Board, with the approval of the Board of County Commissioners through annual appropriations, may use the tax proceeds for operational purposes and capital improvements.

B. ESTABLISHMENT OF RESERVE BALANCE ACCOUNT AND/OR CAPITAL IMPROVEMENTS ACCOUNT

Upon the passage of a resolution by the County Board of Developmental Disabilities, the County Auditor must establish for the district either a capital improvements account or a reserve balance account, or both, as set forth in the Board's resolution. Ohio Rev. Code §5705.222(C).

The capital improvement's account is a contingency account or a "rainy day" account for the acquisition, replacement, renovation, or construction of facilities and movable and fixed equipment. The County Board of Developmental Disabilities will identify all capital holdings in its inventory and agree upon a replacement cost. Funds not needed to pay for current expenses may be annually appropriated for this account. However, the maximum amount in the capital improvements account cannot exceed twenty-five (25) percent of the replacement value of all capital facilities and equipment currently used by the Board for programs and services. Any unspent dollars in the account should be carried over to the next year to the maximum twenty-five (25) percent limitation. Other funds which are available for current capital expenses from federal, state, or local sources may also be appropriated to this account.

The reserve balance account will contain funds which are not needed for current operating expenses and are not deposited in the capital improvements account, but instead, will be needed to pay for operating expenses in the future. Consequently, these funds constitute excess revenue of the Board not needed for current operations. Funds from either account will be appropriated upon the Board's request. This appropriation is optional, available to the Board as a management tool.

C. CREATING NEW FUNDS

The creation of new funds by the County is a process controlled by State statute. The Auditor of State, in consultation with the Department of Taxation, is given authority in Ohio Rev. Code §5705.12 to authorize the creation of new county funds. This process is initiated by the county commissioners submitting a request to the Auditor's Office identifying the fund being requested, the purpose of the fund, and the fund's major source of revenue. Whenever the creation of a fund is authorized or required by statute, either specifically by name, or in general, a letter from the Auditor of State granting permission to establish the fund is not required. For example, the Medicaid reserve fund authorized by Ohio Rev. Code §5705.091 may be created without first receiving permission from the State Auditor's Office.

General statutory requirements for the creation of funds are found in Ohio Rev. Code §5705.09. This code section states:

Each subdivision shall establish the following funds:

- (A) General fund;
- (B) Sinking fund whenever the subdivision has outstanding bonds other than serial bonds;
- (C) Bond retirement fund, for the retirement of serial bonds, notes, or certificates of indebtedness;
- (D) A special fund for each special levy;
- (E) A special bond fund for each bond issue;
- (F) A special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be used for a particular purpose;
- (G) A special fund for each public utility operated by a subdivision;
- (H) A trust fund for any amount received by a subdivision in trust.

Based on this statute, it is unnecessary to request permission from the Auditor of State to establish a new fund when the purpose of the fund will be to record and expend the proceeds of debt, to account for a new grant whose use is restricted to a particular purpose or to account for money received in trust.

Requests to the Auditor of State are appropriate when the creation of the fund is not specifically authorized by statute or when the purpose of the fund is not identified in Ohio Rev. Code §5705.09 (A) - (H). These situations include: 1) when management wishes to create a new fund in order to capture additional financial information about a specific source of revenue or a specific activity; 2) when the fund will be used to account for restricted gifts or bequests that will not be held in trust; and 3) when management wants to impose internal restrictions on the use of otherwise unrestricted resources.

Requests to create a new fund in order to capture additional financial information about a specific source of revenue or a specific activity are regularly denied. The Auditor of State encourages the creation of new, separate accounts in existing funds to satisfy this need.

The receipt of restricted gifts or donations does not ordinarily require the creation of a trust fund; this money may be accounted for in a special revenue fund or, if restricted to the acquisition of capital assets, in a capital projects fund. A trust fund is recommended only when there is a formal trust agreement with the donor. Requests to account for restricted gifts and donations that are not the subject of a formal trust agreement are routinely granted based on the need to demonstrate compliance with donor restrictions.

Letters frequently request permission for a new fund based on management's wish to place internal restrictions on the use of otherwise unrestricted resources. These types of requests are generally not approved. It is the policy of the Auditor of State to refuse requests when approval would result in giving readers of financial statements the false impression that the use of the resources in the fund is restricted. The General Assembly has begun authorizing the creation of funds using unrestricted resources in certain specific circumstances. For example, Ohio Rev. Code §5705.13 was enacted to allow subdivisions to create funds for the payment of compensated absences and to accumulate money for the acquisition of fixed assets. The Auditor of State does not feel it is appropriate to extend this ability into areas where the legislature has not acted.

D. FUNDS AUTHORIZED BY STATUTE

DD Capital Fund

A county board of Developmental Disabilities may request, by resolution, that the board of county commissioners establish a county Developmental Disabilities capital fund for money to be used for acquisition, construction, or improvement of capital facilities or acquisition of capital equipment used in providing services to developmentally disabled persons. The county board of Developmental Disabilities shall transmit a certified copy of the resolution to the board of county

commissioners. Upon receiving the resolution, the board of county commissioners shall establish a county Developmental Disabilities capital fund. Ohio Rev. Code §5705.091.

Severance Benefit Fund

A County Board of DD may request that the county commissioners, by resolution or ordinance, establish a special revenue fund for the purpose of accumulating resources for the payment of accumulated sick leave and vacation leave, and for payments in lieu of taking compensatory time off, upon the termination of employment or the retirement of officers and employees of the subdivision. The special revenue fund may also accumulate resources for payment of salaries during any fiscal year when the number of pay periods exceeds the usual and customary number of pay periods. Notwithstanding sections 5705.14, 5705.15, and 5705.16 of the Revised Code, the taxing authority, by resolution or ordinance, may transfer money to the special revenue fund from any other fund of the subdivision from which such payments may lawfully be made. The commissioners, by resolution or ordinance, may rescind a special revenue fund established under this division. If a special revenue fund is rescinded, money that has accumulated in the fund shall be transferred to the fund or funds from which the money originally was transferred. Ohio Rev. Code §5705.13 (B).

Capital Projects Fund

A county Board of DD may request that the county commissioners, by resolution or ordinance, establish a capital projects fund for the purpose of accumulating resources for the acquisition, construction, or improvement of capital assets of the DD Board. For the purposes of this section, “capital assets” includes motor vehicles. More than one capital projects fund may be established and may exist at any time. The ordinance or resolution shall identify the source of the money to be used to acquire, construct, or improve the capital assets identified in the resolution or ordinance, the amount of money to be accumulated for that purpose, the period of time over which that amount is to be accumulated, and the capital assets that the taxing authority intends to acquire, construct, or improve with the money to be accumulated in the fund.

The commissioners shall not accumulate money in a capital projects fund for more than ten years after the resolution or ordinance establishing the fund is adopted. If the DD Board has not entered into a contract for the acquisition, construction, or improvement of capital assets for which money was accumulated in such a fund before the end of that ten-year period, the county auditor shall transfer all money in the fund to the fund or funds from which that money originally was transferred or the fund that originally was intended to receive the money.

The commissioners, by resolution or ordinance, may rescind a capital projects fund. If a capital projects fund is rescinded, money that has accumulated in the fund shall be transferred to the fund or funds from which the money originally was transferred. Ohio Rev. Code §5705.13(C).

E. ANNUAL FINANCIAL REPORTS

All counties are required by law to prepare annual financial reports in accordance with generally accepted accounting principles (GAAP). GAAP for local governments is established by the Governmental Accounting Standards Board (GASB). Basic guidelines for the preparation of statements that conform to GAAP are identified in GASB Statement No.34, *Basic Financial Statements – and Management’s Discussion and Analysis – for State and Local Governments*. This Statement is available from GASB online at gasb.org.

Responsibility for the preparation of the county’s annual report rests with the county auditor. The report is required to be filed with the Auditor of State’s office within 150 days of year-end. The operations of the DD Board are normally reported as one or more special revenue funds within the county’s report. Major construction would be reported within a capital projects fund. In order to complete the report, the auditor will need additional financial information from the DD Board. Cooperation in furnishing this additional information is required by Ohio Rev. Code §117.38.

In limited circumstances, the DD Board is regarded as a separate legal entity. In this situation, the Board is reported as a component unit of the county whose financial activity is presented in its own single column on the county’s statements. A DD Board that is presented as a component unit of the county is required to prepare its own annual financial report in accordance with GAAP and file that report with the State Auditor’s Office within 150 days of year-end.

Multi-County DD Boards must submit an annual financial report to the Auditor of State, Ohio Administrative Code 117-2-03 (D). Multi-County DD Boards are encouraged to file annual financial statements in accordance with generally accepted accounting principles (GAAP). A GAAP financial report should include all required financial statements and the notes to the financial statements.

If the DD Board is not considered to be a component unit of the county, then the Board is permitted, but not required, to publish its own annual financial report. This report would encompass just the financial activity of the Board and could be the subject of a separate audit opinion. Any Board interested in issuing separate audited financial statements should contact the nearest office of the Auditor of State.

F. FEDERAL SINGLE AUDITS

The Single Audit Act creates federal statutory guidelines which insure a consistent and uniform approach to the audit of federal grant dollars. Standards for the conduct of audits under the Single Audit Act are set forth in OMB Circular A-133, *Audits of States, Local Governments and Non – Profit Organizations*. The Single Audit Act applies to counties which spend more than \$500,000 in federal funds in any one calendar year.

If your county meets the threshold, the Auditor of State will select specific federal programs within the county to audit. Programs are selected based on size and an assessment of audit risk as described in Circular A-133. The audit of the programs will be designed to insure that adequate controls over the program's activities are in place to insure compliance with program guidelines. Unless the DD board qualifies for and elects to have a single audit separate from the county, the Auditor of State will be selecting from all the federal programs within the County, so specific DD programs may or may not be included in the audit.

G. ANTICIPATION NOTES

Upon the approval by the electors of the Developmental Disabilities levy, the Board of County Commissioners may issue anticipation notes in accordance with Section 5705.191 or 5705.193 of the Ohio Revised Code. Ohio Rev. Code §5705.222.

Anticipation notes issued by the DD Board pursuant to these sections must mature serially and in subsequentially equal amounts over the life of the levy. If such notes are issued, the amount necessary to pay the principal and interest on the notes each year will be deemed appropriated, and additional expenditures from the proceeds of the levy will be limited each year to the balance available in excess of such amounts.

Borrowing in anticipation of levy proceeds for operational purposes prior to the first collection of the tax, pursuant to Ohio Rev. Code §5705.191 is limited to an amount not exceeding fifty (50) percent of the levy.

Anticipation notes may also be issued in accordance with Ohio Rev. Code §5705.193. Borrowing prior to the first collection of a tax for capital improvements is limited to an amount not to exceed seventy-five (75) percent of the estimated proceeds of the levy. Such rates are not time limited. Since DD Boards may seek dual purpose levies for operations and capital improvements, there is a need to document with the Board of County Commissioners by resolution, the estimated amount of levy proceeds over its life that are planned for capital improvements so that when a Board wishes to borrow for such purposes a dollar reference amount is available.

Any anticipation notes that increase the bonded indebtedness of the County, must be issued subject to the prior consent of the Board of County Commissioners. Ohio Rev. Code §5705.191 and 5705.193. Both new and renewal levies are subject to these provisions.

H. COUNTY BOARDS OF DEVELOPMENTAL DISABILITIES HANDICAPPED WORKSHOPS

A majority of the 88 County Boards of Developmental Disabilities Handicapped Workshops (the Workshops) are legally separate, not-for-profit corporations, served by boards initially appointed by the County Board of Developmental Disabilities. The Workshops that are under contractual agreement with the County Boards of Developmental Disabilities provide sheltered employment options for developmentally disabled or handicapped individuals in their respective County. Based on the significant services and resources provided to the handicapped adults of the Counties, the Workshops are generally reflected as a discretely presented component unit of the County.

Due to the County financial statements including financial activity of the Workshops as discretely presented component units, the Workshop financial statements need to be available by March 31, each year and must conform to the Governmental Accounting Standards Board Statement No. 34, "Basis Financial Statements – and Management's Discussion and Analysis – for State and Local Governments." Upon implementing GASB Statement No. 34, preparers of the Workshops financial statements must also implement all applicable GASB Statements that are in effect as of the date of the report. Compiled financial statements are adequate for the completion of the County's financial statements; however, audited financial statements are preferred and necessary before the completion of the County's audit.

I. COUNTY BOARD OF DEVELOPMENTAL DISABILITIES RESIDENTIAL SERVICES

A DD Board may provide residential services in the one of the following ways:

1. Directly through the DD Board;
2. A single county non-for-profit corporation; or
3. A multi-county residential services consortium created pursuant to Ohio Rev. Code §5126.47.

There are no separate financial reporting requirements for residential services provided by the DD Board. A single county not-for-profit corporation created for residential services is a discretely presented component unit of the County and is subject to the financial reporting requirements discussed previously for workshops. Multi-county residential services consortiums are subject to the reporting requirements set forth in Governmental Accounting Standards Board Statement No. 14, "Defining the Financial Reporting Entity."

APPENDIX I

OHIO AUDITOR OF STATE GENERAL INFORMATION

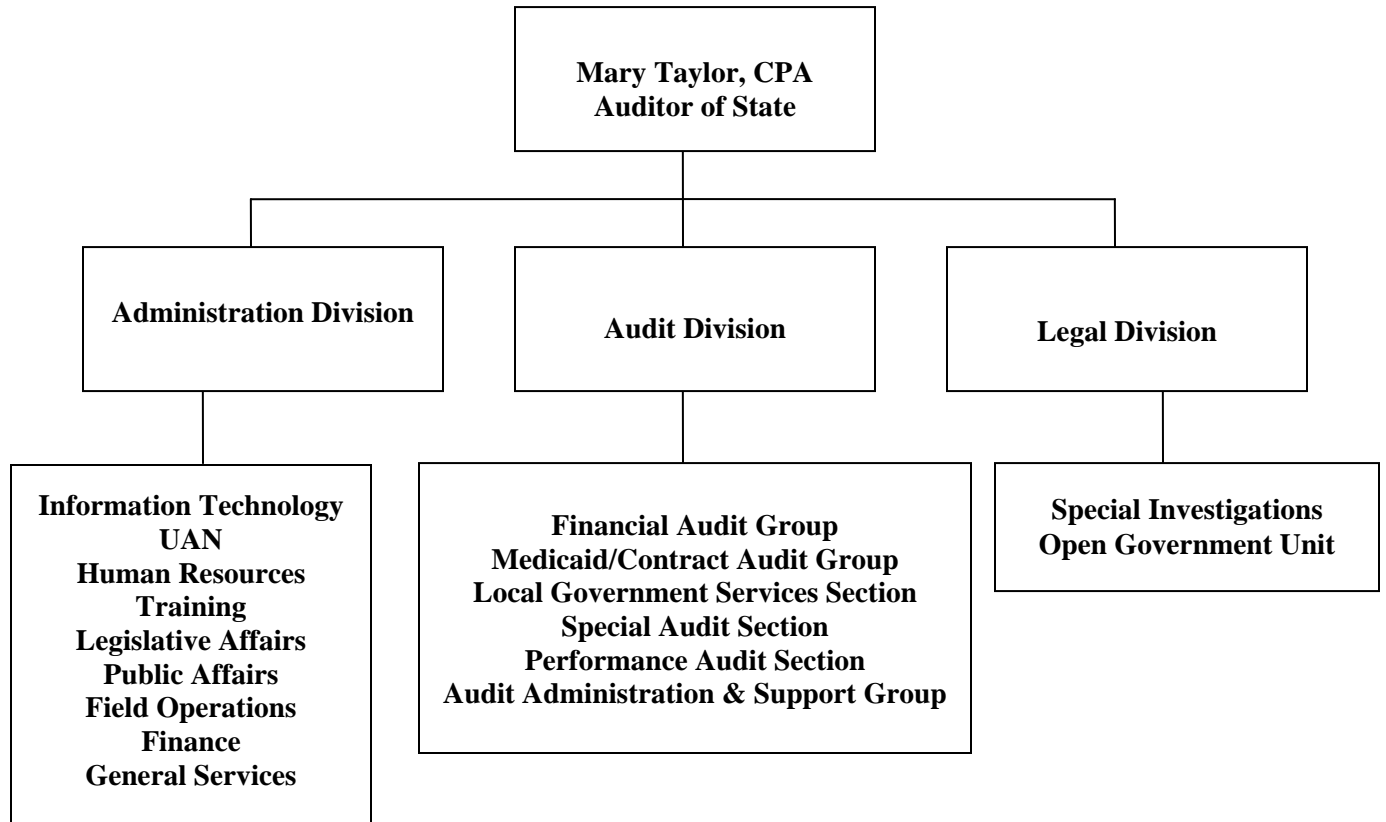
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ORGANIZATIONAL CHART



OHIO AUDITOR OF STATE – GENERAL INFORMATION

ADMINISTRATION DIVISION

The **Administration Division** is the managing arm of the Ohio Auditor of State’s Office. The chief of staff heads the division and reports directly to the Auditor of State. This division is responsible for the day-to-day management and policy decisions of the office.

The **Uniform Accounting Network (UAN)** is housed within the Information Technology Section, which is led by the Chief Operating and Information Officer. UAN provides townships, villages, and libraries with a complete computer system (hardware and software), along with training and support. UAN’s accounting application, payroll application, and ancillary applications (cemetery and inventory tracking) help to reduce the time necessary for entities to process accounting transactions and maintain the related accounting records. UAN also fosters timely and useful information for the governing body. Currently, about 75 percent of the state’s more than 1,300 townships are currently using UAN, as are more than 400 villages and libraries.

ADMINISTRATION DIVISION

Toll Free	(800) 282-0370
Fax	(614) 466-4490
Chief of Staff	Christina Haddad clhaddad@auditor.state.oh.us
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Chief Information OfficerDavid Potts dbpotts@auditor.state.oh.us
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Director of Finance	Jessica Harper jlharper@auditor.state.oh.us
Director of General Services	William Cahill wjcahill@auditor.state.oh.us
Director of Legislative Affairs	Matthew Close meclose@auditor.state.oh.us
Director of Human Resources	Jill Jones jdjones@auditor.state.oh.us
Director of Public Affairs	Chris Abbruzzese cdabbruzzese@auditor.state.oh.us
UAN Support Line	(800) 833-8261
UAN e-mail support	UAN_Support@auditor.state.oh.us

AUDIT DIVISION

The Auditor of State is the constitutional officer responsible for auditing all public offices in Ohio, including cities, villages, schools, universities, counties, townships and state agencies, boards, and commissions.

The office strives, through financial audits of public and quasi-public entities, to ensure that public funds are spent appropriately and lawfully, in accordance with state and local law. The Audit Division is managed by the chief deputy auditor, who reports directly to the Auditor of State. It is made up of several smaller sections such as the Audit Administration and Support Group, the Financial Audit Group, the Medicaid/Contract Audit Section, Special Audit Section, the Local Government Services Section, and the Performance Audit Section.

The Auditor of State's Office employs more than 700 auditors located in nine regional offices in addition to the main office in Columbus: Akron/Canton, Cincinnati, Columbus, Cleveland, Dayton, Athens, Toledo, and Youngstown. Additionally, the State Region, located in Columbus, audits state agencies, boards, and commissions. Each Regional Office is managed by a Chief Auditor who oversees the audits performed by the office within their region.

The **Audit Administration and Support Group** is made up of the office's Quality Assurance Section, Accounting and Auditing Support Section, and Audit Administration Section. These sections develop auditing standards based on current laws and guidelines and ensure that Auditor of State employees are up-to-date on these standards. This group also ensures that Auditor of State audits are performed in a manner that complies with all auditing standards.

The **Financial Audit Group** is responsible for conducting financial audits of all public and quasi-public entities as required under Ohio law. Generally, the Auditor of State's office is required to perform these financial audits at least once every two fiscal years. The office must review the methods, accuracy, and legality of the accounts; financial reports; records; files; and reports of public entities. The Financial Audit Group also determines if the entity has complied with the law, rules, ordinances, and orders pertaining to the office. The Financial Audit Group staff is headquartered out of the nine regional offices, but spends most of its time in the field at local audit sites.

The **Medicaid/Contract Audit Group** focuses its audit work on Medicaid providers, compliance audits of county agencies under interagency agreements with the Ohio Department of Job and Family Services and the Ohio Department of Developmental Disabilities, as well as program audits aimed at assessing the efficiency and effectiveness of state programs such as child support enforcement, home health care, nursing homes, and food stamps.

The **Special Audit Section** reviews allegations of public corruption and abuse of public funds by public officials which potentially constitute a violation of either criminal or civil law. This group works with the Legal Division and the Special Investigation Unit to help prosecute those who use public funds for personal gain.

The **Local Government Services Section (LGS)** is housed within the Audit Division. LGS serves as a consulting and fiscal advisory group to all governmental agencies and subdivisions, and provides an array of services including but not limited to financial forecasts, GAAP conversion assistance, annual financial report processing, record reconstruction and reconciliation, fiscal watch or emergency assistance, and financial management training for elected officials. Publications such as accounting manuals and policy bulletins are distributed to assist local governments in performing their duties and to keep them up to date on their legal requirements.

OHIO AUDITOR OF STATE – GENERAL INFORMATION

The **Performance Audit Section** identifies and helps correct inefficient managerial operations and waste of taxpayer dollars in addition to providing general oversight and assistance to ensure efficient operation of public offices. By statute, the auditor is authorized to conduct a performance audit for any school district or local government deemed to be in fiscal caution (school districts only), fiscal watch or fiscal emergency. Moreover, the Auditor of State is authorized to conduct performance audits of state of local entities upon request.

AUDIT DIVISION

Toll Free..... (800) 282-0370
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Director of Performance Audit Section and Local Government Services.....Randy Cole
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Chief Auditor, Quality Assurance Section.....W. Brad Blake
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Chief Auditor, Accounting & Auditing Support Section.....Fred Kruse
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Chief Auditor, Audit Administration Section.....Robert Greenwalt
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Chief Auditor, State Region/ISA.....Cynthia Klatt
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Chief of Local Government Services Section.....Unice Smith
ussmith@auditor.state.oh.us

OHIO AUDITOR OF STATE – GENERAL INFORMATION

REGIONAL OFFICES:

Regional Office	Chief Auditor	Counties Served	Phone
Akron/Canton	Daniel Stuetzer djstuetzer@auditor.state.oh.us	Ashland, Coshocton, Holmes, Medina, Richland, Stark, Summit, Tuscarawas, Wayne	(800) 443-9272
Athens/SE Ohio	Charles Barga cfbarga@auditor.state.oh.us	Athens, Belmont, Gallia, Guernsey, Hocking, Jackson, Lawrence, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pike, Scioto, Vinton, Washington	(800) 441-1389
Cincinnati	Loren Crisp lscrisp@auditor.state.oh.us	Adams, Brown, Butler, Clermont, Clinton, Fayette, Hamilton, Highland, Preble, Warren	(800) 368-7419
Cleveland	Robert Wilhelm rrwilhelm@auditor.state.oh.us	Cuyahoga, Geauga, Lake, Lorain	(800) 626-2297
Columbus	William Collier wmcollier@auditor.state.oh.us	Crawford, Delaware, Fairfield, Franklin, Knox, Licking, Madison, Marion, Morrow, Pickaway, Ross, Union, Wyandot	(800) 443-9275
Dayton	Mike Botkin mabotkin@auditor.state.oh.us	Allen, Auglaize, Champaign, Clark, Darke, Greene, Hardin, Logan, Mercer, Miami, Montgomery, Shelby, Van Wert	(800) 443-9274
Toledo	George Prephan gjprephan@auditor.state.oh.us	Defiance, Erie, Fulton, Hancock, Henry, Huron, Lucas, Ottawa, Paulding, Putnam, Sandusky, Seneca, Williams, Wood	(800) 443-9276
Youngstown	Richard Kubic mrkubic@auditor.state.oh.us	Ashtabula, Carroll, Columbiana, Harrison, Jefferson, Mahoning, Portage, Trumbull	(800) 443-9271

OHIO AUDITOR OF STATE – GENERAL INFORMATION

LOCAL GOVERNMENT SERVICES REGIONAL CONTACTS:

Toll Free (for all regional contacts)..... 1-800-345-2519

LGS Regional Staff	Chief Project Manager	Counties Served
Northeast	Nita Hendryx nrhendryx@auditor.state.oh.us	Ashland, Ashtabula, Carroll, Columbiana, Coshocton, Cuyahoga, Erie, Geauga, Harrison, Holmes, Huron, Knox, Lake, Lorain, Mahoning, Medina, Portage, Richland, Stark, Summit, Trumbull, Tuscarawas, Wayne
Northwest	Belinda Miller bemiller@auditor.state.oh.us	Allen, Auglaize, Champaign, Crawford, Defiance, Delaware, Fulton, Hancock, Hardin, Henry, Logan, Lucas, Marion, Mercer, Morrow, Ottawa, Paulding, Putnam, Sandusky, Seneca, Union, Van Wert, Williams, Wood, Wyandot
Southeast	Robert Burlenski raburlenski@auditor.state.oh.us	Athens, Belmont, Fairfield, Gallia, Guernsey, Hocking, Jackson, Jefferson, Lawrence, Licking, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Vinton, Washington
Southwest	David Thompson dbthompson@auditor.state.oh.us	Adams, Brown, Butler, Clark, Clermont, Clinton, Darke, Fayette, Franklin, Greene, Hamilton, Highland, Madison, Miami, Montgomery, Pickaway, Pike, Preble, Ross, Scioto, Shelby, Warren.
Special Projects	Jeff Wilcheck jwilcheck@auditor.state.oh.us	Administrative projects and support to regions

LEGAL DIVISION

The Auditor of State's Legal Division is primarily responsible for providing legal advice to field auditors, assisting in determinations of whether or not the entity being audited is complying with all applicable laws. The legal staff can also help public offices comply with state and federal requirements. Such advice can be found in bulletins, informal opinions, and at Auditor of State conferences. The Legal Division also provides continuing education to elected officials and government employees through specific training programs and conferences on government issues.

The Special Investigation Unit helps investigate and prosecute those who seek to use public funds for personal gain. The Chief Legal Counsel and the Chief of Investigations work closely with the Special Audit Section in an effort to aggressively pursue fraud and public corruption.

The Open Government Unit serves local officials by providing training and resources to help them better understand their obligations under the Ohio Public Records Act and the Ohio Open Meetings Act. The unit has a full-time attorney and a full-time paralegal to serve as the office's experts on public records and open meetings. At the request of local officials, the office offers training seminars and other educational resources on the Sunshine Laws.

OHIO AUDITOR OF STATE – GENERAL INFORMATION

LEGAL DIVISION

Toll Free.....(800) 282-0370
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**Assistant Chief Legal Counsel, Athens and
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Chief of Investigations.....Randall Meyer
rjmeyer@auditor.stae.oh.us

APPENDIX II

ASSOCIATED ORGANIZATIONS

Ohio Department of Mental Retardation and Developmental Disabilities www.mrdd.ohio.gov	30 East Broad Street Columbus, Ohio 43215	http://www.mrdd.ohio.gov/ kimberley.oliver@dmr.state.oh.us 1-877-464-6733 or (614) 466-5214
Ohio Association of County Boards of Mental Retardation and Developmental Disabilities www.oacbmrdd.org	73 East Wilson Bridge Road Suite B-1 Columbus, Ohio 43085	dohler@oacbmrdd.org (614) 431-0616
Public Employees Retirement System www.opers.org	277 East Town Street Columbus, Ohio 43215	1-800-222-7377
State Teachers Retirement System www.strsoh.org	275 East Broad Street Columbus, Ohio 43215	(614) 227-4090

APPENDIX III

**DECLARATION BY MEMBER OF
_____ COUNTY DD BOARD**

I, _____ [*Name of board member*] am a member of the _____ Board of Developmental Disabilities (referred to as the “DD Board”). Pursuant to the requirements of Ohio Rev. Code §5126.011 and section 3 of Am. S.B. 10, I make the following declaration:

1. I am a citizen of the United States.
2. I am a resident of _____ County.
3. I am interested and knowledgeable in the field of developmental disabilities and other allied fields.

Check all which apply:

- I have an immediate family member¹ who is eligible to receive early intervention services or services for preschool or school-age children from the DD Board.
- I have an immediate family member who is eligible to receive adult services from the DD Board.
- I have an immediate family member who is eligible to receive residential or supported living services from the DD Board.
- I have an ownership interest in the _____ agency which has a contract with the DD Board. The nature of this ownership interest is as follows:

- I have an immediate family member who has an ownership interest in the _____ agency which has a contract with the DD Board. The nature of this ownership interest is as follows:

- I have a contract with the _____ agency which has a contract with the DD Board. The nature of contract is as follows:

- I have an immediate family member who has a contract with the _____ agency which has a contract with the DD Board. The nature of contract is as follows:

- I am a board member or employee of the _____ agency which is licensed or certified by the Ohio Department of DD and which provides services to individuals with DD.
- I have an immediate family member who is a board member or employee of the _____ agency which is licensed or certified by the Ohio Department of DD and which provides services to individuals with DD.

¹ “Immediate Family Member” includes the following: parents, grandparents, brothers, sisters, spouses, sons, daughters, aunts, uncles, mother-in-law, fathers-in-law, brothers-in-law, sisters-in-law, sons-in-law, and daughters-in-law.

- I am a board member or employee of the _____ agency which is not licensed or certified by the Ohio Department of DD Board, which provides services to the individuals with DD and which is under contract with the DD Board.
- I have an immediate family member who is a board member or employee of the _____ agency which is not licensed or certified by the Ohio Department of DD, which provides services to the individuals with DD and which is under contract with the DD Board.
- I am an elected public official in the following position: _____
- I have an immediate family member who is currently on the DD Board.
- I am currently an employee of the DD Board.
- I was an employee of the DD Board and terminated my employment with the DD Board on _____.
- I have an immediate family member who is currently an employee of the DD Board.
- I have an immediate family member who is currently a county commissioner for _____ County.

Date

Signature