

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

RHODE ISLAND DEPARTMENT :
OF EDUCATION :

vs. :

EAST GREENWICH :
SCHOOL COMMITTEE :

D E C I S I O N

April 6, 1989

Introduction

In the case at hand the Department of Education is alleging that the East Greenwich School Committee is in violation of the school bus monitor law. (G.L.16-21-1). Jurisdiction to decide this case is present under G.L.16-39-1 and G.L.16-39-2.

There is no real dispute about the law or the facts of this case.

The applicable statute states in pertinent part:

16-21-1. Transportation of public and private school pupils.

* * * * *

(b) For transportation provided to children enrolled in grades kindergarten through five (5), 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.

To implement the variance provision of the above-quoted statute the Commissioner has issued interpretive regulations (Lerner v. Gill, 463 A.2d 1352, R.I. 1983) specifying the types of variances which are available and the conditions for their use. These variance regulations read as follows:

School Bus Monitor Variances Approved by the Commissioner for the

1988-89 School Year:

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 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 P.A. system to assist in safely loading the children.

2. P.M. Runs - The bus driver will be instructed to first discharge those children who must cross the street. The bus driver will check to be sure that all traffic has stopped and the street is clear for the children to cross. Then, the bus driver will instruct these children to disembark and take TEN (10) GIANT STEPS to the front of the bus and remain there until the driver signals them to cross by using the P.A. system. The bus driver will count the number of children that have disembarked and then direct them to cross the street. The bus driver will count the children once again when they have crossed the street to be sure that all have crossed safely. The bus driver will then discharge those children living on the same side of the street. The bus driver will not proceed until he/she is sure that all of the disembarked children have reached an area of safety.

The intent of the emergency variances is to provide districts with an alternative plan in the event of an "emergency" (i. e. a monitor is sick and no substitute is available, a monitor quits and the district is actively seeking a replacement). UNDER NO CIRCUMSTANCES SHOULD THE EMERGENCY VARIANCE BE USED AS A PERMANENT REPLACEMENT FOR A SCHOOL BUS MONITOR. Any school district that uses an emergency variance on 10% or more of the total number of bus runs* in the district per month in any two (2) consecutive months must, not later than the 15th day of the month following, reduce such usage to below 10% by hiring additional bus monitors or adopting one or more continuing variances.

* A school bus run is defined as a one-way trip, either from school to home or from home to school.

The functions of the permitted variances are clearly summarized in the cover letter which accompanied the regulations. (Exhibit 2, dated August 16, 1988, from the Commissioner to Superintendents of Schools).

In pertinent part the letter states:

Attached is a list of the variances which have been approved for the 1988-89 school year. Please note the changes in language for Emergency Variance #2, P.M. Runs and the limit on the use of emergency variances.

Any district that uses an emergency variance on 10% or more of its bus runs per month for two (2) consecutive months must reduce such usage below 10% by the 15th day of the following month. Such a reduction can be accomplished by employing additional monitors or requesting a continuing variance. The intent of the emergency variance is to provide an alternative in the event of an "emergency" (i. e. a monitor calls in sick and no substitute is available, a monitor quits and the district is actively seeking a replacement). It was never intended that the emergency variance be used as a permanent replacement for a school bus monitor. Your school district will be asked to report on its use of continuing and emergency variances three times a year, in November, February and April. Report forms will be provided by my office.

At this point we must examine the specific facts of this case.

Findings of Fact

We find, and the School District candidly admits on the basis of its own reports, that the District is not in compliance with the school bus monitor law (G.L.16-21-1(1)). The reasons for this finding are conveniently summarized in the letter from the Commissioner to the Superintendent initiating this hearing. (Exhibit 1, letter of March 3, 1989).

In pertinent part the letter states:

This letter concerns your school district's use of its emergency variance to the school bus monitor law. The law provides that I may grant variances to the requirement for a school bus monitor if an "alternative plan provides substantially equivalent safety for children." The intent of the approved emergency variance is to provide districts with an alternative plan in the event of an "emergency" (i.e. a bus monitor is sick and no substitute is available, a monitor quits and the district is actively seeking a replacement.) Under no circumstances should the emergency variance be used as a permanent replacement for a school bus monitor.

However, last year some school districts used the emergency variance on a continuing basis. Therefore, in a letter on August 16, 1988, I notified all superintendents that I would limit districts' use of the emergency variance during the 1988-89 school year. Any district that uses an emergency variance on 10% or more of the total number of runs in the district per month in any two (2) consecutive months must, not later than the 15th day of the month following, reduce usage to below 10% by hiring additional bus monitors or adopting continuing variances.

As a result of your monthly bus monitor variance reports from September 1988 through January 1989, your district has reported the following use of its emergency variance:

September	-	80%
October	-	80%
November	-	72%
December	-	63.6%
January	-	48.5%

Department staff met with you and representatives from Town and Country, your transportation provider, on December 7, 1988 to discuss various alternatives that East Greenwich could explore to

bring the district into compliance with the school bus monitor law. Although the district's use of the emergency variance decreased from October to December, your Summary Reports do not indicate what steps you took to reduce your usage of the variance. In a letter dated January 10, 1989, I notified you that you had until January 30, 1989 to bring East Greenwich into compliance with the stipulation for use of the emergency variance. Your January 1989 Summary Report indicates that you hired additional bus monitors to reduce your emergency variance use to 48.5%. Therefore, since the East Greenwich School District has not reduced its use of the emergency variance to less than 10% by providing the necessary number of monitors or adopting approved continuing variances, an administrative hearing has been scheduled for you to show cause why you should not be found in violation of the school bus monitor law.

(Note: Exhibit 3, the February bus monitor variance report from East Greenwich shows that use of the emergency variance reached 56.6% in February of 1989.)

The Commissioner's letter (Exhibit 1) just quoted makes reference to a meeting on December 7 between a member of his staff and the Superintendent of Schools at which meeting methods of obtaining compliance with the law were discussed. The content of this meeting is summarized in a letter from the Department of Education staff member who attended the meeting, Ms. Eloise L. Boyer, to the Superintendent of Schools, the letter (S.C. Exhibit A, dated December 14, 1988) stated:

This letter is in reference to our meeting on Wednesday, December 7, 1988 concerning East Greenwich's 80% use of emergency variances to the school bus monitor law during the months of September and October.

We discussed various alternatives that the district would explore in an attempt to lower its use of the emergency variance to less than 10%. Some of these alternatives included:

1. Send newsletters to parents, religious leaders, senior citizens to increase awareness of the need for bus monitors and zone monitors.

2. Contact parents who are at bus stops each day to become zone monitors.
3. Use a combination of zone monitors and door-to-door pick up on bus runs.
4. Hire food service workers as bus monitors.
5. Advertise for monitors outside of the community and offer a central pick-up location to take them to and from the Town and Country bus depot.
6. Offer individuals the opportunity to participate in health insurance programs at group rates.
7. Increase the rate of pay for bus monitors, either hourly or by the run.

I hope that these suggestions will assist East Greenwich in complying with the school bus monitor law. A review of the district's December 15, 1988 bus monitor variance report will determine if the Department needs to take additional steps to ensure that East Greenwich is in compliance with the law.

The Superintendent of Schools testified that he took immediate steps to intensify his compliance efforts by implementing the suggestions contained in the letter just quoted. (S.C. Exhibit A). On January 18, 1989 the Superintendent directed a letter to Gil Darling, a representative of Town and Country Transportation, which is East Greenwich's transportation provider. The letter (S.C. Exhibit B) stated:

After the meeting of December 7, 1988, I received from the state a letter summarizing various alternatives (see attached).

I have or will take care of points 1-4 through letters which have now gone out to the various groups. I would ask you to please look into points 5 and 7 and see what we can do in this area.

It is important to document that we have tried to do all of the things which were discussed and therefore would like you to document and send to me when you have attempted points 5 and 7.

Thank you for your cooperation in this matter.

The Superintendent further testified that he sent letters to parents, senior citizen groups and town workers in an effort to recruit bus moni-

tors. The letters (e.g. S.C. Exhibit C. dated January 9, 1989) stated:

As a result of several young children being killed in school bus related accidents, the State Legislature enacted a law three years ago requiring that all buses picking up children from their homes in the morning and taking them home in the afternoon have monitors. The real problem with this requirement is the inability of most school systems to get people to do the job. In East Greenwich, for example, we have 13 elementary runs in the morning and 13 runs in the afternoon; yet, we have only been able to get people to cover 6 of these runs.

The State Department has been very good in assisting school districts to acquire monitors and by granting temporary waivers to meet this law. East Greenwich, along with the State Department and other communities, recently placed a full-page ad in the Providence Journal. Our transportation contractor, Town and Country, has advertised in local newspapers and has attended at least 3 job fairs in an attempt to recruit people to become bus monitors. None of this has been successful.

Due to our inability to put a monitor on each of the elementary runs, East Greenwich is, as a consequence, in violation of State Law. The Department of Education cannot condone such violations and has therefore requested that this letter be sent to key persons -- such as yourselves -- in our community with the hope that you, in turn, will appeal to your relatives, neighbors, fellow parishioners and Senior Citizen friends to help us solve this problem.

The State Department does not want to take over the school bus system; it does not want to mandate that we pay such high wages as to create problems with bus drivers or with other people who may be hired by the school district; nor does it want us to provide door-to-door service because this will make all elementary bus rides inordinately long. The State Department hopes that by appealing to the citizenry of East Greenwich, we can provide monitors for our buses and be in compliance with the law.

As valuable resources to East Greenwich, you are urged to consider this need. A bus monitor's job entails approximately 2 hours per day with this time being split in the morning between the hours of 8 and 9, and in the afternoon between 2:45 and 4 p.m. If you can help as a bus monitor in any way, even if it is for only one day per week, please call the Central School Administration Office at 885-3300 and leave your name, phone number and information about what you can do. Thank you.

The Superintendent also testified that all the efforts made did not result in the finding of any more monitors. He also stated that socio-economic factors in East Greenwich seemed to make it difficult to obtain volunteer bus monitors from the area.

Of course, issues concerning the cost and necessity of bus monitors must be addressed to the General Assembly. We may safely presume that the General Assembly carefully weighed safety and cost issues before it enacted the school bus monitor law. Now that the Legislature has spoken the only thing which remains to do is to ensure that the law is implemented throughout the state.

In sum, we must conclude and find as a fact that the School Committee of East Greenwich is not in compliance with the school bus monitor law. (G.L.16-21-1(b)).

Conclusions of Law

The legislative power of this state is vested in the General Assembly. Article VI of the Rhode Island Constitution. The Rhode Island Constitution particularly provides that "it shall be the duty of the General Assembly to promote public schools. . .and to adopt all means which it may deem necessary and proper to secure to the people the advantages and opportunities of Article XII Education. . . ." In accordance with its general and particular authority the General Assembly has enacted the school bus monitor law (G.L.16-21-1) which reads as follows:

16-21-1. Transportation of public and private school pupils.

* * * * *

(b) for transportation provided to children enrolled in grades kindergarten through five (5) 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.

It is axiomatic that the School Committee must comply with the law. We further note on this point that while school committees may not be state agencies, they are agents of the state. Cumming v. Gooden, 119 R.I. 325, 377 A.2d 1071 (1977). "School committees act merely as agents of the state in fulfilling their statutorily conferred duties." Brown vs. Elston, 445 A.2d 279 (R.I.) School committees may not avoid their statutory obligations. Brown vs. Elston, supra.

In sum, it is clear that as a matter of law the East Greenwich School Committee must comply with the school bus monitor law.

Conclusion

- (1) The East Greenwich School Committee is ordered to immediately comply with the school bus monitor law.
- (2) Failure to comply will result in the imposition of sanctions against the School Committee.

- (3) Ms. Eloise L. Boyer is appointed Special Visitor to report on compliance.

Forrest L. Avila

Forrest L. Avila, Esq.
Hearing Officer

Approved:

J. Troy Earhart

J. Troy Earhart
Commissioner

April 6, 1989