

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

LORI ANN B.

V.

PROVIDENCE SCHOOL BOARD

DECISION

Held: The appellant's children are entitled to transportation to and from school under R.I.G.L. 16-21-1.

Date: February 14, 1996

### Travel of the Case

Lori Ann B                      who lives at                      Atwells Avenue in Providence, Rhode Island filed an appeal with Commissioner Peter McWalters on November 2, 1995. The matter was assigned on November 21, 1995 to the undersigned as the designated hearing officer.

The matter was heard on December 1, 1995 and the record closed upon receipt of the transcript on December 14, 1995.

Jurisdiction to hear the case arises under R.I.G.L. 16-39-1.<sup>1</sup>

Issue: Are the appellant's children entitled to suitable transportation to school under R.I.G.L. 16-21-1?

### Findings of Relevant Facts

- Ms. Lori Ann B                      resides with her husband and five children at                      Atwells Avenue in Providence, Rhode Island. Tr. pp. 6-7.
- Three of the B                      children are enrolled at the George J. West School located on Beaufort Street in Providence, R.I. Tr. p. 7.
- Two of the children, Kaylor (age 8) and Kristen (age 7) are in the second grade at West; Jessica, age 5, attends kindergarten there in the afternoon.
- The B                      have two other children, one who is four years old who attends the Head Start Program in the afternoon and a twenty-month old child who is at home. Tr. pp. 6-14; letter of appeal dated November 2, 1995.

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<sup>1</sup>The record does not indicate whether or not this matter was ruled upon by the Providence School Board, prior to hearing at the Commissioner's office. We assume that counsel for the school board would have raised this issue if it were anticipated that resolution at the local level were possible, or if he wished to raise the issue of the school board hearing as a jurisdictional prerequisite to hearing by the Commissioner.

- Mr. B is disabled and confined to bed for much of the day. He leaves the house for the most part only to see his doctor on a monthly basis. Tr. pp. 12-14. He is, however, able to care for the two younger children in the house for brief periods of time when Mrs. B must go out. Tr. p. 13.
- Under the policy of the Providence School Board transportation to and from school is provided to children in Kindergarten through grade six (6) who live in excess of one (1) mile from school, with some limited exceptions.<sup>2</sup>
- The B's house at Atwells Avenue is just under one mile from the George J. West School.<sup>3</sup>
- For three years prior to this year the B children received bus transportation to and from the George J. West School. Tr. p. 6. Last year bus transportation to the B children, and other students who were identified as living within the mile radius of the school, was provided because the number of buses allocated for that year had not been entirely used up, and they were used to "aid and assist some trouble spots" that has been identified. Testimony of Dr. Robert A. DeRobbio, Tr. pp. 21-22.
- This year, because of a substantial increase in student population in Providence, and an increase in elementary students living more than one mile from school, the entire 114 buses budgeted for are being used to transport students who live further than one (1) mile, or who otherwise qualify for bus transportation under school board policy. Tr. pp. 22-23.
- Mrs. B presently walks her children the .9 mile to and from school, making this trip in the morning with the two who are in second grade, in the middle of the school day with her child who attends the afternoon kindergarten and again at the end of the school day. Walking time each way is twenty to twenty-five minutes each way, for a total walking time for each child of approximately fifty (50) minutes and a total walking time for Mrs. B of one and one-half (1.5) hours. Tr. pp. 7-8.

<sup>2</sup>A copy of the school board's policy was forwarded to the hearing officer by counsel for the School Department, at the request of the hearing officer. It is included in the record as hearing officer Ex. A.

<sup>3</sup>There was no testimony regarding the exact distance of the B house from the school. A view of the route taken by the hearing officer indicated an odometer reading of .9 mile distance from school. A radius map submitted by the School Department showed that the house is clearly within a one mile radius from the school.

- The B children walk up Atwells Avenue to Academy Avenue, then go down Academy and cross Academy Avenue at or near Brooks Drug store. They then proceed up Beaufort Street to Mount Pleasant Avenue where they cross the street to the school. Tr. p. 10.
- There is a crossing guard outside George J. West at the intersection of Beaufort Street and Mount Pleasant Avenue; a crossing guard is at the entrance to Blessed Sacrament School on Academy Avenue in the morning and at the end of the school day.<sup>4</sup> Tr. p. 51
- That part of Atwells Avenue which is traversed by the B children is a major thoroughfare in the City of Providence, with moderate to heavy traffic during all relevant times of the day. View of the hearing officer 1/25/96. Academy Avenue is a well-traveled street, in a mixed commercial/residential area in the City of Providence; Beaufort Street is a steep hill in a residential area of Providence, with very light traffic during the relevant times of travel. View 1/25/96.
- At the time of hearing, there was no bus which could have accommodated the B children. The buses traveling to George J. West were at capacity at the time of hearing (Tr. 30, 46-47) and the cost of an additional bus would be fifty-six thousand (\$56,000) dollars.

#### Decision

Rhode Island law requires that school districts provide "suitable transportation" to and from school for students who reside so far from school that their regular attendance would otherwise be impractical. R.I.G.L. 16-21-1. The Rhode Island Supreme Court has interpreted this statutory language to require consideration not just of distance, but of "a host of factors affecting the practicality of traveling the distance to and from school". Brown v. Elston, 445 A.2d 279, 283 (R.I. 1982). In considering the factors enumerated by the Supreme Court, i.e. the age of the

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<sup>4</sup>No crossing guard was observed at Blessed Sacrament at the time of travel to the afternoon Kindergarten at West, i.e. between 11:45 a.m.-12:15 p.m.

children, the distance and route they would walk, and the existence of safety hazards, the determination must be made as to whether it would be impractical for a student to go back and forth to school on his own. Brown v. Elston, supra at 283. Despite a natural inclination to defer to the judgment of local school officials who make the day-to-day assessments of the safety of school transportation arrangements, the obligation at this level is to make a de novo determination of this issue.<sup>5</sup>

Based on the record of this hearing, it has been established that all three of the B children are entitled to suitable transportation to and from the George J. West School. In drawing this conclusion the following factors are substantially determinative:

- (1) the age of the children - all three of these children are very young - ages 5,7, and 8.
- (2) a walking distance of nine tenths (.9) of a mile, much of which is along a heavily traveled road, (Atwells) and the last segment of which is a very steep hill (Beaufort Street).
- (3) the necessity for the children to cross a busy intersection of Atwells and Academy Avenues or Academy Avenue and Beaufort Street.

Given the ages of these children, we find that they lack the maturity, judgment, and in the case of the kindergarten-age child the physical stamina to travel safely along the entire route they must travel to their elementary

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<sup>5</sup>See footnote 6 LaChappelle v. Charlestown decision of the Commissioner dated September 7, 1983 and footnote 9 Taboada v. Hopkinton, decision of the Commissioner dated June 27, 1985. Brown v. Elston, supra also cites the duty of the Commissioner to make a de novo decision in appeals from decisions of school committees, at page 283.

school. We would note Mrs. B's testimony that all three of the children get so tired that they cry on the street on their way to school. The last leg of their route of travel to school - Beaufort Street - is a challenging hill even for an adult.<sup>6</sup> If these children were somewhat older, one would expect that their physical strength and capacity to exercise judgment would enable them to travel this substantial distance, cross the necessary streets, and to appreciate fully the hazards posed by the traffic on Atwells and Academy Avenues. At their present ages, the length and route of travel poses an unreasonable risk of harm to these students.<sup>7</sup>

The fact that in three prior years the B children received transportation to and from school indicates that at the local level there has in the past been both recognition of and response to the dangers inherent in their travel to school. Suitable transportation would not have been provided to them without such a finding at the district level. We are not unmindful of the testimony concerning the seven hundred and fifty student - increase this year, and other factors contributing to a substantial increase in

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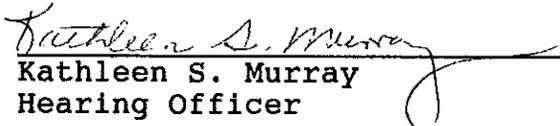
<sup>6</sup>What is remarkable is that Mrs. B testified only as to her concerns for the welfare of her children and that of her disabled husband. At the hearing she did not rely on the fact that she herself spends one and one-half hours per day walking this route.

<sup>7</sup>In past decisions we have noted that it is not possible to eliminate all risk of harm to young children walking to and from school in any locality. We do not read our statute to require elimination of all risk of harm. However, we do not believe a showing of extreme danger is required to demonstrate a need for bus transportation or relocation of a bus stop. An unreasonable risk of harm is the standard we have used and use in this case. See the discussion in Bauerle v. North Kingstown School Committee, decision of the Commissioner dated October 1, 1992 at page 3-4.

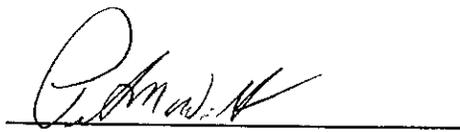
needed transportation services. The district's ability to pay (or inability as has been argued here by the School Board) may not be considered as a factor in relieving the school board of its statutory obligation to provide such transportation. Brown v. Elston, supra at 283. Perhaps the B children can presently be accommodated with the existing number of buses allocated. If not, perhaps the current budgetary situation of the school district will permit a reallocation to provide the necessary funding for such transportation. In any event, we find that the appellant's three children are entitled to suitable transportation.

Since we find the availability of such transportation to be critical to the childrens' attendance at school, we order the immediate provision of transportation to them as both an interim-protective order under R.I.G.L. 16-39-3.2 and the final decision in this matter.

The appeal is sustained.

  
Kathleen S. Murray  
Hearing Officer

Approved:



Peter McWalters  
Commissioner

Date: February 14, 1996