

DOVER EDUCATION ASSOCIATION, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE TOWN : DECISION
OF DOVER, MORRIS COUNTY AND :
NORTHWEST COVENANT MEDICAL :
CENTER/DOVER GENERAL HOSPITAL :
COMPANY, :

RESPONDENTS. :

SYNOPSIS

Petitioning Association contended that the Board’s decision to provide nursing services through a contract with a private vendor was unlawful and improper. Board alleged that once one or more school nurses were employed directly by it, it was free to contract out for the provision of *additional* nursing services.

ALJ found that applicable statutory language greatly restricts a board’s freedom to contract out and seems clearly to require that all school nurses be employed directly by the Board except in very narrow areas -- where there exists an original contract or agreement entered into prior to February 27, 1957, or any renewal or modification thereof. Thus, the ALJ concluded that the determination by the Board to contract out school nursing services for the 1996-97 and the 1997-98 school years to Northwest Covenant was *ultra vires*. ALJ ordered the contracts declared null and void.

In light of recent *Old Bridge Twp. Ed. Assoc.* decision, Commissioner modified the findings and conclusion of the ALJ. Commissioner noted that a district must employ a sufficient number of school nurses to ensure the adequate provision of the duties specifically reserved for certified school nurses. However, there is nothing to prevent a board from duly determining for reasons of economy or efficiency that other nursing services would be provided by health professionals who hold the requisite license from, and are supervised in accordance with requirements of, the Board of Nursing pursuant to *N.J.S.A. 45:11-23 et seq.* Commissioner found it is clear that *school* nurses must be employees of the district; however, nothing in the controlling statute would act to preclude a board from contracting for the services of *noncertificated* nurses, performing duties consistent with the dictates of *Old Bridge*. The Board was directed 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.

OAL DKT. NO. EDU 11164-96
AGENCY DKT. NO. 388-9/96

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions were timely submitted by the respondent, Town of Dover Board of Education, which recast and reiterate many of the arguments presented in papers previously considered by the Administrative Law Judge (ALJ). Petitioner's exceptions were also filed in accordance with *N.J.A.C.* 1:1-18.4. Each of the aforesaid submissions were duly considered by the Commissioner in rendering the within decision.

Upon careful and independent review of the record, and in view of recent developments in related case law, the Commissioner is constrained to modify the findings and conclusion of the ALJ that the determination of the Board to contract out nursing services, for the 1996-97 and 1997-88 school years, to an outside contractor is violative of *N.J.S.A.* 18A:40-1 and *N.J.S.A.* 18A:40-3.1 and the interpreting regulation promulgated thereto, *N.J.A.C.* 6:29-1.2(b). Initially, the Commissioner observes that the education laws clearly require each school district to employ at least one school nurse, who must be appropriately certified by the State Board of Examiners and who is considered a teaching staff member for purposes of salary, tenure and evaluation and to perform duties expressly reserved to school nurses. *N.J.S.A.* 18A:40-1, 18A:40-3.1. Further, in light of the Commissioner's recent decision in *Old Bridge Township*

Education Association et al. v. Board of Education of the Township of Old Bridge, Middlesex County, Decision No. 621-97, decided November 26, 1997, it is 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. (*Id.* at p. 14). However, the Commissioner also ruled therein that,

***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.* (*Id.*)

Additionally, 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, there is nothing to prevent duly qualified persons from assisting certificated school nurses in the performance of duties reserved by law to such nurses.

The present matter raises the issue as to whether a school board may subcontract for nursing services with a private agency such as respondent Northwest Covenant Medical Center. For the reasons stated by the ALJ, it is clear that *school* nurses must be employees of the district. However, nothing in the controlling statute would act to preclude a board from contracting for the services of *noncertificated* nurses, performing duties consistent with the dictates of *Old Bridge, supra*. It has been held in numerous cases that boards of education may subcontract positions and services which would otherwise be assumed by board employees. See *Impey v. Board of Education of the Borough of Shrewsbury*, 142 *N.J.* 388 (1995); *Vincenzino v. Bedminster Board of Education*, 97 *N.J.A.R.* 2d (EDU) 356; *Colantoni v. Long Hill Township Board of Education*, 97 *N.J.A.R.* 2d (EDU) 326. Such cases are based on a recognition that “[t]he decision to contract for services is generally a matter of managerial prerogative and is only limited where such action conflicts with specific rights established under the school law.” *Edison Township Education Association v. Edison Township Board of Education*, 94 *N.J.A.R.* 2d (EDU) 301, 303. Because subcontracting for nursing services, other than *school* nursing services as set

forth in *Old Bridge*, does not violate the applicable statutes or regulations, the Board acted in conformance with its authority at *N.J.S.A.* 18A:11-1 (authorizes boards of education to perform all acts and do all things, consistent with law and State Board rules, necessary for proper conduct, equipment and maintenance of the public schools). See, also, *Kopera v. West Orange Board of Education*, 60 *N.J. Super.* 288 (App. Div. 1960) (a board's actions are presumed valid).

Accordingly, for the reasons expressed herein, the recommended decision of the OAL is modified to the extent set forth above. Consistent with the decision herein, the Board is directed to review its assignments to determine whether the duties performed by the non-certificated nurses employed by contract conflict with duties specifically reserved for certificated nurses and to adjust its staffing as necessary.

COMMISSIONER OF EDUCATION

Date: December 12, 1997