

EDU #11164-96
C # 637-97
SB # 3-98

DOVER EDUCATION ASSOCIATION, :
PETITIONER-APPELLANT, :
V. :
BOARD OF EDUCATION OF THE TOWN : STATE BOARD OF EDUCATION
OF DOVER, MORRIS COUNTY, :
RESPONDENT-RESPONDENT, : DECISION
AND :
NORTHWEST COVENANT MEDICAL :
CENTER/DOVER GENERAL HOSPITAL :
COMPANY, :
RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, December 12, 1997

For the Petitioner-Appellant, Zazzali, Zazzali, Fagella & Nowak (Richard A. Friedman, Esq., of Counsel)

For the Respondent-Respondent Board of Education of the Town of Dover, Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross (Lester Aron, Esq. and Peter Schultz, Esq., of Counsel)

For the Respondent-Respondent Northwest Covenant Medical Center/Dover General Hospital, Mary Joan Sugrue, Esq.

This case centered on a single question: whether, or to what extent, the applicable statutes conferred the authority on a district board of education to contract with a private entity for nursing services.

As stipulated by the parties, the Board of Education of the Town of Dover (hereinafter “Board”) sought to meet its obligations under N.J.S.A. 18A:40-1 and 40-3.1 during the 1996-97 school year through a combination of the direct employment of two certified school nurses and by contracting with Northwest Covenant Medical Center/Dover General Hospital (“NCMC”). Pursuant to that agreement, NCMC provided two full-time registered nurses to perform nursing services mirroring those provided by the school nurses employed by the district.

The ALJ concluded that the contracts at issue were ultra vires because the Board did not have the authority to contract for these services. The ALJ’s conclusion was grounded in the language of those two statutes, which he construed strictly, presuming that they applied to all cases that were not specifically excepted from such application.

The Commissioner modified the ALJ’s conclusions. Stressing that it was now settled that the district must employ a sufficient number of school nurses to “ensure the adequate provision of the duties specifically reserved for certified school nurses,” the Commissioner reasoned that contracting was permitted “so long as noncertificated nurses do not perform nursing functions requiring a certificate except as delegated by the school nurse and so long as professionals practicing under authority of a license are supervised in accordance with any conditions specified by the terms of that license....” Commissioner’s Decision, slip op. at 10. On this basis, the Commissioner concluded that the Board had acted consistently with the general authority conferred on it by N.J.S.A. 18A:11-1, but he directed the Board to “review its assignments to determine whether the duties performed by the noncertificated nurses employed by contract

conflict with duties specifically reserved for certificated nurses and to adjust its staffing as necessary.” Id. at 11.

Petitioner, the Dover Education Association, filed the instant appeal to the State Board.

On April 19, 2000, our Legal Committee issued a report in which it recommended reversing the decision of the Commissioner. The Legal Committee concluded that, under the statutory scheme, a district board retained the managerial prerogative to contract with a private entity for nursing services to supplement school nursing services provided under the statutory mandate, but could not supplant the provision of nursing services that would otherwise be provided by certified school nurses employed by the district. The Committee found that, in this instance, the contract nurses were supplanting the services that would ordinarily be provided by school nurses employed by the district by providing exactly the same services that those nurses would provide, in violation of the pertinent statutes.

In exceptions filed in response to that Report, the Board maintained that any violations of the school laws had been rendered moot by virtue of the fact that its contracts for registered nurses had terminated on July 1, 1999 and that it had entered into no further contracts for such services. The Board pointed out, in addition, that N.J.S.A. 18A:40-3.3, which was enacted in 1999, precluded it from placing any uncertified nurse in a school building without the immediate physical supervision of a certified school nurse.¹

¹ N.J.S.A. 18A:40-3.3 provides in pertinent part that:

....A school district may supplement the services provided by the certified school nurse with non-certified nurses, provided that the

After a careful review of the record in light of the exceptions filed, we agree with the Board that this matter has been rendered moot. In so concluding, we stress that the only relief sought by the petition in this case was a declaration that the contracts with NCMC were invalid under the statutes in effect during the relevant time period. We therefore dismiss the appeal in this matter.

Attorney exceptions are noted.

Arnold G. Hyndman abstained.

July 5, 2000

Date of mailing _____

non-certified nurse is assigned to the same school building or school complex as the certified school nurse.