

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

In the Matter of Student A. P. Doe

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DECISION
and
INTERIM ORDER

Held: This dispute concerns the need for, and the feasibility of, providing a special needs student with safe door-to-door school bus service. The student lives on a private road and requires constant adult supervision. We direct that (1) The school district will request the chief of police to inspect the private road to determine whether it can safely accommodate a mini-bus. If the road is found to be safe, the school committee will direct its bus contractor to provide the requisite busing service. (2) The petitioners will request their condominium association to permit the minibus to travel on the condominium road. If the condominium association declines to allow the minibus to travel down the condominium road, the school district is excused from sending a minibus onto the road. (3) If the chief of police determines that condominium road is not safe for a minibus or the condominium association does not give permission for the use of a minibus, the school committee may provide transportation for this student by contracting for taxicab service. (4) The school district will request a due process hearing to resolve this dispute on a final basis. This interim order will remain in effect until a due process decision is issued.

DATE: April 11, 2003

Travel of the Case

This special education transportation matter is before the commissioner on the basis of parents' petition for an interim protective order. Neither the parents nor the school district have yet requested a special education due process hearing to resolve the issues present in this case. An interim order hearing has been held and the hearing officer has taken a view of the student's bus stop and the condominium road which is at issue in this case.

Jurisdiction

Jurisdiction is present under R.I.G.L. 16-39-1, R.I.G.L. 16-39-2, R.I.G.L. 16-39-3.2, and R.I.G.L. 42-87-5. See: CFR 300.514

Positions of the Parties

A. The School District

At the beginning of the 2002-2003 school year the student who is the subject of this action moved into Rhode Island from another state. In his prior state of residence he had an IEP which called for special education and special transportation. His new Rhode Island school district agrees that this student needs special education and special transportation. The district, however, takes the position that it is not possible to provide this student with a school bus stop at his door since the student lives down a private condominium road that does not meet public road safety standards.

The school committee also objects to the commissioner hearing this matter at all, at this time. The committee urges that special education due process hearing is the only appropriate mechanism to resolve this dispute, even on an interim basis.

B. The Parent

The parent contends that her son, because of his disability, is not able to walk to or wait unsupervised at the bus stop the school district has created for him. At present the student's mother drives him down the condominium road that serves her residence to his bus stop, and waits with him there until the bus comes. In the afternoon she waits at the bus stop until the bus arrives. She argues that school district should, instead, drive down the condominium road and pick her son up at the door of his residence.

The parents submit that they have an IEP, written in another state, which calls for special transportation for their son. They submit that they have waited months for the committee to provide what they are entitled to, and they see no reason why appropriate transportation services should be further delayed.

Findings of Fact

1. Until the start of this school year this student lived in another state. He had an IEP written by school authorities in that state.
2. This IEP called for special transportation.
3. The student's new Rhode Island school committee, and the student's parent, have not yet been able to agree on a new IEP for this student.
4. Neither the school committee nor the parent has requested a due process hearing to resolve this impasse.
5. No one disputes that this student is in need of special education and special transportation services.
6. The IEP dispute concerns the need for, and the feasibility of, providing this student with door to door school bus service.
7. This student has disabilities that make it obvious that he cannot be left unattended at the side of a street.
8. We find as a matter of fact that this student cannot presently walk any significant distance without adult supervision.
9. The major problem in this case is that this student lives down a private road owned and maintained by a condominium association.
10. This road, which has not been accepted as a public way by the town, is narrow, but it is wide enough for two lane traffic.
11. This road is not constructed to the standards of a public road and has some grades and curves on it that would not meet public road standards.
12. In fact, the road appears to be constructed more to the standards of a driveway than a public way.

13. At present the student's mother drives him down this condominium road to his bus stop and waits with him until the bus comes. In the afternoon she waits at the bus stop until the bus arrives.
14. This student's present bus stop is located on the side of a street which is full of loud and confusing automobile traffic, truck traffic, and construction equipment traffic.
15. This traffic moves at a high rate of speed, despite a much lower posted speed limit.
16. The school district suggests that the condominium might be able to create a path that the student could use to walk to through an unimproved field to a less traveled road, where he could be picked up. To accommodate this path, part of a stone wall would have to be removed.
17. Our view of the terrain and our understanding of this student's disabilities convince us that it is simply not possible for this student to walk any great distance unattended. It would also not be safe to leave him alone, or with other students, at a bus stop, even in a quiet area. This student requires constant adult supervision.
18. The school district represents that its bus contractor will not proceed down a private road unless the owner of the road agrees to some sort of "hold harmless agreement."
19. The school district also doubts whether its school bus contractor would find the condominium road to be safe for transit.

Conclusions of Law

1. Simply because a student is advancing from grade to grade does not mean that the student is receiving a free appropriate public education [FAPE]. 300.121 (e)
2. We do not have to consider today whether or not the broadly worded terms of R.I.G.L. 16-24-1 (b) would require a Rhode Island city or town to observe the terms of an IEP written in another state. We also do not have to consider whether the guidance contained in Note 1 is applicable to this case. These issues are moot since all parties agree that this student must have an IEP that addresses transportation issues.

3. There is no federal constitutional right to school transportation. [*Kadrmas v. Dickinson*, 487 US 450 (1988)]
4. Still, federal and state statutes and regulations do require the provision of transportation to handicapped students who, by reason of their handicap, need such transportation to obtain a free public education. [R.I.G.L.16-24-4, RISE 300.310, 34 C.F.R. § 300.16]
5. Rhode Island law requires Rhode Island school districts to provide transportation to all students who live so far from school that it would be impractical for them to walk to school. This mandate includes students with disabilities. [R.I.G.L. 16-21-1] "As we have previously noted the issue of practicality is based on the assumption that the student travels the route to school, or to the bus stop, on his own, unaccompanied by a parent or other responsible adult." *Krupka v. Chariho Regional School District, Commissioner of Education*, February 24, 1995.
6. A Rhode Island school committee cannot escape this transportation obligation by failing to set aside the funds needed to provide such transportation. [*Brown v. Elston*, 445 A.2d. 279 (R.I. 1982)]
7. Rhode Island law contemplates that school buses will be traveling upon private ways, and in private parking lots. [R.I.G.L. 31-20-12] "We cannot agree that, per se, travel on a private road when necessary to afford a child transportation services mandated by the General Laws is beyond the scope of what school committees are required to do. [*Krupka v. Chariho Regional School District, Commissioner of Education*, February 24, 1995.] See: *Kennedy v. Board of Education of McDowell City*, 337 S.E.2d 905 (W.Va. 1985)]
8. The parents in this case have chosen to live in a condominium and have therefore delegated to the condominium association the right to decide who should be allowed to traverse this private way owned by the condominium association.
9. In Rhode Island it is a fundamental principle of contract law that a contract cannot contravene the law or public policy. *City of Warwick v. Boing Corp.* 472 A.2d 1214 (R.I., 1984)
10. "It is a fundamental rule that all contracts are made subject to any law prescribing their effect or conditions to be observed in the performance. The statute is as much a part of the contract as if the statute had been actually written into 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." [*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)]

11. Under state and federal law governmental agencies may not agree to contracts which have the effect of abridging the rights of individuals with disabilities. [28 CFR § 35.130 General Prohibitions against Discrimination.] [See: R.I.G.L. 42-87-2]
12. The terms in the applicable school-busing contract must be read to encompass a student's statutory and regulatory right to transportation. [*In Re: Tyler H. v. Coventry, Commissioner of Education*, November 25, 2002]
13. Rhode Island school committees have the authority "(t)o provide for transportation services which *meet or exceed standards of the board of regents for elementary and secondary education.*" (Emphasis added) [R.I.G.L. 16-2-9 (21)] The Board of Regents has adopted standards for the transportation of students with disabilities. RISE 300.310
14. Under Rhode Island law: "All school bus routes shall be reviewed by the local police chief of each city and town for safety hazards within ninety (90) days before the start of the school year." [R.I.G.L. 31-20-10.3(d)] "Any party may appeal the decision of a local police chief approving or disapproving any bus route or stop to the commissioner of ... education who shall hold a hearing as provided in § 16-39-1." [R.I.G.L. 31-20-10.3(e)]
15. Parents may use either IDEA procedures or regular state procedures to resolve special education disputes. [*In Re Michael C*, 487 A.2d 495 (1985, R.I.)
16. The joint regulations of the Department of Transportation and the Department of Education state: "These regulations shall apply to all motor vehicles owned by any person or by the State or a City or Town and used for the transportation of children to or from school and/or used in transporting children for compensation and to the operation of such vehicles. For purposes of these regulations, all such vehicles shall be classified as "School Buses", *but taxicabs and vehicles owned by the Rhode Island Public Transit Authority are specifically exempt from the application of these rules and regulations.*" (Emphasis added)
17. The commissioner of education has authority to enter an interim protective order in special education cases. The statute governing interim

orders gives the commissioner authority to act "pending a hearing." There is nothing in the interim order statute that requires that a request for a hearing in another forum to have been formally filed before the commissioner can issue an interim order. In any event this matter is also properly before the commissioner under R.I.G.L. 16-39-1, R.I.G.L. 16-39-2, and R.I.G.L. 42-87-5. Federal law and regulations also allow the commissioner to take action in this matter. See: CFR 300.514 and *Burlington School Committee v. Department of Education of Massachusetts*, 471 U.S. 359 (1985)

Discussion

There is no prohibition against a school bus proceeding down a private road, as long as the owner of the road permits the transit of the bus, [*Krupka v. Chariho Regional School District, Commissioner of Education*, February 24, 1995.] School committees must provide transportation to students with disabilities. Since this student lacks the ability to safely walk to, or wait, at a bus stop he must be provided with door to door transportation. RISE 300.310

Conclusion

1. The school district will request the chief of police to inspect the condominium road to determine whether it can safely accommodate a mini-bus. If the road is found to be safe, the school committee will direct its bus contractor to provide the requisite busing service. The school committee may not allow the rights of handicapped students to be trumped by the provider of school bus services since those rights are determined by Rhode Island law which are deemed to be part of the public contract which has been agreed to.
2. The petitioners will request the condominium association to permit the minibus to travel on the condominium road. If the condominium association declines to allow the minibus to travel down the condominium road the school district is excused from sending a minibus onto the road.
3. If the chief of police determines that condominium road is not safe for a minibus or the condominium association does not give permission for the use of a minibus, the school committee may provide transportation for this student by contracting for taxicab service. It may be necessary to provide an aide for this taxi.

4. The school district will request a due process hearing to resolve this dispute on a final basis. This interim order will remain in effect until a due process decision is issued

APPROVED:

Forrest L. Avila, Hearing Officer

Peter McWalters, Commissioner

April 11, 2003
Date