

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

SUSAN C.

vs.

FOSTER SCHOOL
COMMITTEE

D E C I S I O N

October 24, 1988

This matter was heard on August 30, 1988 upon the appeal to the Commissioner of Education of Susan C from a decision of the Foster School Committee denying her request for transportation for her daughter to and from Our Lady of Czenstochowa School in the Town of Coventry.

The Commissioner has jurisdiction to hear the appeal by virtue of §16-21.1-5 of the General Laws of Rhode Island, 1956, as Amended. The matter was heard by the undersigned Hearing Officer under authorization from the Commissioner.

Due notice was given to the interested parties of the time and place of the hearing. Both parties were represented by counsel. Testimony was taken, a transcript of which was made, and evidence was presented. Upon the testimony taken and the evidence presented, we find the following:

1. The appellant and her daughter, S , reside in Foster and S attends Our Lady of Czenstochowa School in Coventry, Rhode Island.
2. Our Lady of Czenstochowa School is a non-profit, non-public school consisting of grades kindergarten through ¹ Grade 8.
3. Both the appellant's home and the School are located in ² Region II.

1] The parties stipulated at the hearing that Our Lady of Czenstochowa School is non-profit, non-public.

2] Rhode Island General Laws, Section 16-21.1-2 (Appendix A).

4. By letter dated March 29, 1988, the appellant requested the School Committee to provide transportation for her daughter to Our Lady of Czenstochowa.
5. At a meeting on April 26, 1988, the School Committee voted to deny the appellant's request for transportation³ to the School.
6. As of March 15, 1988, the School had enrolled five (5) students from Scituate, three (3) from Foster, twenty-nine (29) students from West Warwick and the remainder⁴ from Coventry.

The appellant contends that Our Lady of Czenstochowa School is a regional school serving residents in Region II.⁵ She further contends that the School is a non-profit, non-public school. She argues, therefore, that the Foster School Committee is required by law to provide the requested transportation for her daughter.

The School Committee stipulates that Our Lady of Czenstochowa School is a non-profit, non-public school. However, the Committee contends that the School is not "consolidated, regionalized or otherwise established to serve residents of a specific area within the state," as is required by §16-21.1-2 and has been further defined by the Commissioner in his decision of February 3, 1984 regarding Maureen Ann Harnois v. Cumberland School Committee, and the sustaining of that decision by

3] The Committee originally heard the appellant's request in March but delayed action on the matter because they did not have enough information to make a sound decision at that point.

4] See appellant's Exhibit B.

5] R.I.G.L. §16-21.1-2.

the Rhode Island Supreme Court. Cumberland School Committee v. Harnois, No. 84-423-M.P. (September 22, 1984).

The Secretary of the Parish Financial Council of Our Lady of Czenstochowa Church testified that (1) she is a member of the Church and also a member of the Parish Council; that (2) the School is not separately incorporated, but rather a part of the Church, which is incorporated as a non-business corporation; that (3) the School was built in 1934 to serve anyone who wanted to attend, whether a parishioner or not.

The Principal of the School testified that students at the School come from "Region II and III which includes Scituate, East Greenwich, West Greenwich, Hope, West Warwick, Coventry and Narragansett" and that four (4) students come from Foster. She testified that (1) the Church was established in 1909; that (2) in 1932 they organized the School "for the purpose of educating the youth of Coventry and West Warwick"; that (3) the School was established basically for Polish-speaking children; that (4) after a number of years they opened enrollment to all parishioners regardless of where they came from; and that (5) ten or fifteen years ago they began to accept children from different denominations -- Catholics and non-Catholics -- from anywhere both in and out of the state.

The Chairman of the School Committee testified that the Committee originally considered the appellant's request for transportation at a meeting in March of 1988. However, because the School Committee felt that it needed more information in order to arrive at a sound decision and, upon the advice of counsel, it delayed a decision on the matter to its April 1988 meeting,

requesting in the interim, that the Superintendent of Schools and legal counsel collect additional information which they felt necessary to the decision. One of the pieces of information requested was the incorporation papers of the School and a second was its Bylaws. As a result, after reviewing the materials received from Our Lady of Czenstochowa School, and upon the advice of counsel, the School Committee, at its meeting of April 26, 1988, voted to deny the appellant's request for transportation because it felt that (1) the School did not fall within the purview of the statute; that (2) because it did not fall within the purview of the statute, the School Committee could not afford to appropriate taxpayers' money to transport the appellant's daughter.

The appellant argues that the School Committee cannot avoid its statutory obligation to supply transportation to students solely on the basis of insufficient funds or cost. To support her position, the appellant cites Brown vs. Elston, ___ R.I. ___, 445 A.2d 279 (1982), and Exeter- West Greenwich Regional School District vs. Teachers' Ass'n., ___ R.I. ___ 489 A.2d 1010 (1985).⁶

This Hearing Officer agrees with the position taken by the appellant with regard to a school committee denying a request for transportation for a student solely on the basis of insufficient funds or cost as has been established in Brown vs. Elston, supra and Exeter-West Greenwich Regional School District, supra. Therefore, we will reject that position taken by the

6] See also, Jennings vs. Exeter-West Greenwich School Committee, 116 R.I. 90, 90-94 (1976) and Members of the Jamestown School Committee vs. Schmidt, 699 F.2d 1 (1st Cir. 1983).

School Committee and address the remaining issue, that is, "is Our Lady of Czenstochowa School a regional school as established by statute and decisions of the Commissioner and the Courts?" Since the parties have stipulated to the fact that Our Lady of Czenstochowa School is non-profit, non-public, the one remaining criteria to be determined as cited in the statute, is regionalization.

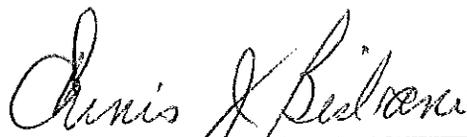
There is no question that if Our Lady of Czenstochowa School is determined to be non-profit, non-public and regional, that the Foster School Committee would be obligated to provide transportation for the appellant's child(ren) as well as any other Foster child attending that School who makes a similar request. However, the School Committee makes a very persuasive and convincing argument regarding whether the School is a "regional school" as defined in §16-21.1-2 and the decisions of the Commissioner and the Courts previously cited, as well as Edward S. Sowa, Jr. vs. North Kingstown School Committee (1983) and Elaine A. McLellan vs. Lincoln School Committee (1985). We reject respondent's argument that the School must be separately incorporated. The Commissioner has already addressed that issue in McLellan, supra, when he accepted the appellant's argument that Barrington Christian Academy was not separately incorporated but was a ministry of Barrington Baptist Church.

We also reject the respondent's argument that the appellant's daughter is ineligible for transportation under §16-21.1-2 because her School happens to serve citizens from anywhere in or outside of Rhode Island. As the Commissioner stated in Harnois, supra:

Nothing in said Chapter (or in the predecessors of this much-litigated statute) indicates that the General Assembly wished to limit busing to those schools which do not seek to attract students from outside this state. (It is clear that the actual benefits of Chapter 21.1 are limited to residents of this state, but there is no indication that otherwise-qualifying Rhode Island residents who choose to attend a school with a relatively universalist outlook are to be denied busing under the statute).

On the basis of the evidence presented and the testimony given, we have no other alternative but to rule that Our Lady of Czenstochowa School (Church) has not complied with the statute and previous decisions of the Commissioner and the Courts by amending its incorporation and/or Bylaws to become a regional school "established to serve residents of a specific area within the state."

Accordingly, the appeal is denied.



Ennis J. Bisbano
Hearing Officer

Approved:



J. Troy Earhart
Commissioner of Education

October 24, 1988

rately. The parent or guardian of any child who is found to have positive signs or symptoms of scoliosis shall be notified of such findings. However, such test shall not be required of any student whose parents or guardian objects on the ground that such test conflicts with their religious belief.

History of Section.

P.L. 1981, ch. 399, § 1; P.L. 1983, ch. 19, § 1.

Repealed Sections. The former section (G.L., ch. 182, § 2, as enacted by P.L. 1948,

ch. 2103, § 1; G.L. 1956, § 16-21-10), which provided for examinations to guard against infantile paralysis, was repealed by P.L. 1961, ch. 133, § 5.

16-21-17. School bus safety programs. — Every school department shall provide school bus safety instructions for all children in grades kindergarten through six, inclusive. Said instruction shall take place at least four (4) times per year, two (2) of which shall take place during the months of September and October.

History of Section.

P.L. 1986, ch. 366, § 1.

Compiler's Notes. In 1986, a comma was

inserted by the compiler following "per year" in the second sentence.

CHAPTER 21.1

TRANSPORTATION OF SCHOOL PUPILS BEYOND CITY AND TOWN LIMITS

16-21.1-1. General purposes.

NOTES TO DECISIONS

1. Constitutionality.

So long as public and sectarian school children are bused to their own schools, and the same standard of remoteness applies to public and sectarian school students alike, the fact that public school students are ordinarily ineligible for busing to schools beyond district lines does not render this section invalid under the Establishment Clause or the Equal Protection Clause. *Members of Jamestown School Comm. v. Schmidt*, 699 F.2d 1 (1st Cir.), cert. denied, 464 U.S. 851, 104 S. Ct.

162, 78 L. Ed. 2d 148 (1983).

As long as eligibility for busing is determined by the same criterion for public and parochial school students and the relative costs per student remain roughly proportional, this section and § 16-21.1-2 cannot be considered as advancing religion and are therefore constitutional. *Members of Jamestown School Comm. v. Schmidt*, 699 F.2d 1 (1st Cir.), cert. denied, 464 U.S. 851, 104 S. Ct. 162, 78 L. Ed. 2d 148 (1983).

16-21.1-2. School bus districts established.

APPENDIX A ✓

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. Specific area.

1. Constitutionality.

As long as eligibility for busing is deter-

mined by the same criterion for public and parochial school students and the relative costs per student remain roughly proportional, § 16-21.1-1 and this section cannot be considered as advancing religion and are therefore constitutional. *Members of James-*

town School Comm. v. Schmidt, 699 F.2d 1 (1st Cir.), cert. denied, 464 U.S. 851, 104 S. Ct. 162, 78 L. Ed. 2d 148 (1983).

2. Specific Area.

A school need not be regional in nature to come within this section; a school must only be established to serve residents of specific areas within the state. Cumberland School

Comm. v. Harnois, — R.I. —, 499 A.2d 752 (1985).

There is nothing in the statute to suggest that the legislature intended that busing be made available only to schools that accept in-state students or to schools that service only one transportation region within the state. Cumberland School Comm. v. Harnois, — R.I. —, 499 A.2d 752 (1985).

16-21.1-3. Variances permitted.

NOTES TO DECISIONS

1. Constitutionality.

This section, requiring the commissioner of education to determine whether a particular sectarian school is regionalized and whether it is similar to another school for the purpose of granting a transportation variance, creates

excessive entanglement of church and state and is therefore unconstitutional under the first amendment. Members of Jamestown School Comm. v. Schmidt, 699 F.2d 1 (1st Cir.), cert. denied, 464 U.S. 851, 104 S. Ct. 162, 78 L. Ed. 2d 148 (1983).

CHAPTER 21.2

THE RHODE ISLAND SUBSTANCE ABUSE PREVENTION ACT

SECTION.

- 16-21.2-1. Short title.
 16-21.2-2. Declaration of purpose.
 16-21.2-3. Authority of municipal governments.
 16-21.2-4. Substance abuse prevention program.
 16-21.2-5. Funding of substance abuse prevention program.
 16-21.2-6. Timetable for grant applications and disbursement.

SECTION.

- 16-21.2-7. Use of funds restricted to substance abuse prevention.
 16-21.2-8. The duties of the director of mental health, retardation and hospitals.
 16-21.2-9. Permanent legislative oversight commission on substance abuse prevention.
 16-21.2-10. Severability.

16-21.2-1. Short title. — This chapter shall be known as "The Rhode Island Substance Abuse Prevention Act."

History of Section.

P.L. 1987, ch. 375, § 1.

16-21.2-2. Declaration of purpose. — In recognition of the growing problem of substance use and abuse that municipalities face the purpose of this chapter is as follows:

(a) To promote the opportunity for municipalities to establish a comprehensive substance abuse prevention program addressing the specific needs of each individual municipality.

(b) To encourage the development of partnership among municipal governments, school systems, parents and human service providers to serve the interest of the community in addressing the need for a comprehensive substance abuse prevention program.

Our Lady of Czenstochowa School

222 MacARTHUR BOULEVARD
COVENTRY, RHODE ISLAND 02816

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APPELLANT'S EXHIBIT B

SR. MARY XAVIER, PRINCIPAL
TEL. 821-3804

March 15, 1988

To Whom It May Concern:

Our Lady of Czenstochowa School in Coventry, Rhode Island has been servicing a wide area in the process of educating the children. Since 1981 our services were extended to include Foster, Scituate, West Warwick and West Greenwich. At present we have 5 students from Scituate, 3 students from Foster, 29 students from West Warwick and the remainder from Coventry.

We will continue our services to all families and hope that buses will be available for transporting students from these areas.

Sincerely,

Sister Mary Xavier
Sister Mary Xavier
Principal