

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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SUSAN LABUTTI

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V.

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RHODE ISLAND DEPARTMENT OF  
ELEMENTARY AND SECONDARY  
EDUCATION

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DECISION

Held: The Department failed to demonstrate "cause" for rescission of Ms. LaButti's school counselor certificate even though she lacked "teaching experience" because the regulatory requirement for two years teaching experience was not imposed on those holding the Northeast Regional Credential and applying for the same certificate.

Date: September 6, 1996

### Travel of the Case

Ms. Susan LaButti holds a school counselor certificate issued by the Rhode Island Department of Elementary and Secondary Education on July 1, 1994. Almost immediately after its issuance, the Department made a determination that the certificate was "erroneously issued" and notified Ms. LaButti of its recommendation that the Commissioner rescind the certificate. See letter of Louis E. DelPapa, Director of Teacher Education and Certification dated July 8, 1994, Dept. Ex. 1.

After receiving notice of the Department's proposed rescission of her certificate, Ms. LaButti wrote to request a hearing. On July 27, 1994 the undersigned was designated to hear this matter and wrote to the parties to schedule an agreed-upon hearing date. Thereafter, hearings proceeded on a schedule agreed to by the parties beginning October 3, 1994 and concluding January 5, 1995. Both parties submitted memoranda, with the final memorandum submitted on February 19, 1996, at which time the record in this case closed.

The record was reopened on July 29, 1996 for the submission of some additional information related to Ms. LaButti's teaching experience. This information was submitted in the form of a written affidavit by agreement of the parties.

### Issue Presented

1. Does the Board of Regents have legal authority to issue certificates for the position of school counselor?
2. Does Susan LaButti have two years of teaching experience at the elementary or secondary level as required by regulations for the school counselor's certificate?
3. If Ms. LaButti does not have teaching experience as defined by the above-mentioned regulation, does the lack of such experience

establish "cause" for the annulment of her certificate under R.I.G.L. 16-11-4?

### Findings of Relevant Facts

- Susan LaButti has been employed full-time as a student assistance counselor at Coventry High School since 1988. Petitioner's Ex. F.
- Student assistance counselors are employees of the R.I. Student Assistance Program, a statewide alcohol and drug abuse prevention/early intervention program operated at several of Rhode Island's junior and senior high schools. Petitioner's Ex. C.
- Ms. LaButti holds a Bachelor's Degree in Elementary Education, a Master's Degree in Education (guidance and counseling) and except for periods in which her certificate expired, has held an elementary teacher certificate issued by the Department of Education. Joint Ex. A. Pet. Ex. F.
- Ms. LaButti has never been employed full time as a classroom teacher at the elementary or secondary level. Tr. p. 298.
- Since the inception of the student assistance program at Coventry High School, Ms. LaButti has utilized her teaching skills by making presentations in health, psychology and other classes on various topics related to substance abuse, e.g. co-dependency, drinking and driving, eating disorders, children of alcoholics. These presentations are in addition to the general introductory presentations she gives in all English classes to orient students to the student assistance program at the high school. Tr. pp. 347-354, 177, 190, 205-206, 227-228, 263.
- In conducting motivational group counseling sessions for targeted high-risk populations during the school year, Ms. LaButti emphasized an educational approach, since she has found education and instruction of students to be integral to prevention, and since she is trained as a teacher. Tr. pp. 105, 315, 333-345, 364-365, 389-392. Joint Ex. A, letter of Robert A. Whitman-Raymond, clinical supervisor dated 5/16/94.
- All of Ms. LaButti's classroom presentations are at the request of the classroom teacher, and with the approval of the school principal. Tr. pp. 424, 184-184, 91, 111-112, 118.
- A limited number of classroom presentations on topics related to substance abuse, made at the request of a classroom teacher is consistent with the role of

a student assistance counselor and consistent with the model for the student assistance program utilized in Rhode Island public schools, known as the "Westchester County Model". (R.I.D.E. Ex. 3,7, 14) Tr. pp. 465, 479-488.

- Such presentations are designed to provide information to students and to generate referrals to the student assistance counselor. Tr. pp. 138, 428, 479. R.I.D.E. Ex. 3, Ex. 7 (Policy 03-008)
- Ms. LaButti was not responsible for or authorized to teach any part of the regular school curriculum, but the topics of her presentations sometimes overlapped with various components of the health /psychology curriculum. Tr., pp. 65, 93-94, 215-216, 277-279, 288, 392,488; R.I.D.E. Ex. 7 (Policy 04-000).
- Ms. LaButti estimates that eighty per cent (80%) of her workday involves educational/instructional activities. (Tr. pp. 418-419) and she testified that consistently over the years since she started the program at Coventry High School, she has made eight (8) to ten (10) classroom presentations per month. Tr., pp. 417-419.
- Monthly statistical reports submitted by Ms. LaButti routinely to her employer show a much lower average monthly figure for classroom presentations- less than one (1) per month, excluding initial orientation presentations made to all English classes. R.I.D.E. Ex. 5, 8, 9, 10, 11, 12, 13.
- After a preliminary discussion in June of 1994 with Constance Baker, a certification officer with the Department of Education, Ms. LaButti submitted a written request that her record be reviewed to determine her eligibility for the school counselor certificate. Joint Ex. A, letter of Susan A. LaButti to Constance Baker dated June 21, 1994; Tr. p. 13.
- At that time, Ms. LaButti submitted numerous letters, including one from the Superintendent of the Coventry school system, her former and present principals, and the Director of the R.I. Student Assistance Program, documenting her employment as student assistance counselor, noting the educational component of her job and , in many instances, attesting to her fine record of performance in that position. Joint Ex. A.
- After reviewing the documentation submitted by Ms. LaButti, Ms. Baker authorized the issuance of the school counselor certificate. Tr. pp. 12-14, 24-25.

- At the time Ms. Baker issued the certificate, she knew that Ms. LaButti had not been employed as a classroom teacher and that she was relying on teaching experience gained as a student assistance counselor to meet the teaching experience requirement set forth in the certification regulations. Tr. pp. 31-32.
- A short time after she issued the certificate, Ms. Baker was notified by Louis E. DelPapa, Director of Teacher Education and Certification that Ms. LaButti did not have appropriate teaching experience as required by the regulations. Tr. pp. 15-18.
- Individuals presently certified as school counselors in Rhode Island under the same regulations applied to Ms. LaButti were issued and retain their certificates despite their lack of any teaching experience. Tr. pp. 187, 237, 252, 370, 549-553, 602.
- Individuals who serve two years as school counselors in Rhode Island under the terms of an interstate agreement recognizing the Northeast Regional Credential are then issued the Rhode Island school counselor certificate without meeting the requirement that they have teaching experience, as a classroom teacher or otherwise. See citations above.

### Positions of the Parties

#### Ms. LaButti

Counsel for Ms. LaButti raises the issue of the legal authority of the Board of Regents to certify school counselors. Since school counselors do not teach and 16-11-1 et seq. authorizes the Board to issue certificates of qualification for "public school teachers," she argues that the Board is without legal authority to establish minimum professional qualifications for those serving as school counselors. The regulations for the school counselor certificate are also impermissably vague, she contends, with regard to what is required to establish "two years of teaching experience at the elementary or secondary level". She points out that the so-called "working definition" adopted by the Department is not set forth in writing, a fact resulting in differing interpretations. The issuance of

Ms. LaButti's school counselor certificate and subsequent decision that she did not have appropriate teaching experience illustrate this point.

Counsel for the petitioner stresses that the Department has the burden to establish legally sufficient cause for the annulment of Ms. LaButti's certificate. She argues that the petitioner has met all regulatory requirements- including two years of teaching experience. Counsel argues that since 1988 Ms. LaButti has been engaged in teaching, both in making classroom presentations and in instructing smaller groups. Given her academic background, Ms. LaButti has utilized both counseling and teaching strategies to accomplish the goals of the student assistance program.

Finally, the Petitioner points to anecdotal evidence of several cases in which she argues the Department did not closely scrutinize applicants' documentation of teaching experience, accepted alternatives to teaching experience or has exempted applicants from the requirement entirely. With such arbitrary enforcement of this regulatory requirement, the petitioner argues that the Department cannot strictly enforce the regulations against Ms. LaButti to take away a certificate it has already issued to her.

#### Department of Education

The Department argues that the Board has regulatory authority over school counselors and that a liberal interpretation of the word "teacher" as it appears in R.I.G.L. 16-11-1 et seq. is appropriate. The Board of Regents and Commissioner are given broad authority, not only in Title 16 Chapter 11 but Chapter 60 as well, over the entire field of public education. Counsel for the Department argues that in a reasonable exercise of its statutory authority the Board has determined that two years of teaching experience is a minimum qualification for those seeking to be employed as school counselors.

Even though "teaching experience" is not defined in any written document, it has consistently been interpreted to mean work as a teacher assigned to a particular classroom, having the responsibility for delivering the curriculum in that classroom and measuring student progress. This so-called working definition is not vague either on its face, or as it is applied in this case, the Department contends. Counsel further argues that implicit in the regulation is the notion that the classroom experience offered to meet the requirements of the regulation must be gained in compliance with state certification rules, i.e. that the teacher hold the appropriate certificate for the classroom to which he or she is assigned. In this case, such principle would prevent Ms. LaButti from being credited with teaching experience at the secondary level, when she held only an elementary teaching certificate. She cannot, therefore, rely on this experience to obtain her school counselor certificate.

In response to those individual cases which are cited by the Petitioner as establishing a record of arbitrary enforcement, the Department argues that these cases represent a series of rational, common-sense applications of a simple standard to a series of highly individualized facts. The common factor in all of the cited cases is that experience accepted was obtained by that individual with the requisite credential issued by the Department. In Ms. LaButti's case, the regulations adequately address the facts and must be applied to establish her ineligibility to retain her school counselor certificate.

### Decision

#### I. Legal authority to certify school counselors.

At the outset, the issue of the Board of Regents' authority to certify school counselors must be addressed. We take administrative notice of the fact that certification regulations promulgated by the Board of Regents and administered by

the Department of Education exist for several categories of non-teaching personnel, e.g. superintendents, principals, school social workers, school psychologists, etc. Thus, this legal issue presents a challenge to the Board's authority to establish minimum qualifications for a large segment of professional employees in our public schools. The word "teacher" is not defined in Chapter 11 of Title 16, the statute which specifically confers authority on the Board of Regents to issue certificates of qualification. Reference to other sections of the General Laws wherein the word "teacher" is used (Chapters 13 and 16 of Title 16 and Title 28 Chapter 9.3) is not very enlightening. These other statutes define teacher either by reference to the fact that such person holds a certificate of qualification issued by the Board of Regents (which begs the question presented here) or states specifically that a teacher includes certified support or administrative personnel. A review of Chapter 60 of Title 16, which establishes generally the legal authority of the Board of Regents in our state, does indicate legislative intent to confer extremely broad authority over the entire field of public education in Rhode Island to the Board (n.b. R.I.G.L. 16-60-4(3) and 16-60-4(12)). Our legislature has authorized the Board ". . . to adopt standards and require enforcement and to exercise general supervision over all elementary public and non-public education in the state". This broad authority coupled with the specific language of Chapter 11 of Title 16 requiring the Board to issue certificates of qualification for public school "teachers" supports the position that the Board has legal authority to issue certificates for all professional educational personnel employed by local school districts. This includes professional, non-teaching support staff and administrative personnel.

We would note that in 1991 the General Assembly enacted section 16-11-2.3 of the General Laws, which limits the effect of a candidate's disqualifying

score on the standardized teacher's examination. The amendment concluded with the statement:

however, no such examination shall be required  
of non-teaching personnel in the school system.  
(emphasis added)

We find this statement implicitly recognizes the inclusion of non-teaching personnel in the group required to hold certificates issued by the Board of Regents. It acknowledges that teachers certified by the Board encompass professional employees of the public schools, not just those actively engaged in teaching. Thus, we find that the Regents' issuance of standards for qualification for school counselors is within the Board's legal authority.

II. Does Ms. LaButti have "teaching experience" as required by the regulations?

Assuming, therefore, that the "Requirements for the School Counselor's Certificate" (Dept. Ex. 2) constitute a reasonable exercise of the Board's authority<sup>1</sup> to license school counselors, we must determine if Ms. LaButti has been shown to be lacking the requisite two years of teaching experience<sup>2</sup>.

We find that the Department has proven that Ms. LaButti does not have "two years of teaching experience" as that term has been interpreted by the Department of Education. As with any administrative agency, the Rhode Island Department of Education has the authority to interpret its own regulations and when it does so, its interpretation is subject to substantial deference. Cohen v. Brown University, 879 F. Supp. 185 (S.R.I. 1995). The working definition utilized consistently by the Department is that teaching experience:

connotes the assignment to a particular  
classroom, and the responsibility for

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<sup>1</sup>We were not presented with the argument that these regulations are unreasonable *per se*.

<sup>2</sup>There was no dispute that the Department had the burden of proof in this matter.

delivering the curriculum in that  
classroom and measuring student  
progress. Tr. p. 12

The record shows that almost without exception, the Department has applied this working definition in evaluating the teaching experience documented by candidates for the school counselor's certificate. Ms. LaButti's attempts to qualify her teaching experience in the classrooms<sup>3</sup> at Coventry High School and in small groups of at-risk students as "teaching experience" as required by the Department was not successful. While she did demonstrate that she does, in fact, "teach" in both the classrooms and in the course of short term counseling sessions, her role was not that of a classroom teacher, with the responsibility for coverage of a set curriculum, assessment of student progress and maintenance of classroom discipline. While she did obtain teaching experience, it was not of such a nature and under the circumstances established by the Department in its more narrow interpretation of teaching experience as that term is used in the regulations. Again, the Department's working definition has not been shown to be an unreasonable interpretation, and the Department has the prerogative to interpret the broad term "teaching experience"<sup>4</sup> as it appears in the regulations. We need not resolve a major factual issue in the record as to the extent of Ms. LaButti's "teaching" at Coventry High School, since it is our finding that her teaching does not qualify as "teaching experience" as that term has been interpreted and consistently applied by the Department of Education.<sup>5</sup>

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<sup>3</sup>at the invitation of the regular classroom teacher

<sup>4</sup>Many of the professional educators who testified at the hearing distinguished between the term teaching and "teacher".

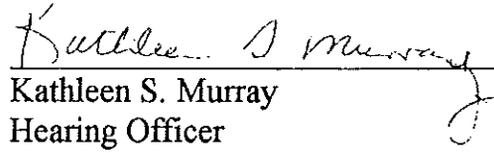
<sup>5</sup>The petitioner did submit evidence of cases in which a remedial reading teacher and a debating techniques teacher were given credit for teaching experience even though the materials they submitted did not substantiate assignment to a classroom. These isolated instances demonstrate that on occasion, assumptions were made when further documentation should have been requested. It does not take away from the consistency of the Department's interpretation of the teaching experience requirement.

Although the Department has proven that Ms. LaButti does not meet the requirement of two years teaching experience, it has not demonstrated that the lack of such experience constitutes "cause" for annulment of her certificate. The record indicates that school counselor certificates have recently been issued to two individuals<sup>6</sup> who similarly have no experience as classroom teachers. While we do not agree with the Petitioner that this situation constitutes arbitrary and capricious enforcement of certification regulations<sup>7</sup>, it does prevent the Department from relying on Ms. LaButti's lack of teaching experience as "cause" to annul her certificate. Stated another way, there is not sufficient explanation in this record as to why some individuals were recently issued and retain the school counselor certificate without any teaching experience. The record shows a) that such individuals came from out of state, b) that they were permitted to be employed in Rhode Island under the "Northeast Regional Credential" issued to them as part of an Interstate Agreement on Qualification of Educational Personnel, and c) that they accumulated two years of experience as guidance counselors. They nonetheless were issued the Rhode Island certificate without the requisite teaching experience required of those not holding the Northeast Regional Credential. Given this record, we cannot conclude that Ms. LaButti's lack of teaching experience constitutes cause to annul her certificate under R.I.G.L. 16-11-4.

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<sup>6</sup>one of whom works with Ms. LaButti at Coventry High School

<sup>7</sup>Testimony was that by "administrative decision", candidates for the school counselor certificate who had been employed in Rhode Island for two years as a school counselor under the Northeast Regional Credential could use their experience as school counselors as a substitute for teaching experience.

  
Kathleen S. Murray  
Hearing Officer

Approved:

  
Peter McWalters  
Commissioner

Date: September 6, 1996