

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

ROBERTA CARVALHO et al.  
V.  
BARRINGTON SCHOOL  
COMMITTEE

DECISION

Held: The transportation to Bay View Academy provided to these two highschool students is inconvenient, but not unsuitable. The Barrington School Committee has met its statutory obligation to provide transportation under R.I.G.L. 16-21.1-2(b).

### Travel of the Case

Several parents filed letters of appeal with Commissioner Peter McWalters with regard to this year's transportation arrangements for students who reside in Barrington and attend Bay View Academy in East Providence, Rhode Island. Hearings were held by the undersigned on October 25 and November 1, 1993. Only two of the appellants<sup>1</sup>, Mrs. Carvalho and Mrs. LaRiviere proceeded to give evidence and argument at the hearings - Mrs. Carvalho through her attorney and Mrs. LaRiviere appearing pro se.

Transcripts were received and memoranda were filed, a process completed on November 29, 1993.

Jurisdiction to hear this appeal lies under R.L.G.L. 16-21.1-5. The issue of whether this dispute was or is in the nature of an interim order request was not addressed by the parties. Nonetheless, since the issue involves the adequacy under law of the transportation provided by the school district, both the hearing and decision process have been expedited.

### Findings of Relevant Facts

- Roberta Carvalho is a resident of the town of Barrington. Her fifteen (15) year old daughter is enrolled in the tenth grade at Bay View Academy in Riverside. Tr. Vol. I p. 8
- Kathryn LaRiviere is a resident of the town of Barrington. Her fifteen (15) year old daughter is also a high school student at Bay View Academy. Tr. Vol. I p.27
- Eighteen (18) Barrington residents are enrolled at Bay View. Tr. Vol. I p. 39
- This year, Bay View students were initially provided with transportation to school in a town-owned minibus from a central location, i.e. the Barrington Public Library. Appellant's Ex. I.

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<sup>1</sup>The named appellants in this matter are Roberta Carvalho, Rosemarie Gagnon, George and Germaine Olear, and Paul LaRiviere (his wife, Kathryn LaRiviere appeared at the hearings).

- In previous years, transportation provided for Bay View students by the school district has been in the form of neighborhood pick up by the minibus. Tr. Vol. I pp. 10, 27, 38
- The change in transportation provided to Bay View students this year was occasioned by the district's obligation to transport two students who enrolled at Fatima High School in Warren. Tr. Vol. I p. 40, Vol. II p 22
- Establishing one pick-up at the central location (instead of scattered neighborhood pick up points), for Bay View students enables the district to use the same minibus to transport the Fatima students earlier in the morning, and use the same bus to transport special education students later in the morning to the various schools they attend. Tr. Vol. II pp. 5-9
- Upon receipt of requests from some parents of Bay View students to have the previous years' transportation system reinstated, the acting superintendent established a "compromise" - an additional stop by the minibus at Barrington High School to pick up any Bay View students who prefer to get on the bus at that location. Tr. Vol. I p 42
- At present the mini bus picks up Bay View students at the Barrington Public Library at 7:40 a.m.; it makes an additional stop to pick up any Bay View students waiting at Barrington High School at 7:45 a.m. From there, the bus proceeds along route 114, arriving at Bay View at 7:56. Tr. Vol. II pp. 7-9
- Both the Carvalho child and LaRiviere child may take the Barrington High School bus to the highschool (pick up 7:07 a.m.) if they do not wish to walk the distance from their homes to Barrington High School. Tr. Vol. I p. 42
- If the Carvalho child or LaRiviere child take the bus to Barrington High School, they must wait in the lobby of the highschool from approximately 7:20 a.m. to 7:45 a.m. when the minibus would then pick them up and take them to Bay View. Tr. Vol. II pp. 20-21
- Mrs. Carvalho lives 1.5 miles from Barrington High School, 2.5 miles from Barrington Public Library, 3.0 miles from Barrington Bay View Academy.
- Mrs. LaRiviere lives approximately 2.0 miles from Barrington Public Library (Tr. Vol. I p. 28). The record does not indicate the distance from the LaRiviere home to Barrington High School; however, the letter of appeal filed by Mr.

LaRiviere states that distance is 1.3 miles. (See letter of appeal dated September 7, 1993).

- If the Barrington minibus driver were to continue to provide morning transportation to the same group of students that she does now, (i.e. Fatima, Bay View, and Barrington special education) and re-route the bus in order to do a neighborhood pick up for the Carvalho and LaRiviere children, who live in the northwest corner of the town, she would have to start her morning run earlier. The two Fatima students would then arrive at school fifty (50) minutes before the starting time. Tr. Vol. II p. 16, S.C. Ex. 3
- On return from Bay View at the end of the school day, the bus driver drops off the eight children she usually transports at or near their homes. Tr. Vol. II p 28, Vol. I pp. 57-58
- Since approximately the first week of school, only one child has been using the transportation to Bay View provided by the school district in the morning. That child gets on the bus at the Barrington Public Library. Tr. Vol. II p28
- Eligibility for bus transportation in Barrington is established by a 1.5 mile walking distance for high school students. Tr. Vol. I p. 42

#### Position of the Parties

##### Roberta Carvalho:

Through her counsel, Mrs. Carvalho argues that the transportation provided by the district in prior years was suitable and the present system is not. Her attorney points out that the 2.5 miles the Carvalho child would have to travel to the Barrington Public Library and the lack of visibility of that site from County Road make it unsuitable. With regard to the alternative pick up site at Barrington highschool, the appellant argues not only must her daughter leave very early to catch the highschool bus (7:07 am), but she must then wait in the lobby of the highschool for another twenty-five minutes before the minibus pick up for Bay View.

Counsel for appellant Carvalho also argues that by leaving five (5) minutes earlier in the morning to pick up the Fatima students i.e. at 7:10 am, the mini bus

could change its route to Bay View from Barrington High School to travel up Lincoln Avenue. After picking up the Carvalho and LaRiviere children, the bus could then continue along Willett Avenue to Pawtucket Avenue to reach Bay View Academy. It is argued that the driver could still return to Barrington, pick up the remaining children to be transported and drop them off at their respective schools in time for class.

Kathryn LaRiviere:

At the hearing, Mrs. LaRiviere joined with Mrs. Carvalho in arguing the unsuitability of both of the pick-up sites established for Bay View children. She noted that students attending schools in Barrington do not have to change buses to get to school in the morning. She has chosen to drive her daughter to school each morning, rather than utilize the bus transportation provided by the district. Neither site, she emphasized, was within a reasonable, safe walking distance from her home.

Barrington School Committee

In his memorandum counsel for the school committee argues that the transportation arrangements made for Bay View students this year are "perfectly adequate under the law ". (Memo p. 4) The previously provided "luxury" of virtual door-to-door service has given way to the need to provide for the transportation of two new students who attend Fatima High School in Warren. He argues that the present system, with the addition of the pickup site for Bay View students at Barrington High School, is the only way that the transportation needs of all of these students can be accommodated. The district has met its statutory obligation to provide safe transportation to students eligible for such services.

Decision

The Barrington School Committee has demonstrated on the record that it has made the most efficient use of its town-owned minibus to transport a large

group of children to their schools in the morning. The testimony showed that the transportation director carefully reviewed her transportation obligations for this school year, weighed the competing demands of the group to ensure the students would be transported to school on time and as conveniently as possible, given the resources she has on hand. It is clear on the record that the school committee is doing its best at the present time to meet these transportation demands with its present resources in a way which treats students fairly.<sup>2</sup>

Equally clear from this record is the fact that both of the appellants have raised reasonable and supportable objections to the two transportation options offered by the district for their children. The first option, bus transportation from the Barrington Public Library presents a walking distance for each child in excess of that permitted for highschool children. Acting Superintendent Malafronte testified that this walking distance, as established by policy of the Barrington School Committee,<sup>3</sup> is one and one half (1.5) miles.

R.I.G.L. 16-21-1 entitles students to transportation to schools located within a school district. R.I.G.L. 16-21.1-1 et seq. entitles students to transportation when they attend non-public non-profit "regionalized" schools located outside district lines, but within an established "region" of the state. Transportation to the appellants' children is provided under the latter statute. Both statutes establish the same standard of remoteness for eligibility for transportation.<sup>4</sup> Both statutes

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<sup>2</sup>We disagree with the argument advanced by Mrs. Carvalho's attorney that the Fatima students could and should be dropped off five (5) minutes earlier to permit a neighborhood pick up for the Carvalho and LaRiviere children. The record indicates that the bus would have to leave fourteen (14) minutes earlier. We would note that last year the bus arrived at Bay View at 8:00 am not 8:04 as stated in the appellant's memorandum. See S.C. Ex. I. We would also predict that transporting students to Fatima High School any earlier would probably result in a claim that such transportation does not meet statutory requirements.

<sup>3</sup>Such policies in Rhode Island are left to the discretion of local school committees.

<sup>4</sup>See the discussion of the importance of this fact in the decision of the Court of Appeals in Members of Jamestown School Committee v. Schmidt, 699 F 2d 1 (1st Cir.), cert. denied 464 U.S. 851, 104 S. Ct. 162, 78 L. Ed. 2d 148 (1983). In this decision the Court of Appeals found that since the same standard of remoteness did apply to in-district and "regional" school students, 16-21.1-1 provided for the health, safety and welfare of all school children in a "neutral" manner. Such benefit was provided in common to all school children who resided in the district.

require transportation for children who live "so far" or "at such distances" from the schools which they attend as to make it impractical or hazardous to require them to walk to school. (16-21-1 and 16-21.1 -1). The first transportation option, located at 2.5 and 2.3 miles from the appellants homes, establishes a different standard of remoteness from that of highschool students attending in-district schools. Thus, the initial transportation provided to the daughters of Mrs. Carvalho and Mrs. LaRiviere did not comply with statutory requirements. By local policy, 1.5 miles is the distance highschool students must walk to school.

The second option provided by the school committee is a bus from Barrington High School to Bay View at 7:45 in the morning, arriving at Bay View at 7:56 am. To get to Barrington High School, these students may either walk (1.5 and 1.3 miles, respectively) or take the 7:07 bus from their neighborhood to Barrington High School. If they take the bus, they must wait twenty to twenty-five minutes in the highschool lobby (from 7:20 or so until 7:45 am) at which time the mini bus will transport them to their own school. In either case (walking or taking the 7:07 a.m. bus) their total commuting time from home would be approximately forty-five to fifty minutes.

In determining whether this second transportation option complies with statutory requirements, our starting point must, of course, be the language of the statute, which provides that an eligible student:

shall be provided with bus transportation to the school or facility which the pupil attends, within the region in which the pupil resides, by the school committee of the city or town within which the pupil resides. R.I.G.L. 16-21.1-2. (b).

Implicit in this statute is the notion that the transportation provided to eligible students must be suitable. In fact, in the corresponding section of R.I.G.L. 16-21-1(a) in describing the transportation services to be provided within the district, our

Legislature explicitly uses the word "suitable". See R.I.G.L. 16-21-1 (a)<sup>5</sup>. There is no question that transportation is being provided under "option 2". The precise issue in this case is whether the transportation provided is suitable.

We agree with the school committee that neither the health nor the safety of the appellants' daughters is jeopardized by the transportation arrangement from Barrington High School at 7:45 each morning. However, we disagree with the school committee's argument that the factor of convenience (which is implicated by the time involved in the students' commute to school) is irrelevant to the issue of whether the transportation is "suitable".<sup>6</sup> An extremely long commuting time to school, especially for young children, could impact negatively on their welfare. Prior decisions of the Commissioner have been responsive to arguments that extremely long commuting times are unacceptable under R.I.G.L. 16-21-1.

The school committee, with regard to the convenience factor, admits that this year's arrangements are "less convenient" for Bay View students than in prior years. Although the walking distance to the highschool is within the acceptable walking distance limits as established by the school committee, the students are commuting forty-five minutes to a school which is only three (3) miles away. Although it is a very close question, we find that the level of inconvenience, albeit substantial is not so extreme as to render this transportation unsuitable under the statute.<sup>7</sup> We make this judgment primarily based on the fact that the students in question here are of highschool age.

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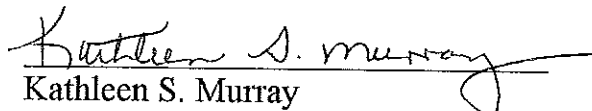
<sup>5</sup>Implicit also in 16-21.1-2 (b) is the obligation of the school district to provide transportation home from school, again explicitly stated by our Legislature in describing transportation rights of students attending schools within a school district.

<sup>6</sup>Convenience has been considered in many appeals to the Commissioner on transportation issues. See Noack v. Barrington School Committee, April 5, 1989; Grenier v. Exeter-West Greenwich Regional School District Committee May 4, 1987; Belanger v. Exeter-West Greenwich Regional School District Committee, April 2, 1986.


<sup>7</sup>We do not address in this appeal the issue of whether a violation of the statute is posed by disproportionate levels of inconvenience imposed on students (such as the appellants) provided transportation to regional schools as compared to those children provided transportation within the district. The record contains no evidence to support such a claim. Also not addressed is the issue of



The appeals of Mrs. Carvalho and Mrs. LaRiviere are denied and dismissed.

  
Kathleen S. Murray  
Hearing Officer

Approved:

  
Peter McWalters  
Commissioner of Education

January 4, 1994  
Date

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whether or not the inconvenience imposed on the Carvalho and LaRiviere children violates any policy of the Barrington School Committee.