

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

PRISCILLA LUCIANNO

V.

WEST WARWICK SCHOOL COMMITTEE

DECISION

Held: The Appellant's request that the West Warwick School Committee's policy for management of head lice in schools be overturned and replaced with a "no nit" policy is denied. There is no evidence that the School Committee's current policy is contrary to state law, regulation, or a statewide educational policy or that the decision to maintain its current policy was arbitrary and capricious. Guidance from the Rhode Island Department of Health indicates that "no nit" policies are not productive. The American Academy of Pediatrics takes the position that no child should be excluded from school or allowed to miss valuable school time because of head lice. This matter is, however, remanded to the West Warwick School Committee so that it can clarify its Policy so that it will be consistently implemented.

DATED: February 12, 2016

Travel of the Case:

The Appellant, Priscilla Lucianno, filed a request for a hearing on October 26, 2015 after the West Warwick School Committee effectively denied her request to change its policy on head lice management. The Appellant presented a Petition¹ to the members of the West Warwick School Committee entitled “Stop the Live Lice in West Warwick Public Schools” on October 14, 2015. The essence of the Petition was a request that the School Committee change its head lice policy to provide that children diagnosed with cases of head lice be immediately removed from the classroom and allowed to return to school only upon proof of treatment and a determination that live lice or nits were no longer present. After hearing from the Appellant and several other supporters of the aforementioned petition and receiving input from the district’s Superintendent, Karen A. Tarasevich, the School Committee left unaltered its current policy and procedures on head lice. By letter dated October 19, 2015 Superintendent Tarasevich notified the Appellant that the policy and procedures would remain as written.

The matter was heard by the undersigned on November 18, 2015. Testimony and documentary evidence were received and the record closed on December 9, 2015 upon receipt of the transcript.

Issue

Is the West Warwick School Committee’s policy regarding head lice unreasonable, contrary to state law, regulation, or statewide educational policy?

Findings of Relevant Facts:

The West Warwick School Committee Policy on head lice (hereinafter “the Policy”) is part of the district’s “Health and Safety Policy Regarding Student Illness in West Warwick Public Schools.” Joint Ex. 1.

¹ The Appellant initiated a paper petition and then went on to do an online petition. She received a total of 648 supporters, not all of whom were parents of West Warwick students or even residents of West Warwick, Rhode Island. See Tr. pp. 14-18; Appellant’s Ex.2.

- The current Policy was adopted by the School Committee on June 10, 2014 and incorporated revisions based on updated guidance issued by the Rhode Island Department of Health and the American Academy of Pediatrics. Tr. pp. 74-77; S.C. Ex. A and B.
- The Policy “includes” a list of seven (7) steps to be followed by the district when a case of head lice is confirmed. It is entitled “Procedure in school when head lice is detected.” The “Procedure” is a separate document not incorporated by reference into the Policy. Joint Ex. 1; App. Ex. 3; Tr. pp. 82, 122-124.
- Superintendent Tarasevich was contacted by Mrs. Lucianno shortly after school started this year with respect to the district’s Policy and Procedure on head lice. Mrs. Lucianno had heard that there was an “epidemic” of head lice last year. She learned the actual number of head lice cases from Superintendent Tarasevich.² They also discussed the fact that the district’s Policy reflected current Guidance from both the Rhode Island Department of Health and the American Academy of Pediatrics. Tr. pp. 83-84. The Superintendent provided copies of the Policy, the Guidance from the R.I. Department of Health and the statement from the American Academy of Pediatrics to the Appellant. Tr. pp. 90-91.
- Superintendent Tarasevich decided to revisit the Policy after conferring with the chair of the School Committee and discussing the Appellant’s concerns with him. A working group was convened to review all relevant documentation and receive input from district staff. In-district meetings were also held with principals, school nurse teachers and the school nurse coordinator to ensure that adherence to the internal procedures called for by the Policy would be uniform throughout the district. Tr. p.93-98; 120.
- The report and recommendation of the working group was forwarded by the Superintendent to the School Committee and placed on the agenda for discussion at its October 14, 2015 meeting. At this same meeting, the Appellant presented her petition to

² The Appellant had heard from several parents and teachers that the number of head lice cases had reached “epidemic” levels last year. Appellant’s Ex. 1. When Superintendent Tarasevich discussed the actual number of cases of head lice in the district last year with the Department of Health she was told that this was not an “epidemic” but rather that it was in the typical range for elementary schools. Tr. pp. 86-87.

the School Committee for the adoption of a “no nit” policy in West Warwick public schools. She and members of the public were given the opportunity to comment on the report and recommendation of the working group. The School Committee declined to make any change in its current Policy. Tr. pp. 120-124.

- There were forty-eight (48) cases of head lice last year in the West Warwick school district. Tr. p.87.
- In the kindergarten class attended by the Appellant’s son, there were eight (8) cases of head lice last year and two (2) students had head lice consistently for the entire year. App. Ex.5;
- At the time that Mrs. Lucianno raised her concerns about the Policy, some of the school nurses were not checking students who had been diagnosed with head lice upon their return to school the next day, citing the “no exclusion” Policy.³ The Superintendent and School Nurse Coordinator subsequently met with all of the school nurse teachers and emphasized the fact that a re-check of students on the day following diagnosis is required under the current Policy. Tr. pp. 20-23, 32-33, 35-38; 95-99; 102-103, 106-107.
- In revisiting the Policy this fall, the district developed additional procedures to manage “chronic” cases of head lice, defined as lice present for six (6) consecutive weeks or in three (3) separate months. The additional procedures are designed to determine the reason for the persistence of head lice and to provide an extra layer of support for the family in obtaining effective treatment for a child with chronic head lice. If necessary, a referral to the Department of Children, Youth and Families will be made.⁴ Tr. pp. 96-98.

³ The information provided to Mrs. Lucianno was that students diagnosed with head lice were checked on the 7th day after their diagnosis, apparently the point at which the effectiveness of treatment could be determined and additional treatment applied, if necessary. Tr.p.36. The district’s Policy includes the statement “No student will be excluded from the school based on the latest recommendations on head lice management from the Rhode Island Department of Health and the American Academy of Pediatrics”. Joint Ex.1. Evidently, the “no exclusion” policy was, and still is, interpreted by staff to allow for the return to school of a student who has been diagnosed with head lice but who has not received treatment. Tr. pp. 20-23;32-33;35-38;139.

⁴ The DCYF referral would be made when the situation constitutes child neglect. Tr. p. 97.

Positions of the Parties:

The Appellant:

Mrs. Lucianno requests that the Commissioner direct the West Warwick School Committee to replace its current Policy on head lice with a “Nit Free” policy⁵ as soon as possible. She argues that West Warwick’s current policy is that “no student will be excluded from school” based on the latest recommendations on head lice management from the Rhode Island Department of Health and the American Academy of Pediatrics. Her position is that it is simply not good school health policy to expose school children to live lice and nits (eggs laid by an adult louse). Although she is aware of the current research and guidelines, she submits that the classroom is not a clean environment in which children can learn when they and their classmates are infested with head lice. Their well-being is at risk as well as that of other family members to whom the infestation of head lice may be spread.

The ineffectiveness of the current Policy on head lice, Mrs. Lucianno asserts, is the reason that West Warwick public schools had so many cases of head lice last year. The “no exclusion” Policy enables parents, for whatever reason, to have the option not to treat their child upon the diagnosis of head lice. The untreated child is likely to spread the infestation to others in his/her classroom, directly or from contact with clothing or the carpet that covers each classroom floor. School nurses at the elementary schools have not consistently been conducting head checks upon a child’s return to school the day following diagnosis of head lice -not because of a lack of concern, but because treatment and elimination of head lice is not a condition for their return to the classroom, according to the Policy. This creates a “vicious cycle” in which children have chronic head lice and keep re-infecting others. This

⁵ The petition circulated and presented by the Appellant to the School Committee requested that the policy be as follows: When a case of head lice has been identified in the student’s classroom, the infected child should be removed from the classroom and sent home. In order for the infected student to be able to return to school, the parent must accompany the child to school and provide proof of treatment. If live lice or nits are still present, the parent must take the child home for further head lice treatment/removal. If the parents do not cooperate with this policy, the child may not return to school. App. Ex.2.

resulted in what the Appellant understood to be an “epidemic” of head lice last year in West Warwick schools.

The Appellant submits that head lice should be treated like any illness such as a fever or contagious disease that school policy requires to be treated- and resolved- before the child’s return to the school environment. Absences from school because of head lice or nits need not cause a gap in instruction. With the use of chrome books now available to West Warwick students, a child could complete school work at home until cleared to return to school. Although the Appellant understands and appreciates the effect all absences have on a student’s ability to do well in school, she views the exclusion of students with lice and nits as a necessary precaution to protect the welfare of all students and staff. Such a policy would more appropriately balance the interests of the child infested with head lice with those of his/her classmates and their families.

West Warwick School Committee:

Counsel for the School Committee notes at the outset that local school committees in Rhode Island have the authority under R.I.G.L. 16-2-9 to develop policies that address the health and wellness of students and employees. School committees exercise considerable discretion in determining which policy will best meet the needs of their community. In June of 2014 when the West Warwick School Committee revised its Policy on the management of head lice in school, it utilized an inclusionary process in which broad input was sought from school staff, the district’s medical consultant, legal counsel and a parent representative. At the conclusion of this process, the School Committee chose to follow updated protocols recommended by the Rhode Island Department of Health and the American Academy of Pediatrics. West Warwick adopted a Policy that permits a student who is found to have head lice to remain in school for the remainder of the school day, be sent home with instructions to his/her parent on how to treat head lice and return to school after the first treatment is completed. This Policy is substantially similar to those adopted by a majority of Rhode Island school districts.

When Mrs. Lucianno raised concerns about the Policy last fall, the Superintendent convened a working group to revisit the Policy in light of her specific concerns. The Appellant had the opportunity to present her petition to the School Committee at its October 14, 2015 meeting and she and several others presented their case for a change to a “nit free” policy. After considering all the information presented that evening, including an updated recommendation from Superintendent Tarasevich, the members of the West Warwick School Committee declined to make any changes to the current Policy. Absent a conflict between the district’s Policy and state law, regulation or statewide education policy, the Commissioner lacks authority to substitute his judgment for that of the School Committee, even if he agreed with the Appellant that a “nit free” policy better served the school community in West Warwick.

DECISION

When the Commissioner is presented with an appeal that challenges local educational policy, there is often an expectation that the Commissioner’s de novo hearing of the matter under R.I.G.L. 16-39-2 enables him to substitute his judgment for that of a school committee.⁶ This is simply not the case. The Commissioner’s authority to conduct a de novo hearing, to rely on an evidentiary record, and to make findings of fact are well settled. The Commissioner must give independent consideration to the facts and applicable law governing an issue.⁷ Equally well-established, however, is that local school committees in Rhode Island are vested by statute with “the entire care, control and management of all public school interests of the several cities and towns.”⁸ Historically, the Commissioner has sought to act consistently with Title 16 and to harmonize these statutory provisions by exercising his independent judgment with restraint. Precedent has established that the

⁶ See *Concerned Parents & Teachers v. Exeter-West Greenwich Regional School District*, decision of the Board of Regents dated August 24, 1989; *Robin Muggle et al. v. Pawtucket School Committee*, decision of the Board of Regents dated May 10 1990. See also *O’Connell v. Newport School Committee*, decision of the Board of Regents dated May 14, 1992.

⁷ *Pawtucket School Committee v. Board of Regents for Elementary and Secondary Education* 513 A2d 13 (R.I. 1986); See also *Slattery v. Cranston School Committee*, 116 R.I. 252 (1976).

⁸ R.I.G.L. 16-2-9.

Commissioner will overturn policy decisions of a local school committee only when the committee's decision is not reasonable or is contrary to state law, regulation, or statewide educational policy.⁹

The Commissioner's exercise of restraint is especially appropriate in the review of a health-related policy when the Rhode Island Department of Health has not seen fit to mandate a policy or protocol. Such is the case in the management of head lice in the school setting. There is no state law, regulation, or statewide educational or health policy that is controlling. The Rhode Island Department of Health has in place a document entitled "Head Lice: Guiding Principles for School Policy."¹⁰ The "Guiding Principles" constitute guidance, not mandates. Each school district in the state has the latitude to fashion its own policy, which is precisely what the West Warwick School Department has done.

The Appellant requests that the Commissioner overrule the School Committee's decision to retain its current "no exclusion" Policy and order that it be replaced by a "nit-free" policy. However, she fails to advance any argument that would overcome the constraints on the Commissioner's authority to do so. She argues that the current Policy fails to adequately address the health issues posed by head lice in West Warwick schools. After hearing her argument and reconsidering its policy on October 14, 2015, the members of the School Committee remained unpersuaded. Although there was no vote or action taken on the Policy at the October meeting, implicitly the Committee rejected the request to adopt a "nit-free" policy. Based on the record made in this case, such a decision was reasonable. Absent evidence that the Committee's decision was arbitrary and capricious, the Commissioner lacks authority to overrule it.

We also find that the School Committee's current Policy is reasonable, based on its alignment with the "Guiding Principles for School Policy" issued by the R.I. Department of

⁹ See *Concerned Parents and Teachers v. Exeter-West Greenwich Regional School District Committee*, decision of the Commissioner on Remand dated November 3, 1989; *Spohn v. Newport School Committee*, decision of the Commissioner dated October 7, 1998; *Lusignan et al. v. East Providence School Committee*, decision of the Commissioner dated June 17, 1999.

¹⁰ Appellant's Ex. 3 contains an undated document (which was also marked separately as School Committee Ex. A) circulated with a letter from Superintendent Tarasevich to parents on September 23, 2015. This undated document was identified on the record as the most current Guidance from the Department of Health. Apparently, however, this prior Guidance from the Department of Health has been replaced by a more recent document entitled "Head Lice: Guiding Principles for School Policy".

Health. A copy of the School Committee's Policy and Procedures are attached as Appendix A. The "Guiding Principles for School Policy" are attached hereto as Appendix B.

The Guidance suggests that children diagnosed with head lice be allowed to remain in class, but be discouraged from close direct head contact with others. Suggested school policy is to notify parents by telephone or by a note sent home at the end of the school day, stating that prompt, proper treatment of this condition is in the best interest of the child and his or her classmates. Schools are encouraged to make available accurate information about the diagnosis, treatment, and prevention of head lice in a form understandable to parents. The Guidance includes a section entitled "Criteria for Return To School". This section states:

Students diagnosed with live head lice do not need to be sent home early from school; they can go home at the end of the day, be treated, and return to class after appropriate treatment has begun.

The Guidance suggests that one of the "criteria for return to school" is that appropriate treatment has begun. More explicit is the recommendation that "no-nit" policies in schools should be discontinued.¹¹

A review of the Policy, and the accompanying procedures, indicates that they substantially conform to the "Guiding Principles for School Policy." Consistent with the "Guiding Principles" the schools' primary role is to be helpful by making available to parents accurate information on the diagnosis, treatment and prevention of head lice. A student who has been diagnosed as having head lice is to be checked the next day by the school nurse.¹² Although it is not entirely clear from the Procedures that treatment must

¹¹ The Guidance notes that the American Academy of Pediatrics, the National Association of School Nurses, and the Centers for Disease Control and Prevention advocate that "no-nit" policies should be discontinued. Although the Department of Health does not expressly adopt this position, in the section on "Criteria for Return to School" a "rationale" includes the statement "Do not check for nits (dead or alive) or enforce a no-nit policy for those who have been treated. It is not productive."

¹² The lack of consistency in following this step of the Procedure was brought to light by the Appellant and, as a result, the requirement that students be examined upon their return to school has been emphasized in meetings with all school nurse teachers in the district.

precede a diagnosed student's return to school, Superintendent Tarasevich testified that her interpretation of the Policy is that treatment is to be verified by the school nurse upon the student's return to school.¹³ Consistent with the "no exclusion" nature of the Policy, if the school nurse detects live lice when the student is examined upon return to school, the student is allowed to remain in school and the process begins again, i.e. returns to step #1 of the Procedure.

The Policy and Procedures adopted by the School Committee have been proven to be a reasonable exercise of the discretion of the West Warwick School Committee in determining how the district will respond to cases of head lice in its schools. The Committee has the prerogative to determine the response that will best meet the needs of its student population and its response to the issue of head lice is entirely reasonable and well-thought out. However, implementation of the Policy and Procedures could be made more effective if some of its essential provisions were made more clear. In this way, nursing staff and the Superintendent will be "on the same page" with respect to such matters as when there will be a verification that a diagnosed student has received treatment for head lice.

This matter is remanded to the West Warwick School Committee so that it can clarify the language of the Procedures so that the following issues can be addressed as soon as possible:

1. Whether or not treatment is required as a condition of the student's return to school following a diagnosis of head lice by the school nurse. Although the Superintendent testified that treatment was required and would be verified by examination of the school nurse upon the student's return to school, the Nursing Coordinator testified as to her different interpretation of the Policy.¹⁴
2. Step #3 indicates that the examination by the school nurse is to "ensure that (the student is) cleared of lice and nymphs (baby lice)." Step # 5 indicates that if, upon

¹³ See testimony at pages 102-105;111- 113.

¹⁴ Tr. pp. 137-140. Mrs. Lucianno makes a good point that the Policy could be construed to permit parents to decline to treat their children for head lice, for whatever reason. Untreated cases would inevitably cause other children to become infested with head lice.

examination, the school nurse finds live lice , the next step is to return to step #1 of the process. These two statements appear to be inconsistent.

3. As a result of the review initiated by the Appellant, the district has put in place additional procedures to be utilized in “chronic” cases of head lice. However, the current Policy and Procedures do not include the definition of “chronic” cases and do not describe the extra steps that the district intends to follow in such cases. It is not clear how notice of these additional procedures will be conveyed to all members of the school community.

Consistency and uniformity in the implementation of this Policy are important in ensuring that students receive prompt, effective treatment for head lice.

For the foregoing reasons, the appeal is denied and this matter is remanded to the West Warwick School Committee for further consideration.

For the Commissioner

Kathleen S. Murray, Hearing Officer

Ken Wagner, Ph.D.
Commissioner

Dated: February 12, 2016

WWPS Policy Reading Head Lice (found in the Health and Safety Policy)

LICE: When children come together in groups (whether in classrooms, sports teams, playgrounds, etc.) there is a potential occurrence of head lice being spread. Because of that fact, we recommend checking your child's hair for lice on a regular basis.

If your child is found to be infected with lice, the school nurse teacher will call you and notify you of the above findings. Please treat your child's hair with a lice shampoo and remove any nits from the hair to prevent re-infestation. The lifespan of the adult louse is approximately 28-30 days and they lay 6-10 eggs (nits) each day. Therefore, you should be checking your child's hair for approximately a month after the detection of lice. As a precaution, the entire family should be examined and treated as necessary. If you do not know what product to use, please contact your pharmacy or physician.

If you have any questions about how to prevent/treat the spread of head lice, please contact your school nurse teacher. No student will be excluded from the school based on the latest recommendations on head lice management from the Rhode Island Department of Health and the American Academy of Pediatrics.

Procedure in school when head lice is detected:

1. Once lice is detected, the parent is notified and instructed on how to treat at home.
2. Once treated at home, if parents are able to drive the student to school the next day vs. taking the bus, they are asked to do so. If they are not able to drive the student, the student can take the bus to school.
3. When the student returns to school, they will be examined by the school nurse to ensure they are cleared of lice and nymphs (baby lice). If they have siblings, the siblings will be checked as well.
4. The parent is given instructions on how to prevent reinfestation (including the cleaning of bedding, furniture, brushes, hats, etc., as well as to continue to check their child's hair daily at least 28 days).
5. If the nurse examines the student when they return after being treated and find live lice, the next step is to return to step #1 of this process.
6. Once the student is cleared by the school nurse, the student is rechecked again by the school nurse one week after being cleared to make sure there are no lice or nymphs.
7. When a student is found to have lice, the student's classroom is checked and a notice is sent home to all students in the classroom that a student was found to have head lice in that classroom.



Appendix B

HEAD LICE: GUIDING PRINCIPLES FOR SCHOOL POLICY

GENERAL CONTROL MEASURES IN SCHOOLS	
RECOMMENDATIONS	RATIONALE
<p>Routine classroom or school-wide screening for head lice is not recommended.</p> <p>The American Association of Pediatrics, the National Association of School Nurses, and the Centers for Disease Control and Prevention advocate that "no-nit" policies should be discontinued.</p> <p>Provide parent education program in the management of head lice in the school setting.</p> <p>School personnel involved in detection of head lice infestation should be properly trained.</p>	<p>The American Academy of Pediatrics discourages head lice screenings, which have not been proven to have a significant effect over time on the incidence of head lice in the school setting and are not cost effective. Children should be checked only when demonstrating symptoms of head lice.</p> <ol style="list-style-type: none"> 1. Egg cases farther from the scalp are easier to discover, but these tend to be empty (hatched) or nonviable and, thus, are of no consequence. 2. Nits are cemented to hair shafts and are very unlikely to be transferred successfully to other people. 3. The burden of unnecessary absenteeism to the students, families and communities far outweighs the risks associated with head lice. 4. Misdiagnosis of nits is very common during nit checks conducted by nonmedical personnel. <p>Head lice are not a medical or public health hazard as they are not known to spread disease. However, parents may have misconceptions and prejudices, which place pressure on school staff. Educating and supporting the child and parent with factual, nonjudgmental information is better than having policies and practices driven by misinformation.</p> <p>The diagnosis of a head lice infestation is best made by finding a live nymph or adult louse on the scalp or hair of a person. Because nymphs and adult lice are very small, move quickly, and avoid light, they can be difficult to find. The diagnosis should be made by a health care provider or other person trained to identify live head lice.</p>
INDIVIDUAL CASE MANAGEMENT	
RECOMMENDATIONS	RATIONALE
<p>A child with an active head lice infestation should remain in class but be discouraged from close direct head contact with others.</p> <p>Notify parent or guardian by telephone or by having a note sent home with the child at the end of the school day stating that prompt, proper treatment of this condition is in the best interest of the child and his or her classmates.</p> <p>Maintain confidentiality when a child is diagnosed with head lice.</p>	<p>A child with an active head lice infestation has likely had the infestation for 1 month or more by the time it is discovered and poses little risk to others from the infestation.</p> <p>The school can be most helpful by making available accurate information about the diagnosis, treatment, and prevention of head lice in an understandable form. Information sheets in different languages and visual aids for families with limited literacy skills should be made available by schools.</p>
CRITERIA FOR RETURN TO SCHOOL	
RECOMMENDATIONS	RATIONALE
<p>Students diagnosed with live head lice do not need to be sent home early from school; they can go home at the end of the day, be treated, and return to class after appropriate treatment has begun.</p>	<p>Nits may persist after treatment, but successful treatment should kill crawling lice.</p> <p>Do not check for nits (dead or alive) or enforce a no-nit policy for those who have been treated. It is not productive.</p>

<http://www.health.ri.gov/publications/protocols/HeadLice.pdf>

<http://www.health.ri.gov/for/schools/#lice>

Division of Infectious Disease and Epidemiology
November 18, 2014