

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER
OF EDUCATION

Henry R.

v.

Newport School Committee

INTERIM ORDER

Held: The appellant's child, who is receiving special education and related services through the Newport School Department, must be transported to the Rhode Island School for the Deaf in such a way that he routinely arrives at school in time for the beginning of the school day. Transportation home from school should be such that he can participate in after-school community activities which start at 4:00 p.m.

DATE: April 23, 1999

Travel of the Case

On April 8, 1999, the Commissioner's office received a request for an interim order hearing by Henry R. Mr. R. sought a ruling under R.I.G.L. 16-39-3.2 to ensure that his son receives an education in accordance with applicable state and federal laws and regulations. In this case, Mr. R.'s son attends the Rhode Island School for the Deaf pursuant to an Individualized Education Program developed for him by the Newport School Department. Mr. R.'s request for an interim order alleged that present transportation arrangements provided by the school department are inadequate and do not comply with federal and state law since his son routinely arrives at school fifteen minutes to one hour after the beginning of the school day.

The matter was assigned for hearing and decision to the undersigned hearing officer, and a hearing was held on April 15, 1999. Given the time constraints for issuance of an interim order ruling under our statute, findings of fact are made based on the hearing officer's written notes of the testimony and other documentation submitted by the parties.

Findings of Relevant Facts

- The appellant is a resident of Newport, Rhode Island and the parent of two children, a son age 10 and a daughter age 12.
- The appellant's son is enrolled at the Rhode Island School for the Deaf and is transported to school on a school bus pursuant to contractual arrangements between the Newport School Department and Laidlaw Transit Company.

- The bus picks up the appellant's son at 7:00 a.m. each morning. Consistently, the student arrives late to school, after a breakfast period (8:15) and many times during the first instructional period of his day, which starts at 8:30 a.m. He has been on time for school only ten (10) times since January 29, 1999. Appellant Ex. 1
- During the first semester of the 1998-1999 school year, the appellant's child was consistently late for school, but no accurate records were kept of the times of his arrival to school.
- Upon his release from school at 2:30 p.m. the appellant's son is transported home. He generally arrives home between 4:00 p.m. and 4:30 p.m. each day.
- As a result of the transportation arrangements, this student is losing instructional time and is not receiving the full educational program provided for in his individualized education plan. He is also unable to participate in after-school extra-curricular and community programs which would be available to him in Newport and in which he would like to participate.
- To facilitate his son's participation in after-school activities, the appellant has agreed to pick up his son from school and transport him home, beginning on April 26, 1999. S.C. Ex. B. This will involve considerable effort on his part as Mr. R. is a single parent who is recovering from a serious illness.
- Despite many conferences between Newport school officials and representatives of Laidlaw Transit Company, which provides the bus transportation to and from school, prompt arrival at school and/or reduction in total travel time has not been effectuated.¹

¹ Ms. Connolly surmises that one issue may be the bus driver's persistent use of a longer route to avoid payment of the toll for daily use of the Newport Bridge.

Decision

The present transportation arrangements do not comply with federal and state law, in that they prevent the appellant's son from receiving those instructional services and other program components to which he is entitled under IDEA. The transportation provided to date also fails to comply with Section One, VII, 2.1.6 of the Board of Regents Regulations Governing the Special Education of Students With Disabilities. Implicit in this regulatory requirement is that a bus ride which exceeds one (1) hour for a special education student, without the furnishing of any explanation, does not provide for "scheduling of transportation...in such a manner as to provide the least amount of travel time necessary." (Regulations, Section 2.1.6) Even if travel time in excess of one hour were adequately explained on the record, it cannot result in a student's loss of special education services which comprise his free appropriate public education.

The request for an interim order is granted. The school department is ordered to provide timely and suitable transportation to school as well as from school, should the appellant be unable to follow through on the arrangement he has made to pick up his son from school starting on April 26, 1999. The parties should confer to determine what instructional and related services he has missed due to his late arrival since September of 1998, and determine appropriate compensatory educational services to be provided to the appellant's son. If the parties cannot agree, the hearing will be reconvened to make such determination.

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

DATE: April 23, 1999