

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

ROBERT AND ANN MARSHALL, et. al.

V.

PORTSMOUTH SCHOOL COMMITTEE

DECISION

Held: Student is entitled
to transportation

The two elementary school students in this case live on Prudence Island where they attend elementary school with four other students. During the 1993-94 school year Student A was seven years old and attended second grade. He lives about 2.7 miles from the school. During the 1993-94 school year Student B was six years old and attended first grade. He lives just over a mile from the school. Prudence Island is part of the town of Portsmouth. Under the regulation of the Portsmouth School Committee elementary school students living on the "main land" are eligible for school bus transportation provided that they live over one half mile from the school they attend. The Portsmouth School Committee, however, has declined to provide such transportation to these two students, or for that matter, to provide transportation to any student living on Prudence Island.

This case may stem from the fact that until last year residents of Prudence Island were not required to register or insure cars used exclusively on the Island. A change in enforcement policy, however, now seems to have resulted in a "transportation shortage" on the island.

With regard to school transportation the laws of Rhode Island state as follows:

16-21-1. Transportation of public and private school pupils. -- (a) The school committee of any town shall provide suitable transportation to and from school for pupils attending public and private schools of elementary and high school grades, except such private schools as are operated for profit, who reside so far from the public or private school which the pupil attends as to make the pupil's regular attendance would otherwise be impracticable on account of physical disability or infirmity.

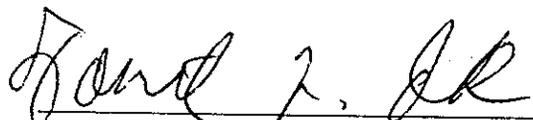
In deciding whether it would be impractical for a student to attend school without transportation the Rhode Island Superior Court has, in Brown v. Elston, 445 A.2d 279 (R.I. 1982), directed us to consider three factors:

1. the age of the child
2. the distance walked
3. the hazard along the roadway.

In the present case the hazards along the roadway are relatively minor. While there are no sidewalks and while the road has many pot holes, there is very little traffic. We therefore look to the ages of the students and the distance they must walk as being the determinative factors. This coming school year Student A will be attending the third grade. We find it to be impractical for Student A to walk 2.7 miles to school. Student B will be attending second grade this year. We find that it would be impractical for Student B to walk over one mile to school.

Conclusion

Student A and B are entitled to receive transportation.


Forrest L. Avila, Hearing Officer

Approved:


Peter McWalters, Commissioner

August 19, 1994
Date