STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

RHODE ISLAND DEPARTMENT OF
ELEMENTARY AND SECONDARY
EDUCATION

V.

WARWICK SCHOOL COMMITTEE

DECISION

Held: State education law requires that in providing health services to school children only the services of certified nurse teachers can be utilized. The Warwick School Committee is ordered to cease and desist from using the services of another health professional in providing services to a student enrolled in the district.

September 27, 1993

Travel of the Case

At some point in time not indicated in the record, a dispute arose between the R.I. Department of Elementary and Secondary Education (hereinafter the "Department") and the Warwick School Committee with regard to Warwick's use of persons other than certified nurse teachers for certain services. An advisory opinion was given by the Department that educational statutes were violated by the use of health care professionals other than certified nurse teachers in staffing the health program in the schools. Warwick school officials sought a reexamination of this opinion through the appeal process set forth under R.I.G.L. 16-39-1. On December 11, 1992 Commissioner Peter McWalters designated the undersigned to hear and decide this appeal.

A hearing was held on February 10, 1993 and the record closed on February 23, 1993.

Findings of Relevant Facts[1]

- The Warwick School Committee presently provides the services of a registered nurse to a severely-handicapped child enrolled in its school system.

- The child in question is six (6) years old and in the first grade. The child is medically fragile, and her medical condition does not always permit her to come to school.

- During school year 1991-92 the student was absent for health reasons for 38 out of 180 days.

[1]The parties stipulated to all relevant facts in this case.

- The child has an open tracheostomy and requires "medical monitoring" on the school bus and during school hours by qualified medical personnel.

- A nurse has been retained by the school department from a private nursing service on a contract basis. She arrives at the student's home in the morning and suctions the child's air passage; then she helps the child dress for school, and assists the child on to the bus and rides to school with the child.

- Upon arrival at school, the nurse changes a weather - related device in the child's throat and suctions the child again.

- Throughout the school day the nurse remains by the child's side monitoring her, and generally suctions her air passage two additional times. At the end of the school day, the nurse accompanies the child home on the school bus at which time she returns the child to her mother.

- The above - described services are provided pursuant to an Individualized Education Program (IEP) which states that medical monitoring will be provided on the bus and during school by "qualified medical personnel".[2]

- The nurse provides no other services to the Warwick School Department, i.e. she is not involved in the educational program, performs no instructional activities, nor does she perform any other health-related services for any other children at the school.

Position of the Parties

The Department

Counsel for the Department argues that the services provided to this child are health services and form part of the school health program described in R.I.G.L. 16-21-7 and 16-21-8. By virtue of these two statutes, it is required that

[2] The issue of whether the medical monitoring is a required "related service" is not raised by this case.

the school committee use only certified nurse-teachers in providing health services, and in staffing the school health program in general.

The School Committee

The position advanced by counsel for the school committee is that health services provided exclusively to this medically fragile student are not part of the health program of the school.. In performing only those services described in the record, this registered nurse has no involvement in health education. The responsibilities for health education, as well as for any other health services provided at the school, are those of the regularly employed certified nurse teacher. Additionally, the school committee points out that the nurse in question is not on staff at the school. She is retained on a contract the Committee has entered into with a nursing service. Some of her duties are performed out of school. All of these circumstances support the proposition that this nurse is not employed in the school health program, argues the Committee. Therefore, the committee argues neither 16-21-7 nor 16-21-8 restrict it to using certified nurse teachers in providing these services. In fact, the Committee argues, it could, if it chose to do so, utilize the services of a respiratory therapist to meet this particular student's needs.

Decision

The broad language used by the Rhode Island Supreme Court in its 1981 decision in Cranston Teachers' Association v. Cranston School Committees[3] has been construed to require the use of certified nurse-teachers, exclusively, in staffing school health programs throughout our state. This requirement can be

[3] 424 A2d 648 (1981)

broken down into two parts. First, when a certified nurse teacher holds the appropriate professional credential to render a service which forms part of the school health program, a school district must utilize a certified nurse teacher to provide the service.[4] Secondly, all nurses employed by a school district must be certified nurse teachers. Given the arguments of the School Committee the sole question presented by this case is whether "services" as used in R.I.G.L. 16-21-7 includes the services provided to this child.

The statute, 16-21-7, does not define the school health program, but does list its components: the organized direction and supervision of a healthful school environment, health education and "services". The Rules and Regulations for School Health Programs[5] promulgated under Section 16-21-7 further identify the "services" component of the program as "health services". See Section 2.0 through 2.6 of the Regulations at page 2-4. We construe the word "services" as it appears in the statute and "health services" as it appears in the Regulations to include all health services provided to students. This interpretation is consistent with the plain and ordinary meaning of such words as they appear in the statute and regulations.

We recognize that over the past several years, as children with severe disabilities have been more fully integrated into the educational program of their local public schools, the range of "services" and "health services" provided by schools has expanded. They now include health services which may be provided on a one-on-one basis and may require advanced skills of a health care

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[4] Even if another health care professional holds the appropriate professional credential to perform the services.

[5] R 16-21-SCHO revised February, 1993.

professional. In its recent enactment of R.I.G.L. 23-13-26.[6] The General Assembly recognized the fact that technology dependent children are present in public school classes. Section 23-13-26 requires that their caretakers in schools have experience and familiarity with the medical devices and equipment necessary for their daily life. Tracheostomy care is identified as one of the advanced skills required of certified nurse teachers. Also under Section 23-13-26 specific guidelines for the care of technology - dependent children in schools is required to be included in the Rules and Regulations "as part of the school health program" (23-13-26 (C). This recent action of the Legislature, together with the subsequent inclusion of such guidelines for care in the Regulations at Section 109.1.1, reinforces the notion that such services comprise part of the school health program.

We are also not convinced by any of the arguments advanced by the School Committee that the services provided to this particular child are not within the meaning of "services" as that word is used in Section 16-21-7. First, the School Committee points out that the services are not provided by the certified nurse teacher on staff and therefore are not part of the school health program. This argument really begs the question because the committee would have us exempt such services from the requirement that they be performed by certified nurse teachers because they are not now being performed by a certified nurse teacher. The fallacy of this argument is, hopefully, clear.

Secondly, the School Committee notes that the individual nurse employed here performs very specialized health services for only one individual child and she is not available to perform health services to the general school population.

[6] Public Laws 1992, Ch. 340 Section 1.

The exclusivity of this nurse's assignment does not change the character of the service as a health service. Neither the statute, nor the implementing regulations contain any language which would remove one-on-one health services from the literal meaning of "services" (as found in the statute) or "health services" (as found in the Regulations). While it is true that part of the services are performed at the child's home and in the course of transportation to and from school, again, the essential character of the service -- a professional health service- remains the same. There is no statutory or regulatory exclusion which would exempt the activity, on this basis, from its inclusion as a health service and the concomitant requirement that it be performed by a certified nurse teacher.

We do not wish to ignore the arguments of the School Committee that: (1) the needs of this medically fragile child can be adequately met by an appropriately-credentialed health professional other than a certified nurse teacher and (2) use of a certified nurse teacher from the school staff will result in unnecessary expense because of the irregularity of this child's attendance.[7] We would point out, however, that these arguments should be addressed to our state Legislature.[8] It is the function of the Legislature to consider the wisdom of amending the laws in question to permit greater flexibility in the use of qualified health professionals in schools.

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[7]The contractual charge for the nurse presently utilized is apparently a per-diem rate.

[8]We take administrative notice of the fact that two bills designed to broaden the range of health professionals available to school districts in staffing the school health program were defeated in committee during the 1993 session of the General Assembly - House bill #7128 and Senate bill #1069.

The position of the R.I. Department of Elementary and Secondary Education in this dispute is sustained. The Warwick School Committee is directed to cease and desist in its use of other health professionals in providing health services to students. The Department and Commissioner are authorized to ensure compliance with this decision, and enforcement of state statute, through any means provided by law, including withholding of funds pursuant to R.I.G.L. 16-5-30.

Kathleen S. Murray, Hearing Officer

Approved:

Peter McWalters, Commissioner of Education

Date: September 27, 1993