

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

MR. AND MRS. ANDREW H,
V.
EAST GREENWICH SCHOOL
COMMITTEE

DECISION

Held: Length of bus ride is
allowable.

Date: July 12, 1995

John Doe is a five year old kindergarten student in the East Greenwich School district. He attends Sunrise Academy in Scituate, Rhode Island which is about 9.5 miles from his home. The Sunrise Academy is a non-sectarian school. Under the states cross-district bussing law East Greenwich is required to bus John to the Academy. G.L. 16-21.1-1. To take advantage of the transportation offered by the district John Doe must leave his house at 6:55 in the morning and board a bus containing mostly high school students. This bus takes him to a pick-up point where he transfers to a bus operated by Warwick which then takes him to the Sunrise School. The trip takes an hour and 20 minutes and gets John Doe to the Sunrise School approximately 20 minutes late. John's parents object to this situation. They contend that the bus ride is too long, complex and late to comply with the school districts obligation to provide John Doe with transportation.

The record establishes that the public school districts and private regional schools within the transportation area have not attempted to coordinate their school calendars and start times to facilitate the provision of regional transportation services. We think this is a crucial omission.

The General Laws of Rhode Island divide the state into five (5) regional school bus transportation areas. G.L. 16-21.1-2. A school district within any given transportation area must provide transportation to any student who is attending a "regional school" located in the transportation area served by the school district. G.L. 16-21.1-4. Under Rhode Island law almost any private school can designate itself to be a regional school. Cumberland School Committee v. Harnois, 499 A.2d 752 (R.I. 1985).

The purpose of this regional school bus transportation law is stated to be as follows:

16-21.1-1. General purposes. -- This chapter shall be construed and applied to create a state plan for the bussing of pupils beyond city or town limits, in

recognition of the legislative policy to encourage the establishment of and continuance of consolidated and regional schools, to provide a unified statewide busing service to afford to pupils who attend public schools the opportunity at the election of the school committee of the city or town in which the pupils reside, to attend a public school, whether full time or part time, outside of the city or town which provides a program or curriculum not available within the city or town in which the pupil resides, as authorized by §16-3.1-1 et seq., to afford to handicapped children equal educational opportunity, to afford bus transportation to pupils who attend non-public non-profit schools which are consolidated, regionalized, or otherwise established to serve residents of a specific area within the state, and who may be counted for purposes of reimbursement to cities and towns under the state aid formula provided by §16-7-22 et seq., to conserve valuable natural resources by reducing the number of vehicles necessary to transport pupils to school, and to provide for the transportation of public school students who attend schools located outside of the city or town in which they reside, to protect the health, safety, and welfare of pupils who live at such distances from the schools which they attend as to make it impractical or hazardous to require the pupil to walk to school.
(Emphasis added)

It is therefore clear that we must construe and "apply" this statute so as to "...create a state plan for the busing of pupils beyond city or town limits" and so as to provide a unified statewide busing service. A major purpose of this busing service is "...to conserve valuable natural resources by reducing the number of vehicles necessary to transport pupils to school". G.L. 16-2.1-1.

In analyzing this statute we must start from the premise that it must be construed and applied to create "a unified busing service" -- not an individualized taxi service. Carvalho v. Barrington, Commissioner of Education, July 19, 1989.

Moreover the law contemplates that school committees "may enter into cooperative agreements with other school committees for the purpose of conforming to the requirements of this chapter". G.L. 16-21.1-4.

Although most Rhode Island regional schools are sectarian in nature there are no constitutional problems with public and private school officials meeting to discuss regional bussing concerns. In Member of Jamestown School Committee v. Schmidt, 699 F.2d (1993) the First Circuit Court of Appeals wrote:

(10) The record does not persuade us that the increase in administrative contacts is as yet a problem of constitutional magnitude. The district court found that the statute entailed "significant interaction between public school and sectarian school officials in order to provide for proper scheduling and routing of buses, necessary adjustment for holidays or special events, and so forth", and "to deal with discipline problems". *Id.* at 1049. We are not persuaded, however, that these contacts, standing alone, invalidate the program. Unlike teacher salaries or direct grants, which can be diverted to direct grants, which can be diverted direct sectarian purposes, bussing is by nature a "secular, neutral, (and) non-ideological service()". Lemon v. Kurtzman, *supra*, 403 U.S. at 616-17, 91 S.Ct. at 2113. Consequently, it involves neither forbidden state intrusion into religious matters, nor "comprehensive, discriminating, and continuing state surveillance" to ensure its confinement to secular use. *Id.* at 619, 91 S.Ct. at 2114. Rather, the contacts are ministerial or mechanical in nature, and concern administrative, not religious, matters. Comparable contacts are intrinsic to virtually all bussing programs, and appellees have not shown that the contacts at issue here are different in kind or degree from the contacts implicitly upheld by the Supreme Court in bussing cases from Everson to Springfield and explicitly approved in Wolman v. Walter, *supra*. See generally Springfield School District v. Pennsylvania Department of Education,

supra, 483 Pa. at 563-66, 397 A.2d at 1166-68 for a good discussion of this issue.

However constitutional problems with the regional busing law could develop if the busing program which it mandates were to provide disproportional benefit to students in private sectarian schools. In Members of Jamestown school Committee v. Schmidt, supra the Court stated:

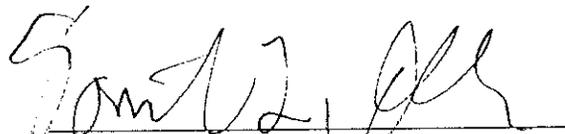
Cromwell Property Owners Ass'n v. Toffolon, supra, 495 F.Supp. at 923, that "(a)t some point, the cost of inter-district transportation for students attending sectarian schools may become so grossly disproportionate compared to the ordinary expense of public school busing that the "indirect" benefits in regionalization accruing to sectarian institutions will rise to a constitutionally significant level" and have as their primary effect the advancement of religion. We agree also with the Pennsylvania Supreme Court that constitutional limits are exceeded "if the cost of transportation for the students attending sectarian schools (is) so disproportionate that it bec(o)me(s) apparent that the transportation provided to the public school youngster (is) merely a ruse to confer a benefit to the sectarian school pupil." *Springfield School District v. Pennsylvania Department of Education*, supra, 483 Pa. at 558 n. 9, 397 A.2d at 1164 n. 9. To these observations we add that inordinately long-distance busing calls into question the secular health, safety and welfare purposes cited in busing's support, for at some point, the increased hazards of travel over increasing distances and for increasing times may outweigh the benefits of the bus.

We note that the school the student is attending in this case, the Sunrise Academy, is not a sectarian school - but we do not believe that the statute at issue (G.L. 16-21.1-2), with its command for a uniform system of transportation, would allow us to permit a difference between the transportation delivered to secular schools and to religiously affiliated schools.

In the present case we find merit in the school committee's argument that it would be excessively costly to hire a mini-bus to drive this individual student directly to school. This is too close to the "taxi service" not allowable under G.L. 16-21.1-2. While the case is a close one we find that the school bus ride at issue, given its statutory context, is not excessive in length. Given the fact however that the record shows little attempt at coordination between area school districts and area regional schools with regard to scheduling we see nothing amiss in requesting the school committee to confer with its area partners in an effort to attempt to shorten this bus ride if reasonably possible.

Conclusion

We find the bus ride at issue to be of acceptable duration but the school committee is requested to confer with others to try to establish one which is shorter and more timely.


Forrest L. Avila, Hearing Officer

Approved:


Peter McWalters, Commissioner

July 12, 1995
Date