

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

Noelle C. Harris

v.

**Rhode Island Department of
Elementary and Secondary Education**

.....

DECISION

Held: The Petitioner has not shown that she has been aggrieved by any action of the Department of Elementary and Secondary Education. She has not applied for, or been denied, any certificate issued by the department. She has, however, placed on the record a request that the Board of Regents review and amend current certification regulations to broaden the school social worker certificate to extend its validity to service as a mental health counselor in schools and to permit licensed mental health counselors holding a masters in counseling to obtain this provisional certificate.

DATE: May 30, 2003

Travel of the Case

On June 6, 2002 Noelle Harris wrote to Commissioner Peter McWalters regarding an alleged denial of her application to be certified as a School Social Worker in the state of Rhode Island. On June 28, 2002 the undersigned was designated by Commissioner McWalters to hear and decide this appeal. The matter was scheduled for hearing by agreement on September 24, 2002. The Department was represented by legal counsel Paul Pontarelli. The Petitioner was accompanied by the President of the Rhode Island Mental Health Counselor's Association, Christine Mattera and other interested parties. The record closed on October 16, 2002 upon receipt of the transcript and supplementary documentary evidence from Ms. Harris.

Issues:

Should the Regulations of the Board of Regents be revised to expand the School Social Worker Certificate to include certification for service as an Adjustment Counselor in schools and make those persons holding a Master's Degree in Counseling eligible for this certificate?

Findings of Relevant Facts:

- Noelle C. Harris is a licensed mental health counselor in the state of Rhode Island, and holds a Masters of Counseling degree. Her professional experience includes providing counseling services at the middle and high school levels. (resume of Noelle C. Harris). In providing counseling services in schools, Ms. Harris has served as a "consultant counselor" and been called a "behavior specialist". Tr.pp.53-54.
- Prior to appealing to the Commissioner on June 6, 2002, Ms. Harris had met with the Director and staff of the Office of Teacher Preparation, Certification and Professional Development regarding her credentials and the requirements needed for the School Social Worker certificate in the state of Rhode Island. She determined that it would be futile for her to submit an application in that she did not hold a Master's Degree in Social Work and thus would not qualify for issuance of a School Social Worker certificate. Tr.pp.3-5.
- On June 27, 2002 counsel for the Department of Education wrote to Ms. Harris and notified her that without an application pending, the position of the certification office would be that there was no basis for a hearing on her certification status. Resp.Ex.3.
- On June 25, 2002 the President of the Rhode Island Mental Health Counselors Association, Christine Mattera, wrote to Commissioner McWalters noting that in Rhode Island licensed mental health counselors could not be employed as counselors in public schools because of certification constraints and the fact that to obtain a

certificate as a School Social Worker, whose duties included counseling of students, a Master's in Social Work was required. Petitioner's Ex.C.

- The June 25, 2002 letter argued in essence that the certification scheme in Rhode Island was defective in that it did not recognize the Master's in Counseling as valid and comparable to a Master's in Social Work, despite data supporting comparability and recognition of the counseling degree as equivalent to the social work degree in determining reimbursement rates for services provided by both of these groups of professionals. Petitioner's Ex.C.
- On July 2, 2002 Doris Anselmo, Director of the Office of Teacher Preparation, Certification and Professional Development, responded in writing to the June 25, 2002 letter of Ms. Mattera, indicating that the question of acceptable degrees and experience for qualification for the school social worker certificate, as well as for the school counselor certificate¹ had been developed after input from the professional educational community and after public hearings conducted by the Rhode Island Board of Regents. Petitioner's Ex.D.
- The July 2, 2002 letter from Ms. Anselmo also informed Ms. Mattera that the issue presented in her letter would be presented to the Rhode Island Certification Policy Advisory Board at its September, 2002 meeting, but noted that because the Advisory Board determines its own agenda, "there is the possibility that it will not review your concerns". Petitioner's Ex.D.²

Positions of the Parties:

Ms. Harris

The precise issue raised by the Petitioner was not clear from her letter of appeal or even at the outset of the hearing. The Petitioner is not arguing that her Master's degree in Counseling should be deemed equivalent to the Master's degree in Social Work in order to meet the advanced degree requirement for the School Social Worker certificate in Rhode Island. The petitioner does not wish to function as a school social worker in the public schools of Rhode Island. Rather, her request is that the certification regulations be reviewed and revised to expand the school social worker certificate to include service as an adjustment counselor, or in the alternative that a separate certificate be created for professionals whose primary function is to provide mental health counseling in the public school setting. A Master's in Counseling should be the appropriate advanced degree for this certificate. The Petitioner notes that there exists some overlap in the fields of school social work and school counseling. She takes the position that the counseling function is

¹ commonly referred to as a school guidance counselor

² the record does not reflect whether or not the Certification Policy Advisory board ever took up the issue raised by Ms. Mattera in her June 25, 2002 letter to Mr. McWalters; however, there is a suggestion on the record that it did not. Tr. p.60, testimony of Joseph Gaudiosi that no one had contacted him about presenting this matter to the board as of the date of the hearing, September 24, 2002.

performed, or could be performed, by a number of individuals whose primary focus would be counseling, not social work. For these individuals an appropriate certificate should be available and the Master's degree in counseling should be the degree required.

The Petitioner argues that this type of certification scheme is found in Massachusetts, which issues a certificate entitled "School Social Worker/School Adjustment Counselor," for which either a Master's degree in Social Work or Counseling is acceptable. Although Rhode Island maintains certification reciprocity with Massachusetts, our state nonetheless still recognizes and certifies only service as a school social worker and requires an advanced degree in Social Work, under the terms of the NASDTEC Interstate Contract currently in effect. The Petitioner argues that the Massachusetts' regulations have logic, and Rhode Island's do not. Our regulations fail to recognize the close similarities in education, professional training and function of these two professions. The regulations do not recognize the distinct role that a school adjustment counselor may have in a school setting. The Petitioner has fulfilled this role, she submits, on a contract or consultant basis in the public school. She submits that the certification scheme in Rhode Island needs to be revised to reflect professional service functions, including the services of mental health counselors. This could be accomplished, she argues, by the expansion of the existing certificate (for a school social worker) to include service as a school adjustment counselor or the creation of a separate certificate for a school adjustment counselor.

R.I. Department of Education

Counsel for the Department raises the threshold issue that the Petitioner has never submitted an application to be certified in Rhode Island. Thus, she was not aggrieved by any action by the Department and therefore no case or controversy exists. Stated another way, since the Department has not formally acted to apply its certification regulations to Ms. Harris, counsel argues that any appeal under R.I.G.L. 16-39-1 is premature. Thus, the Department's position is that it has not acted in violation of Ms. Harris's rights or treated her arbitrarily in any way.

If she had submitted an application to be certified as a School Social Worker in Rhode Island, she would not qualify for the Provisional Certificate because she does not hold the requisite advanced degree, i.e. a Master's Degree in Social Work, nor is she licensed as a certified Social Worker by the Rhode Island State Board of Registration for Social Workers. The Department submits that there is no evidence that the qualifications for certification of school social workers are invalid or otherwise defective.

Counsel for the Department submits that this is not the appropriate forum for presentation of the argument that additional or separate licensing for mental health counselors in public schools is necessary or appropriate. Reference is made to the letter of July 2, 2002 from Ms. Anselmo to Ms. Mattera, indicating that such issue should, in the first instance, be considered by the Rhode Island Certification Policy Advisory Board. It is this group which has been established to advise the Commissioner and the Board of

Regents in matters pertaining to the certification of professionals in the public schools. In any event, the record made in this case does not support a conclusion that the existing regulatory scheme is defective because it does not recognize or certify a professional who functions primarily as a mental health counselor in schools. Counseling duties are components of the professional responsibilities of other school personnel for whom appropriate certification paths do exist.

DECISION

As the hearing in this case evolved, the Petitioner distanced herself from the position that her qualifications and skills should satisfy the requirements for the School Social Worker certificate. She did not focus her arguments on the equivalency of the Master's in Counseling and the Master's in Social Work degree. After some initial testimony, she more clearly stated her objective to be a ruling that a distinct certification path for a school counselor should exist, through either the creation of a separate certificate or, as is done in Massachusetts, the coupling of the school social worker certificate with that of a school adjustment counselor. Therefore, this is not a dispute arising under a law relating to schools or education, but a request to amend existing regulations. The necessity or wisdom of such amendment to the certification regulations of the Board of Regents is not properly before this hearing officer, nor has a record been created which would support such revision of the existing regulations. This is not to say that, in the appropriate forum, the arguments which would be advanced by the Petitioner to support such a change, or to challenge the existing regulations, would not be persuasive. It is up to Ms. Harris to assert her position in the appropriate forum. It is not our role to advise or give direction to one seeking to change or challenge existing regulations of the Board of Regents.

The Department has indicated³ that the issue of appropriate certification for professionals providing mental health counseling in schools might well be considered by the Certification Policy Advisory Board (Petitioner's Ex.D.). This group advises the Commissioner and the Board in certification matters. Although the letter from Doris Anselmo, the Department's Director of Teacher Preparation, Certification and Professional Development states that the issue "will be presented to this board at the next meeting in September", she goes on to note that "The Board determines its own agenda and therefore there is the possibility that it will not review your concerns." The record in this case does not indicate whether or not the Certification Policy Advisory Board took up this issue at its September, 2002 meeting, or if it has to date made any decision on the issue the Petitioner seeks to raise here. We are unaware of any opportunity she, or the members of her professional organization, the Rhode Island Mental Health Counselors Association, has been given to present a request for a review of the existing certification regulations. There is no evidence in this record that the Petitioner, or her professional organization, has had the opportunity to provide the Certification Board with a summary of any information or arguments supporting such request. Ms. Anselmo's July 2, 2002 letter leaves open the possibility that there will be no review of these issues by the

³ although not to the Petitioner directly

Certification Policy Advisory Board if it decides not to place the issue on any upcoming agenda.

While we are unfamiliar with the protocol for determining what matters come before the Certification Policy Advisory Board, it would be unusual to find that this Board provides no opportunity for interested individuals to raise issues clearly within the purview of this public advisory board and to submit support for their position. It would be illogical and inefficient for the Advisory Group to decline to consider the Petitioner's request for review and amendment of the certification regulations when state law would permit the Petitioner to proceed directly to the Board of Regents with such a request. See R.I.G.L. 42-35-6. It would be more beneficial to the Board of Regents to act on such petition only after receiving appropriate input from the Certification Policy Advisory Board. For this reason we are hopeful that this group will take under review the issue raised by the Petitioner once she has directed an appropriate communication to them and provided any supporting documentation to them as well.

For the foregoing reasons, the appeal is denied and dismissed.

For the Commissioner,

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

Date May 30, 2003