

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

DEBBIE F.

V.

EXETER-WEST GREENWICH
REGIONAL SCHOOL COMMITTEE

Decision

Held: School Committee did not provide suitable transportation to student attending out-of-district nonpublic school.

Date: August 7, 2003

Introduction

This matter concerns the Exeter-West Greenwich Regional School Committee's obligation to provide transportation to a student who is enrolled at West Bay Christian Academy in North Kingstown.¹

Background

Appellant resides in West Greenwich with her 9-year-old daughter. For the 2002-2003 school year, Appellant's daughter was enrolled in the third grade at West Bay Christian Academy in North Kingstown. She attended West Bay for the first and second grades as well.

The school day at West Bay Christian Academy begins at 8:15 a.m. and ends at 2:45 p.m. Depending on the route taken, Appellant's home is approximately 22 to 26 miles from West Bay, and is about a 45-minute drive by automobile.

Appellant has had issues with the transportation provided by the school district for the three years her daughter has attended West Bay. For 2002-2003, she was provided with two options for morning transportation to West Bay: (1) a morning pick-up on Raccoon Hill Road, 9 miles from Appellant's home, at 7:10 a.m. with an arrival at West Bay about 8:00 a.m., or (2) a morning pick-up one-half mile from Appellant's home at 6:05 a.m. on the high school bus that, after stopping at the high school, becomes the bus described in option (1).² As for afternoon transportation, the bus arrives at Appellant's home at 5:00 p.m. or 5:30 p.m., depending on whether a student residing in Exeter is on the bus.

Appellant testified that her home is located on "the last road before Connecticut." [Transcript, p. 24]. The area is extremely rural in nature and the roads must bypass forest management areas.³ Appellant complained about her daughter's busing arrangement to the branch manager of the transportation company in September 2002. The manager asked for a month's time to attempt to make an adjustment. In October 2002, the manager informed Appellant that he was unable to improve the service. Appellant wrote to the district's director of administration in November 2002 and spoke to the superintendent of schools in early January 2003. By letter dated February 10, 2003, Appellant proposed that the district resolve

¹ The Commissioner of Education designated the undersigned hearing officer to hear and decide this appeal. A hearing was held on April 4, 2003.

² The road to the bus stop location does not have sidewalks or streetlights, and there are visibility problems as well.

³ One of these management areas accounts for the extra half-hour in the afternoon ride if an Exeter student is on the bus.

the issue by “reimbursing our family per mile since September . . .” [Appellant’s Exhibit 6]. Appellant appeared without success before the Regional School Committee on February 11 and 25, 2003. Appellant filed her appeal with the Commissioner on February 26, 2003.⁴

Positions of the Parties

Appellant initially notes that West Bay Christian Academy and the town of West Greenwich belong to the same bus district as set forth in Rhode Island’s inter-district transportation statute. She contends that the transportation provided to her daughter is unsuitable because it requires a 9-year-old child to walk too far in dangerous conditions, and spend too much time on the bus. Appellant argues that the extended delays she has encountered in receiving adequate transportation necessitate that she be compensated for her personal efforts to transport her daughter to and from school during the 2002-2003 school year. Appellant is seeking reimbursement for 78 miles a day, at \$.31 per mile, for 97 days.

Citing the distance to be traveled, the rural roads, and the impact of the management areas, the Regional School Committee maintains that the commute to and from West Bay from Appellant’s home is extraordinary, and will require an extended period of time on the bus. The Committee contends that it did all it reasonably could for Appellant’s daughter, and that to do more, i.e., contract an additional school bus, will cost at least \$50,000. The Committee further argues that the statute does not provide for mileage reimbursement and, if it did, reimbursement would not be appropriate in the circumstances of this case.

Discussion

In terms of the boundaries of the bus district that West Greenwich and North Kingstown share, this case literally pushes the school committee’s transportation obligation to the limits. Appellant resides in the shadow of the Rhode Island-Connecticut border. West Bay Christian Academy is located near Narragansett Bay. As the School Committee asserts, this is an extraordinary commute that could significantly tax the district’s fiscal resources.

On the other hand, it is an express purpose of Rhode Island General Law 16-21.1-1 to “[a]fford bus transportation to pupils who attend nonpublic nonprofit schools which are consolidated, regionalized, or otherwise established to serve residents of a specific area within

⁴ Also in February 2003, Appellant began serving as a substitute teacher at West Bay Christian Academy for the remainder of the school year. She drove her daughter to and from school while teaching there, and she is not seeking mileage reimbursement for this period of time.

the state . . .” Furthermore, our Supreme Court has stated that a school 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.”⁵ There is no doubt that Appellant’s daughter needs transportation to and from West Bay, and that such transportation must be suitable.

The transportation provided to Appellant’s daughter during the 2002-2003 school year was not suitable. The first morning option required a 9-mile walk to the bus stop. The second morning option required a hazardous one-half mile walk, a ride on a bus carrying high-school students, and a two-hour travel time. The afternoon ride entailed two to two and one-half hours of travel time. Each of these rides exceeds the capacity of a 9-year-old child. The Regional School Committee must make arrangements for suitable transportation for the 2003-2004 school year.

As for Appellant’s reimbursement request, we are aware of only one prior case that addressed such a request. In John Jennings and Terrence Sullivan v. Exeter-West Greenwich Regional School District Committee,⁶ appellants’ children were transported to and from a nonpublic school in South Kingstown until the school committee voted to discontinue the transportation about two weeks into the 1973-1974 school year. The school committee’s vote was in conflict with a prior Department of Education advisory opinion regarding the district’s transportation responsibilities to children attending the school in question. Following a hearing, the Commissioner sustained the appeal, and directed the committee to provide transportation forthwith and to reimburse appellants for the reasonable transportation costs they had incurred after the committee’s decision. Subsequently, the Rhode Island Supreme Court found the statute in question to be unconstitutional as applied to private school “districts” not in existence when the statute was enacted.

The Jennings case needs to be viewed in its proper context. Ultimately, it dealt with the constitutionality of a statutory predecessor to R.I.G.L. 16-21.1. The school committee believed the statute to be unconstitutional. It therefore refused to provide any transportation for the student. The Commissioner presumed the constitutionality of a statute duly enacted by the General Assembly. He concluded that the student was entitled to transportation. This conclusion was consistent with an earlier opinion rendered by the Department. Consequently,

⁵ Brown v. Elston, 445 A.2d. at 283 ((1982).

⁶ January 28, 1974.

the Commissioner awarded reasonable transportation costs from the date of the school committee decision under review.

This case does not raise constitutional issues. The School Committee has made transportation arrangements for Appellant's daughter, and there has been no previous involvement by the Department of Education. Furthermore, by the time Appellant appeared before the School Committee, she had begun a teaching position with West Bay and had assumed her own commute to the school.

In these circumstances, we do not find an award of mileage reimbursement to be appropriate. However, by virtue of this decision, we consider the School Committee to be on notice of the inadequacies of the transportation previously provided to Appellant's daughter. We shall order the School Committee to provide Appellant's daughter with transportation that is suitable for a 9-year-old. The School Committee's failure to do so at the beginning of the 2003-2004 school year shall, absent extraordinary circumstances, subject it to a mileage reimbursement remedy in a subsequent appeal.

Conclusion

The Exeter-West Greenwich Regional School Committee did not provide Appellant's daughter with suitable transportation to and from West Bay Christian Academy during the 2002-2003 school year. It is hereby ordered to provide suitable transportation during her enrollment there.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: August 7, 2003