STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

WILLIAM B VS. EXETER-WEST GREENWICH REGIONAL SCHOOL COMMITTEE	DECISION

August 5, 1992

Held: School Committee's proposed school bus stop location is impractical and not "suitable transportation" under R.I.G.L. 16-21-1.

Introduction

This matter concerns an appeal to the Commissioner of Education by William B from the Exeter-West Greenwich Regional School Committee's denial of Mr. B 's request to relocate his children's school bus stop. [Joint Exhibit 1(a) and (b)].[1]

For the reasons set forth below, we sustain the appeal.

Background

Appellant, his wife, and their 4 children live at Arthur Richmond Road, West Greenwich. As of the date of the hearing, M was 12 years old and a 7th grade student at the junior high school, and K was 10 years old and a 5th grade student at the Metcalf School. L , who was to turn 5 in May 1992, will be attending kindergarten in September 1992. Appellant's fourth child is not of school age.

The School Committee's proposed location of the children's school bus stop is at the intersection of Falls River Road and Hudson's Pond Road, .7 of a mile from Appellant's residence.

Arthur Richmond Road is a paved, 2-lane, private road. It does not have sidewalks, and it is bounded by shrubbery. It intersects with Falls River Road .4 of a mile from Appellant's residence.

Falls River Road is a 2-lane, dirt road. One must turn left onto Falls River Road to reach the proposed bus stop. Upon turning left, Falls River Road turns sharply to the right and

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1 The Commissioner designated the undersigned hearing officer to hear this appeal. It was heard on April 2, 1992. The hearing officer subsequently viewed the roads and bridge at issue herein.

goes downhill. There is a high embankment on the right side of the road where it turns, and visibility is restricted. Shortly after the turn to the right, Falls River Road bears to the left, again downhill. It continues downhill to a one-lane bridge.

The bridge crosses Kelly Brook, approximately 15 feet below, which runs all year long. The surface of the bridge is dirt, with concrete sides about a foot high. The concrete on the north side of the bridge is cracked. The bridge is posted for a 16-ton weight limit.

From the east side of the bridge, Falls River Road continues to an intersection with Hudson's Pond Road, the School Committee's proposed bus stop location. The distance to be traveled on Falls River Road, from the intersection at Arthur Richmond Road to the intersection at Hudson's Pond Road, is .3 of a mile. Arcadia State Forest, which is available to the public for hunting from November to February, is located to the south of Falls River Road.

Following the School Committee's vote to locate the bus stop for Appellant's children at the intersection of Falls River Road and Hudson's Pond Road, Superintendent Walter G. Gibson notified Appellant that

> [t]his decision was made after a good deal of discussion and review, including yesterday's visit to the site on a school bus by officials from Galloway School Lines, a representative of the School Bus Safety Division of DOT, a Rhode Island State Policeman, and myself.
>
> It is my determination after review of the information and input provided by these individuals that attempting to traverse the bridge on Falls River Road after descending the hill that leads from the end of Arthur Richmond Road would be of danger to the students on the bus, including your children. [Joint Exhibit 1(b)].

Superintendent Gibson testified that the bridge on Falls River Road over Kelly Brook "has less than a foot of clearance on either side of the school bus" and the bus must then "go up a very, very steep hill which turns very sharply to the left." "More importantly," continued the Superintendent, "to come back down that hill which is a dirt road, on which traction is very poor, with a busload of kids, was not a wise thing to do." Superintendent Gibson added that "we're not real comfortable with a drop off of 15 feet to a brook." (Transcript, pp. 37-38).

Positions of the Parties

Appellant contends that the bus stop proposed by the School Committee is unsuitable because of the distance from the home and the unsafe conditions on the roads to be traveled to the stop. Appellant questions the visibility at the bus stop intersection, particularly given that the bus must back up onto a private road in order to turn around. Appellant argues that Falls River Road is extremely unsafe for children when they have to share the road with a large vehicle. Appellant requests that the bus stop "be placed at a location that is consistent with the children's safety," (Tr. 28), most preferably at his driveway on Arthur Richmond Road.

The School Committee contends that the bus stop at the intersection of Falls River Road and Hudson's Pond Road is proper because the section of Falls River Road from that intersection to the intersection of Arthur Richmond Road is unsafe for school buses. The School Committee also asserts that it

has no obligation to locate a bus stop on a private road, i.e., Arthur Richmond Road.

Discussion

Under R.I.G.L. 16-21-1 a school committee is obligated to "provide suitable transportation to and from school" for students "who reside so far from the . . . school which the pupil attends as to make the pupil's regular attendance at school impractical."

In Brown v. Elston, 445 A.2d 279 (R.I. 1982), the Rhode Island Supreme Court found that, in deciding questions under R.I.G.L. 16-21-1, the Commissioner of Education may properly consider, in addition to distance, "a host of factors affecting the practicality of traveling the distance to and from school." Ibid. at 283. According to the Court, the health, safety, and welfare of a child affect the practicality of traveling to and from school and therefore ought to be considered in determining a school committee's statutory obligation. Ibid. The Court made it clear that a school committee cannot rely on financial constraints to avoid its obligation under R.I.G.L. 16-21-1 to provide transportation to students who would otherwise find it impractical to attend school. Ibid.

Based on the the record evidence in this matter, including the hearing officer's observations of the site in issue, we find that it is impractical for Appellant's children to walk to the intersection of Falls River Road and Hudson's Pond Road. Therefore, the School Committee's proposed bus stop at that location is not suitable. We do find, however, that it is practical for

Appellant's children to walk on Arthur Richmond Road and receive transportation from the intersection of Arthur Richmond Road and Falls River Road.[2]

In finding the proposed bus stop impractical, we initially rely on the young ages of Appellant's children, particularly M and L . Daily walks on Falls River Road would present serious risks to the children's safety and welfare. As described in the testimony and observed by the hearing officer on foot and from an automobile, Falls River Road has no sidewalks, is abutted by thick brush and shrubbery, has raised shoulders at several points, is narrow at places, has a sharp turn with restricted visibility, has soft dirt and ruts in several spots, and narrows to a one-lane bridge over Kelly Brook, some 15 feet or so below. These conditions, we might add, are those that exist in the summer. Ice and plowed snow on the side of the road would only add to the hazards the children would encounter on Falls River Road.

The bridge over Kelly Brook clearly presents a safety hazard to young children crossing it on foot. Traction on the edge of the road at the approach to the bridge is poor, and the soil has eroded at the edge of the northern concrete berm leaving a substantial crevice leading directly to the brook below. There is virtually no room to step off the edge of the road near the bridge to avoid an oncoming vehicle without falling down the steep

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2 Arthur Richmond Road is paved, sufficiently wide, and it culminates in a dead end/turnaround shortly after Appellant's residence, thus reducing traffic. We make this finding without reaching the private-road issue.

bank to the brook below. Once on the one-lane bridge, it is bounded by concrete sides only about a foot high.

The testimony herein and the observations of the hearing officer also compel us to agree with the School Committee that the bridge over Kelly Brook cannot be safely crossed by a large school bus. It is evident from the record that the Superintendent and the School Committee made safety considerations the top priority in this transportation matter. While we commend them for doing so, we cannot overlook the fact that under R.I.G.L. 21-1-1 it is the duty of the School Committee to provide "suitable transportation" to students who would otherwise find it impractical to attend school. Thus, the School Committee's responsibility to Appellant's children, for whom we have found the Falls River Road/Arthur Richmond Road location to be practical and the Falls River Road/Hudson's Pond Road bus stop to be impractical, does not end with the inability of a school bus to safely cross the bridge at Kelly Brook.

A situation similar to this arose in the case of Mr. & Mrs. Edward Robinson vs. Coventry School Committee, Commissioner's Decision, February 11, 1983. The Commissioner in that matter found that the school committee was required under R.I.G.L. 16-21-1 to provide transportation to the appellants' children from their home to their respective schools. It was further found that it would be a safety hazard for a bus to be driven to the end of John Franklin Road, i.e., appellants' residence.

Recognizing that it would not be easy for the school committee to provide the required transportation, the

Commissioner stated

> Section 16-21-1 requires school committees to "provide suitable transportation" when the statutory criteria are met (as we have determined that they are in this case); it makes no reference to any particular mode of transportation. Although we agree that an ordinary school bus should not make the trip down John Franklin Road, we believe that the School Committee is nonetheless obligated to find some suitable means for transporting the appellants' children. (Decision, p. 7).

The decision stated further:

> We are acutely aware of the heavy fiscal pressures upon local school committees and upon the taxpayers, and we do not lightly reach a decision which will to any degree add to those pressures. Nevertheless, we are dealing with a clear statutory mandate. The General Assembly has declared that, when the statutory criteria are met (as we have found that they are here), the obligation of providing suitable transportation to and from school is the school committee's, not the parents'. (Ibid. at 7-8).

We find that the statutory criteria have been met in this case. The School Committee therefore has a statutory obligation to provide suitable transportation to Appellant's children from the intersection of Arthur Richmond Road and Falls River Road to and from their respective schools or to and from the Falls River Road/Hudson's Pond Road bus stop. The manner in which the School Committee meets its statutory responsibility, whether it be a new bus route, a smaller bus or van, or some other means, is within the Committee's discretion.

Conclusion

The appeal in this matter is sustained.

The Falls River Road/Hudson's Pond Road school bus stop is impractical for Appellant's children and therefore is not suitable

transportation pursuant to R.I.G.L. 16-21-1.

A school bus stop located at the intersection of Arthur Richmond Road and Falls River Road is practical for Appellant's children. The School Committee is directed to provide transportation to Appellant's children from that location to and from their respective schools or to and from the Falls River Road/Hudson's Pond Road bus stop.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

August 5, 1992