

STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

JANE B.F. DOE
v.
PAWTUCKET SCHOOL DEPARTMENT

INTERIM ORDER

Background and Facts:

The 11-year-old special education student in this interim order case is non-verbal and significantly disabled. She takes a special education bus from her home in Pawtucket to her placement at the Northern Rhode Island Collaborative. Because of her disability, this student can act in a somewhat violent and aggressive way and at that time she needs to be restrained. For example, on at least one occasion she has kicked the school bus driver in the head. She wears a harness when she rides the bus to help her stay in her seat. None of this is meant to give the false impressions that this student is always aggressive. In fact, most of the time she is calm but on occasion her behavior is not under control. The student's mother has been given special training at Bradley Hospital to help her cope with her daughter's behavior.

The student's mother testified that at times her daughter has returned from school with bruises or scratches or both after riding the bus. She believes that these may have resulted from excessive application of force by the school bus monitor. The mother also testified that her daughter becomes more agitated and aggressive both before and after

her bus ride. At the hearing on this matter a witness testified by telephone link that on one occasion she saw the school bus monitor on the bus struggling with the student. Immediately before she witnessed this struggle, she testified that the driver of the car she was in exclaimed words to the effect of "look at that child being abused." While this exclamation presumably comes into evidence as "res gestae" the fact remains that the driver of the car was not present at the hearing to testify as to exactly what she saw and the passenger who did testify could not say that she herself saw the student being abused. The monitor was described in the testimony as being in her late 30's and somewhat tall. The monitor, in fact, is 67 years old and about 5 feet tall.

Findings:

Based upon the limited testimony before us, we simply cannot find by a preponderance of the evidence that the bus monitor used excessive force either in this instance or on any other occasion. However, if the school district had not taken steps to add a one-to-one aide for the student this year on the bus, we would have ordered this to be done. We would have been concerned that the present monitor, given the parity in size and the disparity in age existing between the student and the monitor, might not have complete ability to control this student with the gentleness that sufficient strength allows. Regents Regulations Governing the Transportation of Special Education Students at Section One, VII, 2.1.5 state:

2.1.5 In order to insure the safety and well being of all students with disabilities on any given vehicle, the transportation of students with known disruptive behavior problems shall be done in a selective manner and with sufficient assistance by aides [more than one (1) aide, if

necessary] who are appropriately trained and physically able to cope with such behavior.

The Pawtucket school district has, in fact, now hired a one-to-one aide to ride the bus with this student. While we are persuaded that the presence of this additional monitor now ensures the safety of this student, this still does not address the parent's concern that, in her view, her daughter experiences apprehension, which leads to aggressive behavior, when her daughter contemplates riding a bus still "crewed" by the monitor and driver that have always been there.

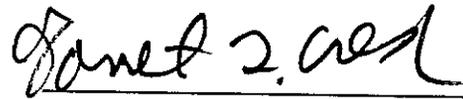
Given these expressed concerns, it might be said that the wisest and best course of action would be to order the transfer of the driver and the monitor. However, this case is not that simple. There are approximately 13 other special education students who ride this bus who have not reported any difficulty with the present monitor and driver. No other complaints have ever been filed against them. The other special education students are accustomed to the driver and the monitor. The present driver and monitor, according to the testimony, know the bus route, the needs of the individual students and the correct emergency procedures which must be followed if the need arises. Since both bus drivers and monitors must have special training and background checks for these essentially part time positions they are very difficult to recruit on short notice.

The testimony indicated that eight weeks might be needed to secure the required training and approvals. Under these circumstances, we do not believe that it would be wise to cause the disruption that shifting the driver and monitor would entail. We think these issues are more appropriately addressed at the IEP meeting which has been scheduled in this matter.

To attempt to remediate this difficult situation on an interim basis we urge and require the parties to schedule a meeting between the parent and the new aide in the presence of a skilled interpreter able to meet the parent's communication needs, as the mother speaks only Spanish. The purpose of this meeting will be to discuss the needs of this student and the best and safest way to transport her. A representative from Bradley Hospital should also be present. Some arrangement must also be made to ensure that the aide receives specific additional training in managing this specific student's behavior. We also request a report from each of the parties, due in this office within 10 working days of the entry of this order, on the advisability of placing a video camera on the bus to document the safety of this student.

CONCLUSION

The parties are directed to proceed in accordance with this decision.



Forrest Avila, Hearing Officer

Approved:



Peter McWalters, Commissioner

October 7, 1998

Date