

EDU #3080-00
C # 179-01
SB # 21-01

RAMSEY TEACHERS ASSOCIATION, :
PETITIONER-APPELLANT, : STATE BOARD OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE :
BOROUGH OF RAMSEY, BERGEN :
COUNTY, :
RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, June 7, 2001

Decision on motion by the State Board of Education, September 5, 2001

For the Petitioner-Appellant, Bucceri & Pincus, (Louis P. Bucceri, Esq., of Counsel)

For the Respondent-Respondent, Winne, Banta, Rizzi, Hetherington & Basralian (Robert M. Jacobs, Esq., of Counsel)

For the Amicus Curiae New Jersey School Boards Association (John J. Burns, Esq., of Counsel)

This matter was initiated by the Ramsey Teachers Association (hereinafter "Association"). The factual circumstances are undisputed. In June 1998, the Board of Education of the Borough of Ramsey (hereinafter "Ramsey Board" or "Board") established the position of school health aide and adopted a job description for the position. Certification as a school nurse was not required in order to be employed as a school health aide. During the 1999-2000 and 2000-2001 school years, a certified

school nurse was employed by the Ramsey Board on a part-time basis and assigned to the Tisdale School from 8:45 to 12:15, Monday through Friday.¹ By resolution adopted on October 14, 1999, the Board employed a registered nurse who did not possess certification as a school nurse to serve as a health aide assigned to the Tisdale School on a part-time basis from 12:00 to 3:00, Monday through Friday. On this factual basis, the Association filed a petition of appeal with the Commissioner of Education challenging the use of non-certified nurses by the Board when certified school nurses were not present in the building. The case was transmitted to the Office of Administrative Law where the Association filed a motion for summary decision and the Board filed a cross-motion seeking dismissal of the petition.

On the basis of the undisputed facts, an Administrative Law Judge (“ALJ”) issued an initial decision recommending that the Commissioner deny the Association’s motion for summary decision and grant the Board’s motion to dismiss the petition. In coming to her conclusion, the ALJ found that the division of duties between the certified school nurse and the non-certified nurses did not violate N.J.S.A. 18A:40-3.3, which permits a school district to supplement the services provided by a certified school nurse with non-certified nurses so long as the non-certified nurse is assigned to the same school building or school complex as the certified school nurse. Finding that the purpose of the statute was to introduce some flexibility into the school health system, the ALJ reasoned that if a non-certified nurse could not be present in the building unless a certified school nurse was also present, the non-certified nurse would be limited to merely “shadowing”

¹ In the 1999-2000 school year, the Board assigned a certified school nurse on a full-time basis to its middle school and high school. It assigned a certified school nurse on a part-time basis to each of its three elementary schools.

the certified school nurse. The ALJ concluded that if the Legislature had intended to mandate this result, it would have expressly provided for it in the statute.

The Commissioner agreed with the ALJ that N.J.S.A. 18A:40-3.3 does not expressly require that a certified school nurse be present whenever a non-certified nurse performs duties that supplement the services provided by the certified school nurse as provided for by N.J.S.A. 18A:40-3.5. The Commissioner also found that there was no evidence that the registered nurse serving as a school health aide at Tisdale School was functioning in a manner not in compliance with the applicable regulations. He therefore concluded that the Board's division of duties between the certified nurse and the school health aide did not violate N.J.S.A. 18A:40-3.3. Accordingly, the Commissioner denied the Association's motion for summary decision and granted the Board's cross-motion to dismiss the petition.

The Association appealed to the State Board of Education, contending that N.J.S.A. 18A:40-3.3 bars the use of a non-certified nurse to perform nursing services in a public school when a certified school nurse is not present in the building, with the exception of temporary absences. The Association argues that the language of N.J.S.A. 18A:40-3.3 clearly states the Legislature's intent to mandate that any form of nursing services in a public school be provided by a certified school nurse with certain exceptions that include the provision of supplemental services if there is a certified school nurse assigned to the building. The Association argues that effectuation of the legislative intent requires that a non-certified nurse and a certified school nurse must be assigned the same hours and serve in the same building.

In response, the Board urges affirmance of the Commissioner's decision, contending that nothing in N.J.S.A. 18A:40-3.3 requires that a certified school nurse must be present when a non-certified nurse performs duties that supplement the services of the certified school nurse. The Board further contends that the Commissioner correctly concluded that nothing in the record indicates that the school health aide assigned to the Tisdale School is not functioning in compliance with the applicable regulations.

The State Board granted leave to the New Jersey School Boards Association to appear as amicus curiae in this matter. Amicus argues that both the language and the legislative history of N.J.S.A. 18A:40-3.3 support the ALJ's and the Commissioner's interpretation of the statute. Amicus further argues that reversal of the Commissioner's decision in this case would have the effect of invalidating N.J.A.C. 6A:16-2.1 et seq., upon which school districts have reasonably relied, and thereby would put many districts into disarray.

Although the State Board would act to minimize any disruption to districts if it were to conclude that a regulatory provision was in conflict with a statute, it would not avoid such a conclusion where warranted. However, this is not the case here.

N.J.S.A. 18A:40-3.3 was enacted into law on July 1, 1999. Nothing in the language of the statute provides that a certified school nurse must be present whenever a non-certified nurse performs duties that supplement the services provided by a certified school nurse assigned to the same building. N.J.S.A. 18A:40-3.3 provides that:

A school district shall only utilize or employ for the provision of nursing services in the public schools of the district persons holding an educational services certificate with an endorsement as a school nurse issued by the State Board of Examiners, except for those non-nursing

personnel who are otherwise authorized by statute or regulation to perform specific health related services....A school district may supplement the services provided by the certified school nurse with non-certified nurses, provided that the non-certified nurse is assigned to the same school building or school complex as the certified school nurse.

Hence, while the terms of the statute require that a certified school nurse be assigned to the building or complex where the non-certified nurse is providing supplemental services, nothing in the statutory language requires that the certified school nurse be present when such services are being provided.

Further, the legislative history of the statute supports the conclusion that the certified school nurse assigned to the building or complex need not be present when a non-certified nurse is providing supplemental services. When it was adopted by the Legislature, N.J.S.A. 18A:40-3.3 did not include any language authorizing school districts to supplement the services provided by the certified school nurse with non-certified nurses. The Governor conditionally vetoed the legislation as proposed and recommended certain amendments, one of which was to give school districts the prerogative to supplement the services provided by the certified school nurse by using non-certified nurses so long as the certified school nurse was assigned to the same building or complex. In making this recommendation, the Governor expressly stated her view that it was “essential that a certain degree of flexibility be maintained for school districts when hiring health care professionals to provide nursing services.” Governor’s Conditional Veto Message, May 20, 1999. The Legislature added the language recommended by the Governor, and, as set forth above, it became part of the statutory provision at issue. In view of this history, it would be contrary to the legislative purpose to read into the statute a requirement that a certified school nurse be present when a

non-certified nurse assigned to the same building or complex is providing supplemental nursing services.

Therefore, for the reasons stated, we affirm the Commissioner's determination that the Ramsey Board did not violate N.J.S.A. 18A:40-3.3 by employing a non-certified nurse as a health aid assigned to the Tisdale School during hours when the certified school nurse assigned to the school was not present. In addition, we agree with the Commissioner that nothing in the record indicates that the supplemental nursing services being provided by the non-certified nurse contravene the applicable regulations. However, we stress that, as set forth in prior decisions of the Commissioner and the State Board, the non-certified nurse may not provide "school nursing services," which include those duties expressly reserved to "school nurses" by statute or regulation. Montclair Education Association v. Board of Education of the Township of Montclair, decided by the State Board of Education, November 2, 2002; Dover Education Association v. Board of Education of the Town of Dover, decided by the Commissioner of Education, December 12, 1997; Old Bridge Township Education Association v. Board of Education of the Township of Old Bridge, decided by the Commissioner of Education, November 26, 1997, aff'd with clarification by the State Board of Education, April 1, 1998.

Attorney exceptions are noted.

September 1, 2004

Date of mailing _____