

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

RHODE ISLAND	:
DEPARTMENT OF EDUCATION	:
	:
vs.	:
	:
WEST WARWICK	:
SCHOOL COMMITTEE	:
	:

D E C I S I O N

November 10, 1989

This matter was heard on October 10, 1989 upon appeal to the Commissioner of Education by the West Warwick School Committee of a decision by the Commissioner citing a violation of the school bus monitor law (G.L. §16-21-1) and threatening the withholding of funds authorized under the General Laws of Rhode Island (§16-7-20).

The Commissioner has jurisdiction to hear the appeal by virtue of the provisions of §16-39-1 and §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 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.

Appellant raises two issues to be determined by the Hearing Officer:

- (1) That the Public Address System is a bonafide substitute in all cases where monitors are required.
- (2) That the School Bus Monitor Variances approved by the Commissioner for the 1988-89 school year were promulgated in an arbitrary manner and that the Commissioner's rejection of the plan submitted relative to compliance is arbitrary and capricious.

Respondent objected to the hearing proceeding with regard to Issue #1 in that the Commissioner has rendered decisions in at least four recent cases relative to this matter, one of which involving this very School Committee is pending on appeal to the Board of Regents. Respondent argues further that the granting of a continuing variance allowing the use of a public address system as a substitute for school bus monitors for grades

kindergarten through grade five would in essence be a rescinding of the statute passed by the General Assembly in 1986, and that all of the arguments fostered by the appellants in this regard should be addressed to the General Assembly and not to the Commissioner of Education. Respondent also argues that this is basically the same issue which is on appeal by this School Committee to the Board of Regents. The Hearing Officer reserved a decision on the objection and allowed the hearing to proceed.

The Hearing Officer finds the arguments as stated by the respondent to be convincing. The Commissioner has decided this issue in at least four recent cases, one of which is pending before the Board of Regents.¹ We incorporate the reasoning contained in those cases into the case at hand, and, accordingly, the objection raised by respondent is sustained.

With regard to Issue #2, the following are the findings of fact:

- On July 14, 1989, the Commissioner found the West Warwick School Committee to be in violation of §16-21-1(b) and ordered the Committee to submit a corrective action plan to the Commissioner by no later than August 10, 1989.
- By letter of August 3, 1989 to the Commissioner from Superintendent of Schools, Thomas E. Sweeney, Jr., the Committee submitted a "Corrective Action Plan-School Bus Monitors." (Appellants Ex. A).

1] Rhode Island Department of Education vs. East Greenwich School Committee, April 6, 1989; Rhode Island Department of Education vs. West Warwick School Committee, July 14, 1989; Rhode Island Department of Education vs. Chariho Regional School District, June 28, 1989; John E. Lawrence vs. Gloucester School Committee, August 30, 1988.

- By letter of August 10, 1989 to the Commissioner from the Superintendent the Committee submitted an "Amendment, Corrective Action Plan -School Bus Monitors". (Appellant's Ex.B).
- By letter of August 18, 1989 to the Superintendent the Commissioner found the "Corrective Action Plan" as submitted to be in violation of the school bus monitor law and ruled that if the district was not in compliance by September 18, 1989, he would withhold funds as authorized under §16-7-20.

Relevant Statutes and Regulations

§16-21-1. Transportation of public and private school pupils. - (b) For transportation provided to children enrolled in grades kindergarten through grade 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 purpose of this section a school bus monitor shall mean any person sixteen (16) years of age or older.

§31-23-53. School bus public address sound system. - Every school bus placed in service after January 1, 1987 shall be equipped with a public address sound system which shall be audible from a distance of not less than fifty (50) feet and shall have a minimum of one speaker mounted outside the bus and a minimum of one speaker mounted inside the bus. The public address system and the method of installation shall be approved and certified by the division of emission control of the department of transportation. This system shall be inspected at all regularly scheduled inspections.

When the driver of the school bus has picked up students, the bus will remain stopped, with red lights flashing, until all students are seated. Prior to any student being permitted to disembark from the bus, the driver shall look to see that all approaching traffic has stopped and observed the flashing red signal. After students have disembarked from the bus, the driver shall allow ample time for the students to clear the bus area before closing the doors and then after remaining stopped for approximately ten (10) seconds the driver shall announce through the public address system that the bus will proceed. . . .

To implement the variance provision of §16-21-1(b), the Commissioner has issued interpretive regulations 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 PA 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 home to school or from school to home.

The criteria under which variances would be permitted are spelled out clearly in the cover letter which was sent to all superintendents from the Commissioner, dated August 16, 1988. 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 Variances #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 an 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.

Summary of Arguments

The School Committee argues that the Commissioner acted in an arbitrary and capricious manner when he first promulgated the School Bus Monitor Variances in 1986 and again when he revised them in 1988. They argue that the Commissioner in appointing the Task Force to develop and recommend school bus monitor variances did not include experts in school bus safety, such as its chief witness at this hearing, and, in fact, did not even solicit input from such experts. The School Committee also argues that the Task Force was made up of "self-serving interests" with only one Superintendent of Schools out of approximately 39 superintendents in the state. Further, the Committee argues that the 10% allowance by the Commissioner for emergency variances is an arbitrary figure which has no validity, and that the Commissioner's decision to reject the transportation plan as submitted on August 3 and 10, 1989 and the threatened withholding of state aid is also arbitrary and capricious. Mr. Gilbert T. Darling, an expert in the field of school bus safety and presently employed as New England Regional Director of Safety Training and Personnel by Laidlow Transit, Inc., testified that in his opinion the use of public address system is superior to the use of monitors. Mr. Gilbert further testified that the use of the public address system without monitors is as safe as the use of monitors. He testified that in his professional opinion, the use

of the public address system is a bonafide substitute for monitors. Under cross-examination, Mr. Darling testified that the use of the public address system together with the use of school bus monitors provides additional safety to children not provided by the use of the public address system alone.

Respondent argues that there are two pertinent statutes which must be considered. The first is §16-21-1 which requires school bus monitors on all A.M. and P.M. runs involving children in grades kindergarten through grade five. This statute provides the Commissioner with the authority to grant variances if "he or she finds that an alternative plan provides substantially equivalent safety for children". This the Commissioner has done with the issuance of the regulations entitled "School Bus Monitor Variances" which he issued in 1986 and revised in 1988.

The other pertinent statute is §31-23-53 which requires that "every school bus placed in service after January 1, 1987 shall be equipped with a public address system", and goes on to define in specifics the kind, where it is to be located and the way it is to be utilized by school bus drivers. Respondent argues further that if the Commissioner authorized a continuing variance for the use of public address systems in place of school bus monitors, he would in essence be rescinding the statute (§16-21-1), which he does not have the authority to do.

Respondent argues that the promulgating of the School Bus Monitor Variances in 1986 and their revision in 1988 by the Commissioner was not arbitrary and capricious. Through the testimony of Eloise L. Boyer, an

Educational Specialist in the Department of Education, who has the responsibility for overseeing the school bus monitor program, respondent argues that the composition of the Task Force charged by the Commissioner to develop the variances was not arbitrary. Miss Boyer testified that the Task Force was comprised of one superintendent recommended by the Rhode Island Association of School Superintendents, one school committee member recommended by the Rhode Island Association of School Committees, a local transportation director, a representative from the Department of Transportation who was in charge of school bus safety, and the President of the Rhode Island School Bus Owners Association. She testified that in 1988 when the variances were revised, the Task Force was expanded to include a representative of a school bus transportation company. Under cross-examination, Miss Boyer testified that there also are parents, advocates, a second representative from the Department of Transportation and the Executive Director of the School Bus Owners Association on the Task Force.

Conclusion

It is the unrefuted testimony of Miss Boyer that the Commissioner used a reasonable procedure in adopting the variances that he implemented in 1986 and again when he revised them in 1988. The Task Force was comprised of a good cross-section of the various groups which could be considered as "parties of interest" to such regulations. Contrary to appellant's argument that only one superintendent was on the Task Force, that superintendent was selected by the Rhode Island Association of School Superintendents as its representative on the Task Force, and thus was

representing all superintendents as is the customary practice with such appointments. The same can be said for the representative of the Rhode Island Association of School Committees, school bus companies, Department of Transportation, parents and advocates.

Accordingly, the appeal is denied with regard to Issue #2. We find that the Commissioner did not act in an arbitrary or capricious manner when he approved the School Bus Monitor Variances for the 1988-89 school year. Nor did he act in an arbitrary or capricious manner when he rejected the transportation plan relative to compliance as submitted.

Remedy

The School Committee will submit a corrective action plan to the Commissioner of Education not later than December 15, 1989. If a suitable plan is not submitted to insure compliance for the 1989-90 school year, sanctions will be imposed to require compliance.



Ennis J. Bisbano
Hearing Officer



J. Troy Earhart
Commissioner of Education

November 10, 1989