STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

GLENN AND DEBRA S , FRANK AND DENISE B KEVIN AND LESLIE C ET AL. VS. COVENTRY SCHOOL COMMITTEE	DECISION

Held: School Committee must provide transportation to Appellant's children in first and second grades who must walk along Hopkins Hill Road on their way to or from Hopkins Hill Elementary School.

DATE: November 2, 1993

Background

This matter was originally heard on September 3, 1993. On September 10, 1993 we issued an interim order directing the School Committee to restore transportation to Appellants' children pending the Committee's implementation of a number of safety-related measures. The hearing resumed on September 24, 1993, at which time additional evidence was taken concerning the implementation of the safety-related measures and the existing road and traffic conditions in the area.

Superintendent of Schools Raymond E. Spear testified that, as of September 24, 1993, all but two of the safety-related measures had been implemented. The two exceptions concerned the electronically-controlled speed limit signs on Hopkins Hill Road and the installation of stop signs at appropriate intersections throughout the area. Mr. Spear testified that, pending the outcome of this proceeding, barrels with warning lights had been placed on Hopkins Hill Road as an alternative to the expensive electronically-controlled signs. He also stated that the stop signs were on order and would be installed upon their delivery. The subsequent installation of the stop signs was confirmed by Mr. Spear in his letter of September 29, 1993.

Appellants questioned the appropriateness of the barrels on Hopkins Hill Road. They also challenged the type and location of crosswalk warning signs posted on Hopkins Hill Road.

Mr. Paul R. Annarummo of the Rhode Island Department of Transportation testified at the September 24th hearing. Mr. Annarummo, who is the managing engineer of the Department's

traffic engineering and data management, was appointed as an expert witness in this matter. He was asked to view Hopkins Hill Road and Johnson Boulevard and to render his opinion at the hearing with regard to the safety of pedestrians walking along and crossing these roads. (Hearing Officer's Exhibit 1).

Mr. Annarummo's testimony at the hearing addressed the speed limits, crosswalk locations, sign postings, and general road and traffic conditions on Hopkins Hill Road and Johnson Boulevard. Although Hopkins Hill Road and Johnson Boulevard are town roads, and therefore not subject to the state Department of Transportation's jurisdiction, Mr. Annarummo reviewed these those roads in light of well-established traffic control policies and guidelines.

Mr. Annarummo's observations included the following:

(1) The 25 mile-per-hour speed limit in effect for the section of Hopkins Hill Road in dispute is appropriate and adequately posted;

(2) the crosswalk at Hopkins Hill Road and Johnson Boulevard is located in an appropriate place and it has the necessary warning signs posted in proper locations;

(3) the crosswalk at Hopkins Hill Road and Linwood Avenue is located in an appropriate place, but there are insufficient and improperly placed warning signs;

(4) the barrels with warning lights are a permissible interim traffic device which, in conjunction with the existing warning signs, provide adequate notice of the Hopkins Hill Road-Linwood Avenue crosswalk;

(5) the installation of electronically-controlled speed signs

on Hopkins Hill Road would be useful and preferable to the barrels with warning lights;

(6) Hopkins Hill Road directly connects with Route 95 and is located in an area in which several major businesses have been added in recent years;

(7) traffic on Hopkins Hill Road is fairly heavy and travels in excess of the posted speed limit;

(8) Hopkins Hill Road has wide sidewalks;

(9) there are no speed limit signs posted on the section of Johnson Boulevard in dispute, but the prima facie speed limit of 25 miles per hour is appropriate for the road given its residential nature;

(10) it would be appropriate to post speed-limit signs on Johnson Boulevard;

(11) the crosswalk on Johnson Boulevard west of Hopkins Hill School is located in an appropriate place, but it is not marked with the normally-recommended warning signs;

(12) Johnson Boulevard has sidewalks;[1] and

(13) the white lines painted on the sides of Johnson Boulevard provide adequate walking area for pedestrians.

With regard to pedestrian use of Hopkins Hill Road and Johnson Boulevard, Mr. Annarummo concluded that "the roadways are designed and the traffic control devices are placed such that pedestrian

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1 On page 5 of our interim order we stated that "there are no sidewalks on Johnson Boulevard . . ." We correct that statement by noting that the north side of Johnson Boulevard has an asphalt sidewalk for several blocks, followed by a "grass sidewalk," as that term was used by Mr. Annarummo.

activities can be conducted in a safe manner." (9/24/93 transcript, p. 110).

Mr. Annarummo further testified that the term "pedestrian" refers to any person walking along the side of the road. He explained that, in applying his professional expertise, he cannot make distinctions based on the age of the pedestrians nor can he predict the patterns of pedestrian behavior. Mr. Annarummo stated that a traffic control design can create safe conditions for pedestrians, but pedestrian safety cannot be guaranteed if the pedestrian behaves erratically while walking along or crossing the street.

Positions of the Parties

The parties' contentions were fully set forth in our interim order. Briefly, Appellants contend that the young age of their children and the hazards they will encounter while walking on the roads in question require that they be provided transportation to school. The hazards alleged by Appellants include the volume and speed of traffic on Hopkins Hill Road, the location of the Hopkins Hill-Linwood Avenue crosswalk, the walking areas on Johnson Boulevard, snow on sidewalks, and the absence of police patrols shortly before and after 8:00 a.m. due to a shift change. The School Committee asserts that the safety of Appellants' children was fully considered throughout the process by which it arrived at its decision herein, and that the record evidence regarding area road and traffic conditions confirms that these students can safely walk to Hopkins Hill School.

Discussion

Consistent with the testimony of Mr. Annarummo, we find that the road conditions and traffic control devices in the area in dispute make it possible for pedestrians to safely walk to Hopkins Hill Elementary School. Given Mr. Annarummo's testimony concerning his use of the term "pedestrian," we base this finding on the premise that the pedestrians have the maturity and judgment which will enable them to recognize and comply with the traffic control devices which provide for their safety.

We realize, however, that this appeal involves children attending grades 1 through 6. We believe that there are substantial differences in the maturity and judgment of these children depending upon their ages. We find, based on the hearing officer's viewing of this area on 3 separate occasions and the testimony of Mr. Annarummo, that the volume and speed of vehicular traffic on Hopkins Hill Road pose a serious danger to any child who fails to exercise the maturity and judgment needed to safely walk along that road.

Hopkins Hill Road is a direct link to Route 95 for traffic entering and leaving the Coventry-West Greenwich area. It is a means of travel to and from numerous commercial establishments on Tiogue Avenue and several major businesses in the area. It is not uncommon for traffic on Hopkins Hill Road to exceed the speed limit. In light of these facts, it is our belief that children in the first and second grades do not possess the maturity and judgment to walk along this type of road unattended.[2] Given the

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2 The Rhode Island Supreme Court has recognized that the age and (continued on next page)

nature of the traffic on Hopkins Hill Road and the potential risk of serious harm to any child who may absentmindedly wander or impulsively run into that traffic, we find that it is not practical for Appellants' children in the first and second grades to walk along Hopkins Hill Road. We therefore hold that the

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2 (continued) sophistication of children must be taken into account when determining the duty of care owed to them. In Haddad v. First National Stores, 109 R.I. 59, 280 A.2d 93 (1971), the Court made the following statement during its discussion of a landowner's duty of care to a trespassing child:

> . . . the acts of a child are not to be measured by the same standard that is employed when judging the acts of an adult. The degree of care to be exercised by children of tender years, we have said, is that degree of care which children of the same age, education and experience would be expected to exercise in similar circumstances. (citations omitted).
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> Recently, in Kolc v. Maratta, 108 R.I. 623, 278 A.2d 410, we ruled that it was error to give a jury the charge on sudden emergency. In Kolc, the defendant motorist was approaching a group of young school children who were standing on the sidewalk under the supervision of a crossing guard as they waited to cross the highway. The seven-year-old plaintiff ran onto the roadway and collided with the defendant's automobile. We said that it was a jury question as to whether a reasonably prudent person should have perceived the likelihood of a child darting across the street.
>
> Although it is unreasonable to require a landowner to provide for the safety of an unwanted intruder when that intruder is a child, such a fact justifies a closer look at the respective rights of the landowner and those of the young trespasser. A young child cannot, because of his immaturity and lack of judgment, be deemed to be able to perceive all the dangers he might encounter as he trespasses on the land of others. There must and should be an accommodation between the landowner's unrestricted right to use of his land and society's interest in the protection of the life and limb of its young. When these respective social-economic interests are placed on the scale, the public's concern for a youth's safety far outweighs the owner's desire to utilize his land as he sees fit. Ibid. at pp. 63-64.

We find that the concerns expressed by the Court in Haddad are equally applicable here.

School Committee must provide transportation to any of Appellants' children in the first or second grade who must walk any distance on Hopkins Hill Road on their way to and from Hopkins Hill School.

We also hold, based on Mr. Annarummo's testimony, that the safety of Appellants' children who walk to school requires that the School Committee take prompt action to add and relocate warning signs at the Hopkins Hill Road-Linwood Avenue crosswalk, install electronically-controlled speed limit signs on Hopkins Hill Road, and post speed limit and crosswalk warning signs on Johnson Boulevard.

Conclusion

The appeals are sustained to the extent that the School Committee must provide transportation to Appellants' children in the first or second grade who have to walk any distance along Hopkins Hill Road on their way to or from Hopkins Hill Elementary School. The School Committee also must make arrangements with appropriate town and state officials to install and relocate, where necessary, speed limit and crosswalk warning signs on Hopkins Hill Road and Johnson Boulevard as discussed above.

The appeals are denied in all other respects.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: November 2, 1993

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RULING ON REQUEST FOR CLARIFICATION

On November 2, 1993, we issued a decision in this matter.

By letter dated November 22, 1993, the Coventry School Committee requested that a hearing be conducted "for the purpose of providing greater clarification to the meaning and intent of the Commissioner's statement" in the decision that "the School Committee must provide transportation to Appellants' children in first and second grades who must walk along Hopkins Hill Road on their way to or from Hopkins Hill Elementary School."

Pursuant to the School Committee's request, a hearing was held on December 15, 1993.

At the hearing the School Committee sought clarification of the November 2, 1993 decision by submitting six specific questions to the hearing officer. Appellants also sought clarification of the decision at the hearing.

The questions submitted by the parties, and our responses to those questions, are as follows:

School Committee

1. Does this Decision mean that an appellant's first or second grade child living on Hopkins Hill Road must be picked up at their door to avoid **walking along** Hopkins Hill Road to reach a bus stop or crosswalk?

On pages 6-7 of our decision, we stated that "it is not practical for Appellants' children in the first and second grades to walk along Hopkins Hill Road. We therefore hold that the School Committee must provide transportation to any of Appellants' children in the first or second grade who must walk any distance on Hopkins Hill Road on their way to and from Hopkins Hill School." Consequently, Appellants' first or second grade children cannot walk along Hopkins Hill Road to reach a bus stop or crosswalk. The School Committee must provide transportation to and from the child's residence if the child must otherwise walk along Hopkins Hill Road.

2. Does this Decision prohibit the Coventry Public Schools from requiring appellants' first and second grade child(ren) to walk to school if, to do so, the child(ren) would be expected to walk a distance of as few as 15 feet on a Hopkins Hill Road sidewalk to reach the nearest crosswalk?"

As set forth in #1, the School Committee must provide transportation to any of Appellants' children in the first or second grade who must walk <u>any</u> distance along Hopkins Hill Road. The decision therefore prohibits the Public Schools from requiring Appellants' first and second grade children to walk to school if, to do so, the children must walk <u>any</u> distance along Hopkins Hill Road.

3. Does this Decision give recognition to the fact that, to avoid requiring a child to walk 264 feet on a Hopkins Hill Road sidewalk, the child could, instead thereof, be required to walk 1100 feet on an alternate route, without sidewalk, to reach a crosswalk?

In a proceeding before the Commissioner of Education, a "fact" is established by the introduction of competent evidence into the record. With regard to the scenario presented in this question, we found on pages 5-7 of our decision that it is safe for pedestrians to safely walk in the area in dispute except for Appellants' first and second grade children who must walk along Hopkins Hill Road. These children could therefore be required to walk alternate routes in the area in dispute, provided that they do not walk any distance along Hopkins Hill Road and the alternate routes remain within the school district's permissible walking distances to school.

4. Does this Decision give recognition to the fact that there are first and second grade children walking on Hopkins Hill Road on the East side in compliance with the School District recommended walking route and in fact, walking in some cases further distances than would be required of most living on the West side (appellants' side)?

Again, "facts" are established by the introduction of competent evidence into the record. As for the scenario presented in this question, the walking routes of students who are not parties to this appeal are not dispositive of the question of whether it is practical for Appellants' children to walk to school.

5. Does this Decision recognize that in the name of equity and the use of good judgment, that it would be considered equally unsafe (Commissioner's determination) to expect children to walk on one side of the road but not the other? In fact, does not a decision to totally prohibit walking of first and second graders on the West side spell the same for the East side?

In performing the statutory duty to "decide such controversies as may be appealed to him or her from decisions of local school committees," [R.I.G.L. 16-60-6(9)(h)], the Commissioner of Education rendered a decision in this matter which constitutes his resolution of the particular issues raised by the appeal filed by Appellants. Issues beyond the scope of the appeal herein will be resolved if, and when, an appeal pursuant to R.I.G.L. 16-60-6(9)(h) is filed raising those issues.

6. Does this Decision mean that first and second graders living on or near roads throughout Coventry and the State of Rhode Island, with traffic conditions equal to or greater than those of Hopkins Hill Road, cannot be expected to safely traverse such roadways and thusly, require transportation services?

Decisions of the Commissioner of Education serve as precedent for future cases. Each case is decided on the basis of its particular facts. If precedent is applied correctly, cases with similar facts will have similar results.

Appellants

1. Do the warning lights on the barrels used on Hopkins Hill Road have to be flashing?

The decision states that "barrels with warning lights" are a permissible traffic device. The language "with warning lights" is not superfluous and it is therefore expected that the lights are in operation.

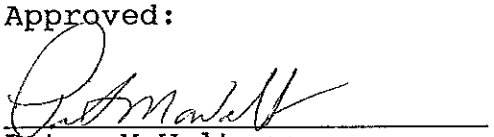
2. Is the hearing officer aware that a 7-year old child, such as the one involved in the Kolc v. Maratta case, can be in the third grade?

The decision classifies Appellants' children by grade level, not age.

The responses set forth above constitute our ruling on the request for clarification.

Paul E. Pontarelli
Hearing Officer

Approved:



Peter McWalters
Commissioner of Education

Date: April 6, 1994