

OLD BRIDGE TOWNSHIP EDUCATION :
ASSOCIATION ET AL.,

PETITIONERS,

V.

BOARD OF EDUCATION OF THE
TOWNSHIP OF OLD BRIDGE,
MIDDLESEX COUNTY,

RESPONDENT.

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COMMISSIONER OF EDUCATION

DECISION

SYNOPSIS

Petitioning education association and members alleged that Board of Education had acted outside the scope of its authority in creating the position of “registered nurse,” which required a nursing license but no educational certification, that the Board and County Superintendent had erred in holding that County Superintendent approval was not necessary for such position, and that the position as implemented by the Board improperly usurped the role of the certified school nurse. Petitioners sought declaration from Commissioner that nursing services in the school setting must be provided by certified school nurse.

ALJ dismissed petition, finding no violation of law in the Board’s action, holding instead that such action was within the scope of the Board’s discretionary authority and was properly taken for reasons of economy and efficiency. ALJ further concluded that County Superintendent approval for the position was unnecessary, and that the position did not impermissibly require the holder to perform duties reserved to the school nurse.

Commissioner affirmed initial decision with amplification, drawing a distinction between those duties designated by statute or regulation as “school nursing services” and other nursing services provided in the school setting. The Commissioner held that the former must be provided by certified school nurses, while the latter may be provided by any qualified person, licensed and supervised, where the duties so require, in accordance with the nursing practice law (*N.J.S.A. 45:11-23 et seq.*) The Commissioner found approval by the County Superintendent for establishment of noncertified professional nursing positions to be unnecessary, beyond reviewing proposed job descriptions to ensure that they do not include duties requiring educational certification. However, the Commissioner did find that, in the present instance, the distribution of duties between the school nurse and registered nurse resulted in vision and hearing tests independently being administered by the registered nurse, rather than by the school nurse with the assistance of the registered nurse, and directed the Board to reform its practice in this area.

OAL DKT. NOS. EDU 4459-96 AND EDU 4981-96 (CONSOLIDATED)

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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. Timely exceptions were filed by petitioners pursuant to *N.J.A.C.* 1:1-18.4, as were replies by the Board of Education.

In urging rejection of the initial decision, petitioners contend that the ALJ both erred in his ultimate findings and failed to offer a sufficient explanation for them, as required in the Administrative Procedure Act. Petitioners allege that, in making his judgments, the ALJ ignored a crucial factual document, i.e., the deposition of Sharon Lane demonstrating the breadth of duties she actually performed, as well as petitioners' arguments based upon it, and inexplicably closed the record prior to receipt of petitioners' timely brief filed in reply to the Board's cross motion for summary decision. Petitioners argue that an appropriate review of the full record of this matter will reveal that, even accepting *arguendo* that duties not reserved to a certified school nurse may in theory be performed by other appropriately licensed personnel, Ms. Lane's deposition demonstrates that such a distinction will not work in practice and that performance by other staff of any duties which are not in the nature of those assigned to an aide will inevitably result in the duties of a certified school nurse being performed by a noncertificated person, contrary to law.

The Board, in turn, urges acceptance of the initial decision as procedurally sufficient, legally correct and fully supported by the factual record, including the deposition cited by petitioners.

Upon review, the Commissioner initially finds that, while the ALJ may not have set forth at length the factual and legal analysis underlying his conclusions with respect to the contents of Ms. Lane's deposition, such does not rise to the level of invalidating the decision, nor does it impede the Commissioner's ability to make a determination in this matter. Further, upon consideration of applicable law, the record of the contested case, the arguments of parties and sound educational policy, the Commissioner concurs with the ALJ and the Board that, apart from those specific statutory and regulatory duties that expressly require performance by a "school nurse," health and related services in the school setting not necessitating an educational certificate may be provided by any appropriately licensed health professional supervised in accordance with the terms of their licensure.

It is clear that under the education laws, each school district must employ at least one school nurse, who must be appropriately certified by the State Board of Examiners and is considered a teaching staff member for purposes of salary, tenure and evaluation. *N.J.S.A.* 18A:40-1, 18A:26-2, 18A:1-1, 18A:28-5, 18A:29-4.2; *N.J.A.C.* 6:11-11.7, 6:3-4.1/3, 6:29-1.2(b)¹ The duties expressly reserved to "school nurses" are recognized as "school nursing services" pursuant to *N.J.S.A.* 18A:40-3.1, and include lecturing to teachers on recognition and prevention of communicable disease and other health concerns (*N.J.S.A.* 18A:40-3; *N.J.A.C.* 6:29-1.2(b)1vi), maintaining pupil health records and assisting the medical inspector with physical examinations, including vision and hearing exams (*N.J.S.A.* 18A:40-4; *N.J.A.C.* 6:29-1.2(b)1i, 6:29-1.2(b)1iv, 6:29-2.1), examining pupils for the presence of scoliosis (18A:40-4.3; *N.J.A.C.* 6:29-1.2(b)1ii), recommending exclusion from school due to illness or exposure to disease (18A:40-7/8; *N.J.A.C.* 6:29-1.2(b)1v), reporting, receipt of reports and examinations in

¹ A registered nurse may, upon receipt of a county substitute certificate pursuant to *N.J.A.C.* 6:11-4.5, substitute for a certified school nurse on a short-term basis within the express limitations prescribed by that rule.

instances of suspected substance abuse (18A:40A-12, *N.J.A.C.* 6:29-6.5), vision screenings, health appraisals and various consultative functions with respect to evaluation for and provision of special education services (*N.J.A.C.* 6:28-3.2 *et seq.*, 6:28-11.3 *et seq.*), audiometric screening (*N.J.S.A.* 18A:40-4; *N.J.A.C.* 6:29-1.2(b)iii, 6:29-5.1), maintaining awareness of safe procedures for handling of body fluids (*N.J.A.C.* 6:29-2.5), accessing employee health records when permitted by the employee (*N.J.A.C.* 6:29-7.4), serving as liaison to the local board of health on issues relating to pregnancy and prenatal health (*N.J.A.C.* 8:52-5.3), administration of Snellen vision screenings for special learner's permits for obtaining a driver's license (*N.J.A.C.* 13:21-7.1 *et seq.*), testing for tuberculosis infection (*N.J.A.C.* 6:29-2.3), and completion or approval, as designated thereon, of health forms required to be submitted to the State. Additionally, where so assigned, the school nurse will provide instruction to students within the limitations of the school nurse endorsement (*N.J.S.A.* 18A:26-2; *N.J.A.C.* 6:11-11.7, 6:29-4.2).²

As these services are both required by law and, apart from pupil instruction, specifically reserved to certificated school nurses, each board of education must employ a sufficient number of such nurses to ensure their adequate provision. *N.J.S.A.* 18A:40-1, 18A:40-3.1 However, where education law is silent on the provision of specific nursing services and support functions related to them, and such services do not otherwise require educational certification, there is nothing to prevent a board of education from duly determining, for reasons of economy or efficiency, that these nursing services will be provided by health professionals who hold the requisite license from, and are supervised in accordance with the requirements of, the Board of Nursing pursuant to *N.J.S.A.* 45:11-23 *et seq.*, but are not additionally certified by the State Board of Examiners. *Communications Workers of America, Local 1033 v. New Jersey Department of Education, Marie H. Katzenbach School for the Deaf*, decided by the State Board of Education, April 1, 1992, 92 *N.J.A.R.2d* (EDU) 326 Additionally, there is nothing to prevent duly licensed professionals or other qualified persons (e.g., clerical aides) from *assisting* certificated school nurses in the performance of duties reserved by law to such

²It is noted that noncertificated nurses may serve as resource persons for family life programs pursuant to 6:29-4.2(h), but may not actually instruct pupils.

nurses, so long as they do not actually *perform* the function at issue 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.

With regard to the question of County Superintendent approval for establishment of the position of “registered nurse,” the Commissioner concurs with the ALJ that no such approval is necessary. Noncertificated health care positions entailing duties requiring professional licensure are not “unrecognized titles” within the intendment of *N.J.A.C. 6:11-3.3*, which applies to certificated teaching staff positions and provides a mechanism for identifying the appropriate recognized educational (legal) title for such positions so as to determine the particular certificate and endorsement that will be necessary to hold it. Nor are they “paraprofessional aides” requiring approval pursuant to *N.J.A.C. 6:11-4.6*. In the case of positions to be held by licensed health care professionals, review by the County Superintendent would be limited to assessment of the job description at hand to advise as to whether, on its face, such description includes duties necessitating a school nurse endorsement or other educational certificate in addition to, or instead of, the license proposed by a board. However, the County Superintendent has neither the authority nor the expertise to determine the appropriateness of the nursing license proposed for the specified duties, such being the purview of the Board of Nursing pursuant to *N.J.S.A. 45:11-23 et seq.* and *N.J.A.C. 13:37-1.1 et seq.*

In the instant matter, then, as concluded by the ALJ, the Board acted within the scope of its lawful discretionary authority to design a nursing position where the job duties do not, on their face, usurp functions reserved to the certified school nurse. Neither did it need the County Superintendent’s approval to establish this position, once it was determined that the job description did not facially require duties reserved to the holder of a school nurse endorsement or other educational certificate.

As correctly noted by petitioners, however, that does not end the inquiry herein. Once a noncertificated nursing position is designed and established, its actual implementation must still conform to applicable education law. Here, petitioners claim that the deposition of Sharon Lane demonstrates a lack of such conformance, and further contend that, as a distinction between certified and noncertified nursing services cannot be

maintained in practice, the only appropriate remedy is a directive that all nursing services in the school setting be performed by certified school nurses.

The Commissioner has carefully considered petitioners' argument and reviewed the deposition of Ms. Lane in light of it. Upon such review, the Commissioner is ultimately unpersuaded by petitioners' claim, as he finds that virtually all of the instances where petitioners allege usurpation of the role of the certified school nurse are based upon the district's job description for that position, or upon prior case law rooted in analysis of tenure rights and allegations that boards had attempted to thwart them through hiring of aides, rather than upon the statutory and regulatory limitations on a board's authority where employment claims are not at issue. The fact that a registered nurse may be assigned to a particular school, work alone for most of the time, report to school administrators rather than the school nurse, have contact with pupils, parents and other medical professionals, and fulfill many of the functions performed by school nurses in the buildings to which they are assigned, does not, in itself, create a violation of education law; rather, it reflects the fact that school nurses can and do perform a variety of services in their positions that do not necessarily require educational certification or direct reporting to a senior medical professional. On the other hand, a board may not, as the Board herein clearly has done with vision and hearing tests for the school to which Ms. Lane is assigned, have its noncertificated nurse independently performing functions reserved to the school nurse and then simply have the school nurse review and approve the results; the role of the noncertificated nurse in such functions must be clearly limited to provision of *assistance*.³

The Commissioner believes, however, that duties can be divided and assignments maintained that will preserve this distinction. He declines, therefore, to hold that all nursing services provided in the school setting *must* be performed by a certified school nurse, but stresses that the job description and assignment of any noncertified providers may not require or permit them to actually perform functions specifically

³ It is noted that this role does not necessarily require an organizational structure where the noncertificated nurse reports to, or is evaluated by, the school nurse whom he or she is assigned to assist. However, in devising such structures, care must be taken that the separate supervision and delegation requirements of nursing law are considered and applied.

reserved by law to the school nurse, except as delegated by him or her, or which otherwise require educational certification, and that all such providers must, where required, be appropriately licensed and supervised in accordance with *N.J.S.A. 45:11-23 et seq.*

Accordingly, the initial decision of the Office of Administrative Law dismissing the petition of appeal is affirmed for the reasons expressed therein, as amplified above. Consistent with the decision herein, however, the Board is directed to revise its assignments with respect to vision and hearing tests so as to ensure that they are provided in conformance with the requirements of law.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date: November 26, 1997