

This matter was heard on January 10, 1990 upon the appeal to the Commissioner of Education by Mr. and Mrs. Michael H from a decision of the Chariho School Committee denying their request for transportation for their son, J, to attend West Bay Christian Academy in East Greenwich, Rhode Island.

The Commissioner has jurisdiction to hear the appeal by virtue of the provisions of R.I.G.L. §16-21.1-5. 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, parties were represented by counsel, witnesses sworn and testimony taken, a transcript of which was made and evidence presented.

Facts of the Case

1. The appellants and their son are residents of Charlestown, Rhode Island.
2. The School Committee with jurisdiction is that of the Chariho Regional School District.
3. J is enrolled at the West Bay Christian Academy as a kindergarten student.
4. J attends class in a facility located on Frenchtown Road in East Greenwich.
5. The request of the H for transportation for their son was denied by the Chariho School Committee.

Argument of the Parties

The appellants argue that their son J is enrolled in the

West Bay Christian Academy, 6356 Post Road, North Kingstown, Rhode Island (Region #4)¹ as a kindergarten student and attends a facility on Frenchtown Road in East Greenwich (Region #2). They argue that the locus of enrollment should be the determinant factor for the decision to transport and not the locus of attendance. They argue, further, that the lack of space at the North Kingstown facility is the only reason for the utilization of the East Greenwich facility by the kindergarten students enrolled at the North Kingstown facility.

The appellants also argue that transporting one child from the same household to the North Kingstown facility (D - Grade 3) and the fact that inter-facility transportation is provided by West Bay Christian Academy gives a rationale for transporting (J - Grade K) since he goes to North Kingstown for transfer to East Greenwich.

The Chariho School Committee argues that the East Greenwich facility is outside the Region #4 area for which Chariho is obligated to provide transportation. The Committee argues that §16-21.1-2 requires that the operant word be ". . . school or facility which the pupil attends . . ." (Emphasis added). The Committee argues that the statute does not specifically envision the transfer of pupils by the institutions and, therefore, the denial should be sustained.

1] §16-21.1-2 establishes the regions for school bus districts within the state to provide bus transportation for several categories of children. The reference herein is to the regions where the facilities are physically located.

Law Governing the Case

§16-21.1-2 School bus districts established. - . . . (b)
A pupil attending . . . a non-public non-profit school for grades kindergarten through twelve (12), consolidated, regionalized, or otherwise established to serve residents of a specific area within the state . . . in the interest of public safety, health and welfare, shall be provided with bus transportation to the school or facility which the pupil attends, within the region in the pupil resides, by the school committee of the city or town within which the pupil resides.

Decision

We find in this case that there is no statutory authority which requires the Chariho School Committee to provide transportation to the H . . . for their son, J . . .

J . . . is a resident of Charlestown. He, however, attends a private school located in East Greenwich which is outside the Region for which the Committee is responsible to provide transportation under Rhode Island law.

This opinion rests on several important findings as relates to expansion of attendance areas and transportation responsibility. The Rhode Island Supreme Court found that the present law (§16-21.1-1 et seq.) was not an unconstitutional delegation of legislative power because it ". . . established five school districts [i.e.; regions] and a variance procedure [which] has carefully circumscribed the interest that private schools may have in expanding for purposes of transportation." Members of Jamestown School Committee v. Schmidt, R.I. 405 A.2d 16, 23-24 (1979) (Jamestown II).

The Circuit Court found that ". . . the current law does not permit

church schools to expand indefinitely the area from which they will accept students. A sectarian school may if it wishes enroll students from all five transportation regions, but under current law it cannot, absent special circumstances, require the public to pay for the transportation of students from outside the one region in which it is located - a region fixed by law and which the school is powerless to expand." (Emphasis added). Members of Jamestown School Committee v. Schmidt, 699 F.2d 11 (1st Circuit, 1983) (A.17).

The kindergartener in this case attends a school located in Region #2 while he is a resident of Region #4. The argument presented by the appellants that it is only a lack of space which requires their son's attendance in East Greenwich fails. By uncontroverted testimony of the School's Headmaster, David C. Greenhalgh, (Tr.8) "That is where the Frenchtown extension or satellite school is which is also a regionalized school, is in East Greenwich." (Emphasis added). and by presentation by Counsel (Tr.9). "We have two categories of pupils. . . . There are those that are enrolled and attend class at the Frenchtown facility. The second category of students are those students that are enrolled and because of lack of space (at North Kingstown) are temporarily shipped over to Frenchtown facility".

The question to be answered is one of the establishment of the East Greenwich School. It has approval from the State Department of Education and by testimony and presentation is a regionalized school serving the region in which it is located (Region #2) with pupils enrolled from that region.

Since there is no kindergarten program at the North Kingstown School and there is only a kindergarten program at the East Greenwich School and each school is established separately to serve district regional populations for purposes of transportation, we can only conclude that the request in this instance falls into an expansionist mode for purposes of transportation. We find that the schools are separate, i.e.; North Kingstown School - Grades 1-8 within service Region #4, and East Greenwich School - Grade K within service Region #2.

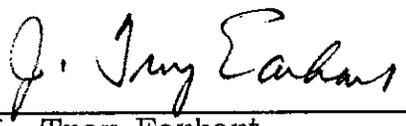
While a sectarian school may enroll students from any region it wishes, it cannot require a public school entity to provide all or part of the transportation needed by pupils who attend from outside the region which the school is established to serve. See: Costa, et al vs. Exeter West Greenwich Regional School Committee, Commissioner of Education, April 13, 1990

The West Bay Christian Academy cannot have it both ways. The schools are clearly separate entities for purposes envisioned under §16-21.1-1, et seq.

Accordingly, the appeal is denied.



Donald J. Driscoll
Hearing Officer

Approved: 

J. Troy Earhart
Commissioner of Education

April 23, 1990