

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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**Woonsocket Teachers' Guild**

**v.**

**Woonsocket School Committee**

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**DECISION**

Held: The Woonsocket School Committee has utilized the services of a registered nurse to meet the in-school medical needs of five students in a classroom at Woonsocket High School. The facts of this case do not fall squarely within the exception created by the Rhode Island Supreme Court to the statutory requirement that school health programs be staffed exclusively by certified nurse teachers. Therefore, the Woonsocket School Committee must provide such services through the employment of a certified nurse teacher and cease its utilization of a registered nurse.

DATE: March 30, 2001

## **Travel of the Case**

On August 28, 2000 the attorney for the members of the Woonsocket Teachers' Guild filed an appeal with Commissioner Peter McWalters with respect to the school department's use of a registered nurse at Woonsocket High School. The matter was assigned to a hearing officer for purposes of hearing and decision and on September 25, 2000 the matter was heard before the undersigned hearing officer. Although the School Committee's decision is not part of the record, we assume that the issues have previously been presented to the members of the Woonsocket School Committee, or that they are informed of the nature of this dispute and their formal action would not effectuate a resolution of the issue presented to the hearing officer. The record in this matter closed on November 8, 2000 upon receipt of the legal memoranda submitted by counsel on behalf each of the parties.

### **Issue:**

Is the Woonsocket School Committee's utilization of a registered nurse to attend to the health care needs of a group of five disabled students who are all in a small classroom at Woonsocket High School consistent with R.I.G.L. 16-21-7 and 16-21-8?

### **Findings of Relevant Facts:**

- Since September of the current school year, a registered nurse has been employed by the Woonsocket school department to attend to the medical needs of a group of students who are in their first year of enrollment at Woonsocket High School. Tr.pp.6, 8, 29.
- The registered nurse is assigned to a classroom of six students, all of whom are students with disabilities, have medical needs, and who are functioning from an infancy to a toddler level; there is one student in the class with whom the registered nurse presently has no involvement. Tr. pp. 9, 14.
- The health care services that the registered nurse provides to these students include administration of medication, monitoring for seizures, feeding through gastronomy tubes, monitoring of lung function and administration of oxygen if necessary, administration of nebulizer treatments, and suctioning when necessary. Tr. pp.9-10, 14-19, 23-25.

- The instructions and guidelines for the medical services provided to these students in school by the registered nurse are found in the standing orders of each child's physician. Tr. p.26.
- The services provided by the registered nurse to these students are essential to their continued attendance in the public school, but there is no evidence that these services are provided as a related service pursuant to their Individualized Education Programs (IEP's). Tr. p.40.
- The registered nurse does not accompany any of the children to or from school on the school bus. Tr. p.23.
- All of the students in the classroom staffed by the registered nurse have Individualized Education Programs (IEP's) Tr. p.40; their IEP goals focus on activities of daily living and control of their environment. Tr. p. 35; the registered nurse assigned to their classroom does not perform any instructional activities related to their IEP goals. Tr. pp.38-39.
- The registered nurse performs no other instructional activities and is not involved in any aspect of the educational program at Woonsocket High School. Tr. p.38.
- With the exception of one very limited situation in the beginning of the school year, the registered nurse has not provided health services to any other students at Woonsocket High School. Tr. p.37.
- Woonsocket High School also has on staff a certified nurse teacher who administers medication, conducts mandated health screenings, maintains each student's school health record, and treats approximately fifty (50) students a day. Tr. p.12.
- The certified nurse teacher has not been trained in the administration of gastronomy feedings, nebulizer treatments and the like and has stated that she feels uncomfortable providing such services. She is a psychiatric nurse by training. Tr. pp. 20-21.
- None of the parents of the students who receive services from the registered nurse assigned to their classroom have requested that nursing care be provided by a certified nurse teacher. Tr. p.40.

### **Positions of the Parties**

#### Woonsocket Teachers' Guild

Counsel for the Teachers' Guild argues that our Rhode Island Supreme Court has recently affirmed its holding in Cranston Teachers Association v. Cranston School Committee, 424 A.2d 648 (R.I. 1981). In the Cranston case, our Supreme Court ruled that school health programs must be implemented by certified nurse-teachers. In the 1997 case of Rhode Island Department of Elementary and Secondary Education v. Warwick

School Committee, 696 A2d 281 (R. I. 1997) the Rhode Island Supreme Court determined that one-on-one nursing services provided to a student pursuant to his Individualized Education Program, coupled with the fact that the nurse provided no health services to other children and engaged in no instructional activities, did not constitute part of the “school health program” as defined in Section 16-21-7 and 16-21-8. The Court found that use of an appropriately-credentialed health-care professional, in that case a registered nurse, did not violate the provisions of Section 16-21-7 and 16-21-8. Counsel draws our attention to the precise language used by the Court in affirming the principle established in the Cranston case, supra:

Notwithstanding our determination in this case, we refrain from modifying our holding in Cranston Teachers’ in light of the unambiguous provisions of both the statutes and the regulations, and of our interpretation of those statutes in Cranston Teachers’. Hence, a school health program must be implemented by certified nurse-teachers, and the services provided therein must be rendered exclusively by such personnel. Rhode Island Department of Elementary and Secondary Education v. Warwick School Committee, 696 A.2d 281, 285 (R.I. 1997)

In relying on the unique facts with which it was presented in the Warwick case to distinguish the services at issue in that case from those comprised within a school health program, the Court created a unique exception to the school health program. Therefore, the services provided by the nurse in this Woonsocket classroom do not fall within the exception created in the Warwick case. The services at issue are, therefore, part of the school health program and must be staffed with certified personnel as required by state statute.

Woonsocket School Committee:

The School Committee, through counsel, describes the services provided by the registered nurse in this case as “virtually identical” to the services provided by the nurse in the case of Rhode Island Department of Elementary and Secondary Education v. Warwick School Committee, 696 A2d 281 (R.I. 1997). The only factual difference in the case before the hearing officer, counsel submits, is that the student/nurse ratio is five to

one (5/1), whereas in the Warwick case, supra, the ratio was one to one (1/1). Counsel argues that this factual difference is insubstantial and that the focus of the Court's ruling in the Warwick case was on the "type and quality" of the services provided to the student in that case. Not only is the Court's decision in the Warwick case controlling here, counsel submits, but the facts of this case are even more compelling. The certified nurse teacher at Woonsocket High School has indicated that she is not trained to perform the duties required in the classroom to enable these students to attend school, and, in addition, she would feel uncomfortable if she had to perform them. Therefore, the School Committee takes the position that its decision to provide these services by contracting with a registered nurse is good practice and consistent with R.I.G.L. 16-21-7 and 16-21-8 in that such services are not part of the school health program.

### **DECISION**

The Rhode Island Supreme Court's 1997 decision in Rhode Island Department of Elementary and Secondary Education v. Warwick School Committee, 696 A2d 281 (R.I. 1997) provides the foundation for our decision in this matter. It is important to observe at the outset the direction the Court did not follow in that case. It clearly did not rule that as a general proposition individualized nursing services could be provided to medically fragile students by a qualified health care professional who was not a certified nurse teacher. The Court declined to follow the direction in which the Board of Regents had proceeded<sup>1</sup> when it considered the case. The Regents had indicated a need to describe certain IEP-related health services which were separate and distinct from those provided as part of the school health program. If such services were to continue to be included within the scope of the "school health program", R.I.G.L. 16-21-7 and 16-21-8 required that they be provided by certified nurse teachers, pursuant to the Court's prior interpretation of those statutes in Cranston Teachers Association v. Cranston School Committee, 424 A2d 648 (R.I. 1981). In overruling the decision of the Commissioner, the Regents invited "further court review" as an alternate route to a change (in the

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<sup>1</sup> the Commissioner had ruled that health services provided to medically fragile students formed part of the school health program and, therefore, were required to be provided by a certified nurse teacher.

requirement that all health services provided by schools be provided exclusively by certified nurse teachers). The Board of Regents stated at page 2 of its decision:

...it is our hope that given the opportunity the Court will revisit the issue. In light of the expanded use of Individual Education Plans since 1981 perhaps the Court will take a more limited view of what constitutes services provided in a 'health program' as opposed to individual medical attention which has little or no educational component. Decision of the Board of Regents, September<sup>2</sup>, 1995.

Faced squarely with the opportunity and invitation to carve out a generic exception to the school health program for specialized health services provided to medically fragile students pursuant to their individualized education programs, the Rhode Island Supreme Court declined to do so. Instead, the Court ruled that the nurse's services in that case did not form part of the school health program but confined its ruling to the facts of that specific case. There is no description in the decision of a category of health services which the court would find to be distinct from those forming part of a school health program. The decision does not include a definition or interpretation of "school health program", or more particularly "services", as this word is used in R.I.G.L. 16-21-7. In addition, the Court in its opinion does not indicate the reason why it distinguishes the services at issue in that case from other health "services" comprising the school health program.

The Court clearly identified the issue in the Warwick case to be:

...whether in this particular case the assistance provided by a registered nurse is subsumed within the meaning of the term "services" in Section 16-21-7. If the care is so included, it must be rendered exclusively by a certified nurse-teacher as part of the school health program, pursuant to Section 16-21-8. Warwick, supra, at 284

After a brief summary of the facts, including the facts that the registered nurse provided one-on-one nursing services as prescribed by the student's IEP and engaged in no instructional activities, the Court concluded:

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<sup>2</sup> the exact date of the Regents' September, 1995 decision is not indicated on the decision.

Therefore, the nurses services could not be construed as part of the “school health program” defined in Sections 16-21-7 and 16-21-8. Consequently, on the basis of the facts specific to this case, we are led to conclude that neither Sections 16-21-7 and 16-21-8 nor the applicable regulations are implicated here, and thus the services at issue may be provided by a registered nurse. Warwick, supra, at 285.

The Court went on to emphasize that it was refraining from any modification to the holding in the Cranston Teachers’ case and that school health programs must be implemented by certified nurse-teachers, and the services provided therein must be rendered exclusively by such personnel.

The task presented to those who must interpret and apply our Supreme Court’s ruling in the Warwick case is challenging, given the basis for the Court’s decision and the context in which it arose. There clearly was a need to construe the statute in such a way as to guide future decisions on the staffing requirements for health services provided to medically fragile students pursuant to their IEP’s and in situations in which the health care professional performed no other services in the school setting. For its own reasons, our Court chose to rule in the very limited fashion that it did, confining its decision to the facts of the specific case before it at that time. While we might be tempted to do so, it would be inappropriate for us to extend the Court’s ruling to cases in which the facts are not the same, such as this case.

As indicated in our findings of fact, the services at issue here are not prescribed by each of the five students’ IEP’s<sup>3</sup>. The nurse is not assigned to perform one-on-one medical monitoring throughout the school day<sup>4</sup>, but rather provides a variety of health services to five students as ordered by their individual physicians. Without knowing the basis for the Court’s conclusion in the Warwick case, it is impossible to determine which variations of fact the Court would find to be substantial or insubstantial to a determination that services do or do not form part of the school health program. We could speculate that the Court intended to carve out an exception to school health

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<sup>3</sup> as were the services in the Warwick case, supra.

<sup>4</sup> as was the registered nurse in the Warwick case, supra.

program “services” for those intensive, if not one-on-one, health services provided to medically fragile children when such services were necessary for their attendance in school, whether or not they were described in the child’s IEP. However, we are constrained by the Court’s ruling and the language of its decision in the Warwick case. It is for this reason that we must rule that the services at issue here do form part of the school health program as described in R.I.G.L. 16-21-7 and therefore must be provided by a certified nurse teacher. Until further elucidation by the Rhode Island Supreme Court, or action by the General Assembly, we find that only health services such as those specifically described in the case of Rhode Island Department of Elementary and Secondary Education v. Warwick School Committee, supra, are excluded from the school health program.

The Woonsocket School Committee must, therefore, cease and desist from its use of a registered nurse for the services described in this decision.

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Kathleen S. Murray  
Hearing Officer

APPROVED:

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Peter McWalters, Commissioner

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March 30, 2001  
Date