

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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MARY B. :  
 :  
 :  
vs. :  
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 :  
SCITUATE SCHOOL :  
COMMITTEE :  
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DECISION

April 12, 1988

This matter was heard on February 11 and February 25, 1988 upon the appeal to the Commissioner of Elementary and Secondary Education by Mrs. Mary B. from a decision of the Scituate School Committee in accordance with the provisions of §16-39-2 of the General Laws of Rhode Island, as amended. The matter was heard by the undersigned Hearing Officer under authorization from the Commissioner.

Due notice was given to the parties of the time and place of the hearings. Both the appellant and respondent were represented by counsel. Testimony was taken, a transcript of which was made and evidence was presented. In addition, the parties together with the Hearing Officer made a visual observation of the area in question on February 16, 1988.

There exists a threshold issue of procedure which must be addressed prior to a determination on the merits. The Committee takes the position that the appeal may not be properly before the Commissioner for a determination, since the Committee has made no decision in response to the request of Mr. and Mrs. B. dated September 22, 1987, relative to the relocation of the bus stop for picking up and dropping off their daughter, B. The minutes of the October 6, 1987 meeting of the Committee, a portion of which have been entered into evidence,<sup>1</sup> indicates that discussion took place among the Committee, the Superintendent and the B's with regard to the B's letter of September 22, 1987. The minutes indicate that the School

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<sup>1</sup> Respondent Exhibit L.

Committee voted unanimously to "take the matter under advisement." As a result of the testimony taken and the evidence presented in this regard, we find that the matter is properly before the Commissioner in accordance with §16-39-2, because the School Committee did in fact render a decision when it voted on October 6, 1987 to take the request of the B.'s under advisement. To rule otherwise would allow school committees to vote consistently to take matters under advisement; thereby, deliberately delaying any decision and thus preventing individuals from pursuing their right to redress in accordance with §16-39-2 of the General Laws of Rhode Island.

Upon the testimony taken and the evidence presented, we find the following:

1. The appellant and her daughter, B. , reside on Cole Avenue in Clayville, in the Town of Scituate.
2. B. is a seven (7) year old student in the first grade at the Clayville School.
3. The present bus stop for B. is located at the corner of Pleasant Lane and Route 102, approximately 483 feet from her home.<sup>2</sup>
4. The appellant requested the School Committee to re-locate the bus stop to a point in front of their home<sup>3</sup>

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<sup>2</sup>The location of the present bus stop is marked as lot 57 on diagram Appendix A.

<sup>3</sup>The location to which the appellants requested that the bus stop be re-located is marked as lot 50 on Appendix A.

5. The appellant alleges that the present designated bus stop for B. presents a safety concern for her.
6. The appellant alleges that her daughter is required to wait across Route 102 upon her return home from school.
7. The appellant alleges that there is no monitor on the school bus, either in the morning or afternoon, and that a student on the bus not much older than B. walks B. across the street.
8. At a meeting of the School Committee held on October 6, 1987, the Committee voted unanimously to take the matter under advisement.
9. In a letter dated January 22, 1988, Mrs. B. appealed to the Commissioner of Education.

Issues to be Decided

Has the Scituate School Committee acted in accordance with current statutes, regulations and School Committee policy in the transportation design for B. to and from the Clayville School?

Applicable State Laws and Regulations

§16-21-1.- Transportation of public and private school pupils. The school committee of any town shall provide suitable transportation to and from school for pupils . . . of elementary and high school grades. . . who reside so far from the . . . school which the pupil attends as to make the pupil's attendance at school impractical. . . .

§31-20-10.3. - School bus stops - routes. . . .(b)

No school bus shall stop to discharge or pick-up passengers at any location which would require a child/ren to cross any road where the posted speed limit is greater than thirty-five (35) miles per hour. School bus stops shall be developed in a manner which assures that the bus stop will be on the child/ren home side of the road so that the child/ren do/es not have to cross the road to board the bus or to reach home.

(d) All school bus routes shall be reviewed by the local police chief of each city and town for safety hazards within ninety (90) days before the start of the school year.

§31-20-10-4. - Exemptions from discharge requirements of 31-20-10.3. - Rural communities are exempted from the provisions of §31-20-10.3 (b) when:

- (a) A school bus is turning 180 degrees on a road, or
- (b) A school bus is backing up on a road, or
- (c) A school bus is stopping on a road of low traffic flow.

For purposes of this section, "rural community" shall mean. . .the town of . . . Scituate. . .

For purposes of this section, "low traffic flow" shall mean any road designated as a road with low traffic flow by the state traffic commission.

Rules and Regulations for School Bus Transportation, Effective September 30, 1986.

Section 6.0 - Regulations for School Committees

Section 6.3 - School Bus Monitors

Each school committee shall provide a bus monitor sixteen (16) years of age or older on all school-bound and home-bound bus routes for grades kindergarten through grade five (5), unless a variance has been obtained from the Department of Education.

Mrs. B, contends that the original bus stop (Pleasant Lane and Route 102) designated for her daughter's transportation presents a safety hazard, since she is required to cross Route 102 while on her way home from school. Mrs. B, also contends that the requirement for her daughter to wait for the bus in the morning at the corner of Pleasant Lane and Route 102 also presents a safety hazard, since both sides of Pleasant Lane at the corner are overgrown with brush and shrubbery almost completely to the highway. Mrs. B, contends that this prevents traffic moving along Route 102 in both directions from seeing her daughter, and more particularly, creates a safety hazard for any vehicles which might be turning into Pleasant Lane from Route 102. The appellant claims that the problem becomes more acute following snow storms, since with snow piled up in high mounds at the corner of Pleasant Lane, B, is required to stand in the road while waiting for the bus and is thus completely hidden from the view of vehicles approaching in either direction.

The appellant further contends that the requirement for B, to cross Route 102 on the way home from school constitutes a violation of state law. Mrs. B, testified that there has never been a monitor on the school bus which transports her daughter to or from school, and that this arrangement also constitutes a violation of state law and regulations. However, Mrs. B, testified that since the transportation design was changed in February, an adult monitor has been on the school bus every day.

The appellant contends that the relocation of the bus stop to the front of her home on Cole Avenue or some other mutually agreed upon alternative would substantially increase the safety for B. and would not present a safety hazard for any other children or for the school bus.

Mr. Donald Dumont, an expert in school transportation in Rhode Island, was retained by the appellant to investigate the circumstances and conditions relative to the transportation design for B. He testified that in his opinion, Route 102 is a high traffic movement area, and in the area of Pleasant Lane and Cole Avenue, the speed limit is posted at 40 miles per hour. He believes that both of these conditions present a violation of §31-20-10.3 and §31-20-10.4. He also testified that in his opinion, a school bus entering Cole Avenue at the Scituate end and exiting Cole Avenue at the Foster end would pose no safety hazard to the school bus.

The School Committee contends that to relocate the bus stop to the location proposed by the appellant would increase the danger to B. and the other students on the school bus, because it would require the bus to enter Route 102 in a position that would place it broadside to oncoming traffic and because of the curve in the road and a small knoll at that location, oncoming traffic would not be able to see the school bus until the last possible moment. The Superintendent testified that he, the Chief of Police and the Deputy Chief of Police visited the Cole Avenue, Pleasant Lane and Route 102 area sometime in late October of 1987, in

order to ascertain whether or not the transportation design for

B. could be changed. As a result of that visit, the Police Department rejected the proposal that a school bus route be implemented which would require the bus to exit from either Cole Avenue or Pleasant Lane.<sup>4</sup> The Superintendent also testified that he had received a waiver from the Commissioner of Education relative to the requirement for a school bus monitor.<sup>5</sup> However, the waiver requested and received by the Superintendent (See Respondent's Exhibit P) is for emergency situations only and does not allow for the absence of a school bus monitor every day as was the unrefuted testimony of Mrs. B.

There is no question that the original transportation design for B. which on the afternoon run returning from school dropped her off on Route 102 opposite the corner of Pleasant Lane requiring her to cross Route 102, is a violation of §31-20-10.3 and §31-20-10.4. Route 102 at that point is a high traffic movement road and is posted with a speed limit of 40 miles per hour. The absence of a school bus monitor on that run also constitutes a violation of §16-21-1. The variance which the Superintendent requested and received from the Commissioner applies only to emergency day-to-day situations not to a continuous, ongoing arrangement. However, sometime in early February of 1988, the Superintendent, acting upon direction from the Chief of Police,<sup>6</sup> modified the afternoon transportation design for the appellant's

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<sup>4</sup>Appellant Exhibit #1.

<sup>5</sup>Respondent Exhibit P.

<sup>6</sup>Respondent Exhibit O.

daughter. From that date forward, B. has been transported home from school in the afternoon by a mini-bus and is dropped off at the corner of Pleasant Lane and Route 102 on the proper side of the street, the point where she is picked up in the morning.

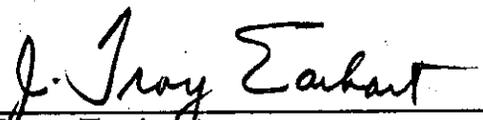
On the basis of the present transportation design for the appellant's daughter as stated in the previous paragraph, the appeal of Mrs. B. is denied. The Committee has met the requirements of the statute". . . shall provide suitable transportation to and from school for pupils . . . who reside so far as to make the pupil's regular attendance at school impractical . . ." As long as the present transportation design continues, or until and/or unless the parties mutually agree to an alternative transportation design, this decision shall remain in full force and effect. However, the School Committee shall work cooperatively with the appellant in an attempt to get the brush and shrubbery removed from both sides of the corner of Pleasant Lane and to confer with the Department of Public Works relative to the piling up of snow at the northerly side of the corner of Pleasant Lane and Route 102.

Respectfully submitted,



Ennis J. Bisbano  
Hearing Officer

Approved:



J. Troy Earhart  
Commissioner of Education

April 12, 1988