

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER
OF
EDUCATION

.....

In The Matter of Student K.M.

.....

Decision and Interim Order

Held: This matter concerns a request for transportation to and from a private high school, a distance of 4.8 miles. We find the petitioners are entitled to an interim protective order directing the Pawtucket School Committee to provide transportation to this student until this matter is disposed of on the merits. This matter is remanded to the school committee for a decision on the merits. The school committee is also directed to amend its school bus transportation regulations to conform with state law.

DATE: October 26, 2000

Travel of Case

The petitioners, who live in Pawtucket, asked Pawtucket school authorities to provide transportation to their 14-year-old daughter who attends the Bishop Keough Regional High School, which is also in Pawtucket. The Superintendent of Schools in Pawtucket answered this request in a letter dated August 25, 2000. He wrote:

We are in receipt of your letter requesting special bus transportation for student K. I regret to inform you that we have no choice but to adhere to current policy regarding transportation for our older students.

The Pawtucket School Department does not provide transportation for our public high school students. We can find no justification for making an exception in this case.

While we appreciate your concern for your child's transportation needs, the School Department has to bear in mind not only the high cost of transportation, but the fact that whenever an exception to policy is granted, it generates a multitude of similar requests. **We simply do not have the resources to satisfy everyone's special transportation needs.** [Boldface in original] I hope you can understand our position.

The superintendent signed this letter and added a "cc" to the chairperson of the school committee. The petitioners, for some reason, seem to have detected a certain preclusive tone to this letter, which lead them to believe that both the superintendent and the school committee had rejected their request for transportation. Counsel for the school committee has informed us, however, that this is not the case--the school committee is fully prepared to hear on the merits any request the petitioners might make concerning transportation.

In any event, the petitioners were correctly informed by the department of education that they had a right to petition their school committee for transportation and that they had right to request the commissioner of education to issue an interim protective order while this matter is pending.¹ The commissioner has authority to interpret school law and to "require the observance of all laws relating to elementary and secondary education."² The commissioner has explicit authority to "certify that school bus routes and schedules and all contracts for pupil transportation conform with provisions of law and the rules and regulations of the board."³ The commissioner also has jurisdiction to issue interim protective orders:

16-39-3.2. Interim protective orders.--In all cases concerning children...the commissioner...shall also have power to issue such interim orders pending a hearing as may be needed to ensure that a child receives education in accordance

¹ The fact that the Department of Education has given a prior interpretation on an issue of school law does not prevent it from hearing a contested matter involving the same issue.

² R.I.G.L.16-60-6(8) and R.I.G.L.16-60-6(9)(viii)

³ R.I.G.L.16-1-5(8)

with applicable state and federal laws and regulations during the pendency of the matter.

On October 16, 2000 a hearing on petitioners' request for an interim protective order was held before a hearing officer designated by the commissioner of education. At this hearing the school committee, through counsel, offered several preliminary motions. We will discuss these motions next.

Disposition of Preliminary Motions

The respondent school committee suggested that this matter is not an appropriate subject for an interim order hearing because the issue in this case concerns school transportation--not education. However, a reading of the interim order statute compels us to reject this argument. In Rhode Island an education which is provided "in accordance with state law and regulations" frequently includes the provision of transportation.⁴ We therefore rule that transportation is a proper subject for an interim order hearing.

The respondent school committee has also requested the present hearing officer to recuse himself because he has ruled adversely to Pawtucket in a number of recent cases. Our reading of the case law convinces us that this is not a proper ground for recusal. Our Supreme Court has said:

Merely because a judge has ruled adversely against a litigant does not show bias or prejudice on the part of a judge.⁵

In sum we conclude that we may not grant the school committee's motion to recuse. In Rhode Island the commissioner of education exercises *de novo* review authority over "any decision or doings of any school committee or in any other matter arising under any law relating to schools or education...."⁶ It would not enhance confidence in this system if hearing officers were to be disqualified because they had ruled against a school committee.

The Pawtucket school committee has requested us to remand this matter to the school committee. Before we address the issue of remand we will determine whether or not the petitioning parents are entitled to an interim protective order.

Conclusion of Law

The Rhode Island General Assembly requires school committees to provide transportation to pupils attending private (or public) in-town high schools if their regular attendance at the high school attended would be impractical without transportation:

⁴R.I.G.L. 16-21-1 and R.I.G.L. 16-21.1-1

⁵ *In re Yashar*, 713 A.2d 787 (R.I.1998), citing: *In re Antonio*, 612 A.2d 650 (R.I.1992)

⁶ R.I.G.L.16-39-2

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*...who reside so far from the public or private school which the pupil attends as to make the pupil's regular attendance at school *impractical*.... (Emphasis added)

The Rhode Island Supreme Court has defined the factors to be weighed in deciding whether or not it is *impractical* for a pupil to walk to school:

- Age of the pupil
- Distance walked
- Hazards along the roadway⁷

The Supreme Court has also set forth some factors that may *not* be considered in making a decision about whether or not a pupil is entitled to transportation:

The committee cannot avoid its statutory obligation to supply transportation to students who would otherwise find it impractical to attend school by neglecting to set aside sufficient funds to do so. Similarly, it cannot shift to the students the cost of providing busing by forcing them to pay for public transportation.⁸

In Pawtucket the school committee has made a decision not to provide transportation to students who are beyond the sixth grade.⁹ We, of course, do not read this decision as indicating that the Pawtucket school committee intends to act in a way which is both contrary to state statute law and to Rhode Island Supreme Court precedent.¹⁰ Instead we read the school committee policy to mean that the committee believes that the public and private schools of its community enrolling pupils who above grade six are all sited in such *convenient locations* that it is never *impractical* for a student to walk to school.¹¹

Of course, a student has the statutory right to demonstrate that in his or her particular case that walking to school is in fact impractical.¹² For example, in one case heard by the present hearing officer the Pawtucket school committee was sustained in a case involving a public high school student who was required to walk 2.4 miles to school.¹³ The commissioner found that a 2.4-mile walk to high school was not excessive.

⁷ *Brown v. Elston*, 445 A.2d 279 (R.I.1982)

⁸ *Brown v. Elston*, 445 A.2d 279 (R.I.1982)

⁹ Exhibit 5, Pawtucket Pupil Transportation Regulations

¹⁰ *Brown v. Elston*, 445 A.2d 279 (R.I.1982)

¹¹ R.I.G.L.16-2-2

¹² *Brown v. Elston*, 445 A.2d 279 (R.I.1982)

¹³ *Puleo v. Pawtucket School Committee*, Commissioner of Education , January 4, 1994

Findings of Fact

The present case involves a 14 year old young woman who would be required to walk 4.8 miles to school over a convoluted route which involves crossing many highly traveled streets through commercial and industrial urban areas.¹⁴ Given the start of her school day, much of this walking would take place in the dark or in the morning twilight. She would be traveling alone. She would also be encumbered by a heavy backpack containing books and school related material. With the onset of winter the hazards along the roadway will increase. Traversing the route would require her to be exposed to potentially inclement weather for over two hours on each leg of her trip.¹⁵

The people of Rhode Island, acting through their General Assembly, have determined that the health and safety of school children shall be a concern of great priority. Our Supreme Court has emphasized that the purpose of the school transportation law "is to encourage school attendance and to protect the health, safety and welfare of the pupil."¹⁶ In the case at hand we find that a walking distance of 4.8 miles, in and of itself, and under the conditions we have discussed, is an impractical walking distance for this student. We therefore find, based upon the record which is presently before us, that the petitioners are entitled to an interim protective order directing the Pawtucket school committee to provide transportation to their daughter until this matter is disposed of on the merits.

Motion to Remand

Counsel for the school committee has requested that we remand this matter to the school committee for a decision on the merits. The petitioners contend that, given the tone of the denial letter they received from the superintendent, a decision to remand this matter is simply an exercise in futility.

The commissioner has broad authority to remand matters to local school committees.¹⁷ Given the representations made by counsel, we remand this matter to the school committee.

Conclusion

The General Assembly has already decided that high school students, both public and private, are entitled to transportation if it would be impractical for them to walk to school.¹⁸ On remand, therefore, the issue before the school committee will be whether or not it is impractical for this student to walk to school. On an interim basis the school committee is directed to provide this student with transportation. This transportation may

¹⁴ Petitioners' exhibit A.

¹⁵ See: *Petitioner's' Exhibit A*, further explained in the testimony of the petitioner's father. This testimony was not disputed.

¹⁶ *Chaves v. School Committee of Middletown*, 100 R.I.140 (1965)

¹⁷ *McSally v. Board of Regents*, 121 R.I. 532 (1979)

¹⁸ R.I.G.L.16-21-1.

take the form of free RIPTA transportation if such transportation is a practical and reasonable method of getting this student to school.

School committees must, of course, “provide for and assure the implementation of federal and state laws, the regulations of the board of regents for elementary and secondary education, and of local school policies, programs, and directives.”¹⁹ The school committee is therefore directed to amend its school bus transportation regulations to conform with the state law requirement that transportation be provided to high school students in situations where it would be impractical for them to walk to school.²⁰ Letters denying students transportation should inform parents of their right to appeal to the school committee and the commissioner.

Forrest L. Avila, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

October 26, 2000

Date

¹⁹ R.I.G.L.16-2-9 (3)

²⁰ R.I.G.L.16-21-1