

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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 JOHN L. :  
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 vs. :  
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 GLOCESTER :  
 SCHOOL COMMITTEE :  
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D E C I S I O N

August 30, 1988

This matter was heard on June 15, 1988 upon appeal to the Commissioner of Education under the provisions of §16-39-1. The appeal was made by John L against the Gloucester School Committee upon the failure of the Committee to provide a bus monitor on his daughter's school bus as required by law.

Mr. L appeared pro se and Vincent J. Piccirilli, Esq. represented the School Committee.

The Hearing Officer visited the pick-up site on June 16, 1988 and observed the bus pick up the students.

#### Facts of the Case

- The bus used by the student had a monitor at the beginning of the school year in 1986.
- In late November 1986, the bus monitor stopped riding the bus. There was no monitor for the remainder of the 1986-87 school year.
- There was no monitor at the beginning of the 1987-88 school year.
- Mr. L met with the School Committee on October 22, 1987.
- A bus monitor was assigned to that bus from mid November 1987 to the beginning of March 1988.
- There has been no monitor since that time.

#### Issue and Law of the Case

Mr. L is charging the School Committee with failure to

implement state law (R.I.G.L. 16-21-1) and applicable regulations. The law requires that a school bus monitor, in addition to the driver of the bus, shall be present on each bus utilized for children enrolled in grades K-5. The law further provides for variances to be granted by the Commissioner of Education, and states in pertinent part:

. . . For such transportation provided to children enrolled in grades kindergarten through five, school bus monitors, other than the school bus driver, shall be required on all school bound and home bound routes. Variances to the requirement for a school bus monitor may be granted by the Commissioner of Elementary and Secondary Education if he or she finds that an alternative plan provides substantially equivalent safety for children. For the purposes of this section a school bus monitor shall mean any person sixteen (16) years of age or older.

Further, Rules and Regulations for School Bus Transportation, Department of Transportation: September 30, 1986: Regulations for School Committees: 6.3, reads as follows:

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.

The Rhode Island Department of Education promulgated a request for variances on August 4, 1987.

School Bus Monitor - Variances Approved by the Commissioner for the 1987-88 School Year:

The Continuing and Emergency variances, as outlined below, have been approved for the 1987-88 school year on the condition that:

- Districts demonstrate a continued effort and evidence of their attempts to actively recruit school bus monitors and

- Submit to the Commissioner by January 31, 1988 on a form to be provided by the Commissioner's Office a report detailing their recruitment efforts.

### CONTINUING VARIANCES

1. Zone Monitors, Plus Public Address System
  - a. A.M. and P.M. runs
  - b. An adult is present to meet the children as they enter or disembark at each bus stop. The adult assists the bus driver in ensuring children follow procedures for crossing the street, but does not perform crossing guard duties.
  - c. Adult makes a final visual check when the bus driver announces his/her departure on the PA system.
    - \* It is recommended that the number of children at each bus stop be limited to ten (10).
2. Door-to-Door Transportation K-5
  - a. Children are picked up and dropped off at home on the same side of the street as they reside.
  - b. When discharging students, bus drivers are instructed not to move the bus until the children are visually sighted at least twenty (20) feet from the bus.
3. Door-to-Door Transportation K-only
  - a. Children are picked up and dropped off at home on the same side of the street as they reside.
  - b. When discharging students, bus drivers are instructed not to move the bus until the children are visually sighted at least twenty (20) feet from the bus.
  - c. The number of children on the bus should be limited to twenty-five (25) students.

### EMERGENCY VARIANCES

On those occasions when a school bus monitor or zone monitor is not present at each stop:

1. A.M. runs - Bus drivers will be instructed to stop the bus approximately twenty (20) feet before the actual stop and to use the PA system to assist in safely loading the children.
2. P.M. runs - Bus drivers will be instructed to first discharge those children living on the same side of the street. Then, with the use of the PA system, direct the other children to disembark and properly cross the street.

Summary of Argument

Both sides in this case stipulate to the facts -- there is no dispute -- there has been a lack of monitors on that bus.

Mr. L. argues that the continued absence of a monitor on his daughter's school bus is a violation of law, and as such, the School Committee should be found liable and instructed to meet the law. He approached the School Committee and the Commissioner of Education seeking assistance and asking questions concerning alternatives and seeking a monitor for his daughter's bus. He feels that there is something that can be and must be done.

The School Committee argues that it had provided monitors, However, through the vagaries of employment etc., attrition had left them one monitor short before the end of each year. Further, the Committee argues that it had obtained emergency variances for absences and that as long as it (the Committee) demonstrated active recruitment the variance would apply. Given this, the Committee argues that it should not be found to be in violation of the law and the regulations as currently written.

Conclusion

The Gloucester School Committee has failed to provide a bus monitor on each bus run where a monitor is required by state law. There is no argument by either party concerning this fact. The difference between the parties rests on an interpretation of the regulations of the Department of Education as they pertain to the sufficiency of the Committee's action in meeting the law through a variance.

The School Committee argues that it filed for an emergency variance and that such was granted. This is true. The fact, however, is that the regulations of the Department of Education provide for two types of variance; i.e., Emergency and Continuing. In the instant case, the finding of this case rests on the difference between the two variances.

The Committee did have an emergency variance and did demonstrate an active, continuing recruitment effort. The Hearing Officer, at this point, however, would note that the pay offered, when combined with short hours, is minimal and, given the economy of the times, attention should have been given to a pay increase to see if that would have made a difference.

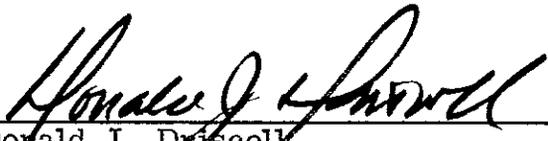
Notwithstanding that, of special note, however, is the Committee's failure to utilize the alternatives provided by the Continuing Variance Regulations. The Committee, although faced with long-term absences of monitors, failed to recognize that such absences had passed from an emergency to a continuing absence.

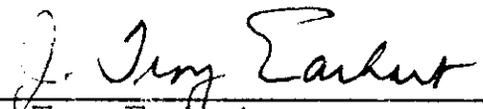
The term "emergency" has as its definition: "an unforeseen combination of circumstances which calls for immediate action" or sometimes "exigency" which is an "urgent want." The implication is clear. Emergency variances are meant to cover unavoidable short-term absences; such as illness, etc., not a long-term employment problem.

The Department of Education clearly provided, under Continuing Variances, methods to handle a longer-term inability to provide monitors on school buses. The Committee should have utilized an approved Continuing Variance.

The School Committee is hereby found deficient in meeting the state law and regulations as applies to school bus monitors in that the Committee erroneously relied on an emergency variance in a case which had migrated to a continuing long-term situation.

The Committee is hereby ordered, forthwith, to fulfill the state law as it relates to school bus monitors by either manning each bus with a monitor on every run or providing an alternate method approved by the Department of Education.

  
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Donald J. Driscoll  
Hearing Officer

Approved:   
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J. Troy Earhart  
Commissioner of Education

August 30, 1988