

STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

In Re: Tyler H. v. Coventry

**INTERIM ORDER
DECISION**

Held: The petitioner, represented by his mother, is a student who wishes to ride a "regular education" school bus instead of a "special education" school bus. The school bus company insists that this student ride a special education bus.

Based upon our findings of fact and conclusions of law we find that this student has a right to ride the appropriate regular education school bus in Coventry. However we must make this finding on a provisional basis because we have not yet heard from the school bus company.

Notice will be served on the school bus contractor that this matter will be set down for a show cause hearing on issue of the contract's conformity with provisions of law and the rules and regulations of the Board of Regents. A pre-hearing conference will be scheduled immediately in an attempt to resolve this matter.

DATE: November 25, 2002

Jurisdiction

Jurisdiction is present under R.I.G.L.16-39-1, R.I.G.L. 16-39-2, and R.I.G.L. 42-87-5.

Parties

The petitioner, represented by his mother, is a student in the Coventry Public Schools who wishes to ride a "regular education" school bus instead of a "special education" school bus. The respondent is the Coventry School Department. The school bus contractor has not been made a party to this appeal.

Position of the Parties

This is an unusual case in that both the petitioning parent and the respondent school district agree on how this case should come out. Both parties agree that:

1. This special education student, based upon the least restrictive placement requirement, should be allowed to ride a "regular education" school bus, rather than a "special education" school bus.
2. This student has a mobility impairment that requires him to use canes or a walker to get about, but he is able to safely ride a school bus, and he would be able to exit a bus in an emergency situation.
3. Both parties therefore conclude that this student should be allowed to ride a regular education bus.

Findings of Fact

1. The school bus company that has the contract to provide busing services to Coventry is insisting that this student ride a special education bus.¹
2. Based upon the testimony, which at this time remains without rebuttal, this student is able to safely ride a regular education bus.²

Conclusions of Law

The General Laws of Rhode Island state:

42-87-2. Discrimination prohibited. —No otherwise qualified person with a disability shall, solely by reason of his or her disability, be subject to discrimination by any person or entity

¹ Testimony of the parent

² Testimony of the student's physical therapist.

doing business in the state; nor shall any otherwise qualified person with a disability be excluded from participation in or denied the benefits of any program, activity or service of, or, by any person or entity regulated, by the state or having received financial assistance from the state or under any program or activity conducted by the state, its agents or any entity doing business with the state.

42-87-5. Enforcement of anti-discrimination provision. —... (c) The Rhode Island department of education is empowered and directed to hear all complaints relating to violations of this chapter in the area of elementary and secondary education. Those

16-24-4. Transportation.—The school committee of each city and town shall provide for the transportation to and from school either within the school district or in another school district of the state for any child who has a disability in accordance with the regulations of the state board of regents for elementary and secondary education.

The Special Education Regulations of the Rhode Island Board of Regents state:

300.533 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 300.306, each LEA shall ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child.

300.306 Nonacademic services

- (a) Each LEA shall take steps to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.
- (b) Nonacademic and extracurricular services and activities may include counseling services, athletics, *transportation*, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

The federal regulations to the Rehabilitation Act of 1973 state, in pertinent part:

**28 CFR § 35.130 GENERAL PROHIBITIONS
AGAINST DISCRIMINATION**

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b)(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability--

- (i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
- (ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
- (iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
- (iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;
- (v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;
- (vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;
- (vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

- (i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;
- (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or

- (iii) (iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State.
 - (4) A public entity may not, in determining the site or location of a facility, make selections--
 - (i) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or
 - (ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.
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- (c) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

In Rhode Island it is a fundamental principle of contract law that a contract cannot contravene the law or public policy.³ In fact:

It is a fundamental rule that all contracts are made subject to any law prescribing their effect or conditions to be observed in their performance. The statute is as much a part of the contract as if the statute had been actually written into the contract. This is so even if the parties knew nothing of the statute and did not include the provision or even though they knew of the legislation and agreed on the exact contrary.⁴

Discussion

The terms in the applicable school-busing contract must be read to encompass this student's statutory and regulatory right to transportation in the least restrictive environment. Based upon our findings of fact and conclusions of law we must find that this student has a right to ride the appropriate regular education school bus in Coventry. However we must make this finding on a provisional basis because we have not yet heard from the school bus Company. If we reach the conclusion that school bus contractor is in material breach of its contractual obligation to provide school bus transportation in the least restrictive environment we will have to direct that appropriate steps be taken to remediate this situation or terminate the contract. On this point it must be recalled that the laws of Rhode Island provide in pertinent part:

³ *City of Warwick v. Boing Corp.* 472 A.2d 1214 (R.I., 1984); *Power v. City of Providence*, 582 A.2d 895 (R.I. 1990)

⁴ *Sterling Engineering v. Housing Authority*, 108 R.I. 723, (1971) at 726. See: *Women's Development v. Central Falls*, 764 A.2d 151 (R.I. 2001)

16-1-5. Duties of commissioner of elementary and secondary education. — It shall be the duty of the commissioner of elementary and secondary education:

(8) 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* . (Emphasis added)

Conclusion

Notice will be served on the school bus contractor that this matter will be set down for a show cause hearing on issue of the contract's conformity with provisions of law and the rules and regulations of the Board of Regents. A pre-hearing conference will be scheduled immediately in an attempt to resolve this matter.

Forrest L. Avila, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

November 25, 2002
Date