

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

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**In the Matter of T. J.**

**v.**

**North Kingstown School Committee**

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**DECISION**

Held: If the North Kingston school committee concludes that an alternate method of transporting the petitioner's children to school would be safe and effective, it may adopt a resolution to this effect. This resolution, however, shall not be operative until the petitioner has had an opportunity to complete an appeal to the school committee and, if necessary, to the Commissioner of Education.

DATE: August 26, 2005

## **Travel of the Case and Jurisdiction**

This is an appeal from a decision of the North Kingston School Committee to refuse to accept on a permanent basis an interim accord reached by the parties concerning a transportation dispute. The petitioning parents are satisfied with this interim accord and wish to make it permanent, but the school committee has signaled its intention to abandon this accord at the start of the next school year.<sup>1</sup> Jurisdiction is present under R.I.G.l.16-39-1 and R.I.G.l.16-39-2.

## **Positions of the Parties**

- **The Petitioning Parents**

The parents in this case contend that the interim accord governing their children's bus stop should be ruled to be permanent.

- **The School Committee**

The school committee in this case contends that it should be free to change the bus stop to meet changes in the applicable circumstances.

## **Issue Presented**

Should the bus stop in the case be ruled to be permanent?

## **Findings of Fact**

1. The students in this case are eight and eleven years old. One of these girls is in the third grade and the other girl is in the sixth grade. The younger girl attends the Hamilton Elementary School, and the older girl attends the Wickford Middle School.<sup>2</sup>
2. This matter has been the subject of ongoing dispute between the petitioners and the school committee since September of 2003. In December of 2004 the parties reached *modus vivendi*. Under this interim accord a school bus picks up the petitioners' children at a site not too far from the petitioners' home on Hammond Hill Road.
3. The school committee's preferred solution to this case would be to have the petitioners children walk from a point on Hammond Hill Road down Gilbert Stuart Road to a bus stop on Route 1 (Tower Hill Road).
4. Gilbert Stuart Road is narrow and a bit hilly. It has no sidewalks, and the adjoining woods, which surround the road, tend to encroach upon the edge of the road surface.

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<sup>1</sup> Tr. Page 7

<sup>2</sup> Tr. Page 5.

There is, therefore, very little walking room. Traffic has a tendency to hasten down this road at a higher speed than is appropriate.<sup>3</sup> There are a number of blind curves. Furthermore children walking down these roads would, in essence, be “on their own” since the area is not yet built up enough to provide any measure of neighborhood vigilance.<sup>4</sup>

### Conclusions of Law

If a student lives so far from the school he or she attends that it would be *impractical* for the student to walk to school, the local school committee must provide the student with transportation:

**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, except such private schools as are operated for profit, 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* and for any pupil whose regular attendance would otherwise be impracticable on account of physical disability or infirmity.<sup>5</sup> (*Emphasis added*)

The Rhode Island Supreme Court has listed three factors to be used in deciding whether it is *impractical* for a student to walk to school:

- ⇒ *The age of the child*
- ⇒ *The distance walked*
- ⇒ *The hazards along the roadway.*

If these factors, separately or together, make it impractical for a student to walk to school, the school committee must provide transportation.<sup>6</sup> The standard for being able to walk to a school bus stop is the same standard used in deciding whether a child is able to walk to school.<sup>7</sup> The three factors are:

- ⇒ *The age of the child*
- ⇒ *The distance walked*
- ⇒ *The hazards along the roadway*

The law also provides that school bus routes must be established under the supervision of local police authorities.<sup>8</sup>

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<sup>3</sup> Testimony of North Kingstown Police Department traffic safety officer.

<sup>4</sup> View by Hearing Officer.

<sup>5</sup> There is no federal constitutional right to school transportation. *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450 (1988)

<sup>6</sup> *Brown v. Elston*, 445 A.2d 279 (R.I. 1982).

<sup>7</sup> *Bauerle vs. North Kingstown School Committee*, Commissioner of Education, October 1992.

<sup>8</sup> R.I.G.L. 31-20-10.3 [School Bus Stops – Routes]

**Discussion**

In the case at hand, the local police authorities have concluded that it is not safe for these two students to walk down Gilbert Stuart Road. Part of the support for this conclusion can be found in the brush and branches from the adjoining woods that encroach upon the road. The school committee expects that during this summer the brush can be cleared so as to make the walkway more passable. The committee seems to be of the view that if the brush were cleared along Gilbert Stuart Road, the road would be safe for use by small un-accompanied children. From the testimony we heard we do not believe that the local police department would share this optimistic viewpoint. In any event our view of the matter is that even if the brush were cleared, Gilbert Stuart Road would still not be a safe walk for small children. Gilbert Stuart Road is too hilly, the traffic on it is too fast, and the walk way is too unimproved and unsupervised for small children to navigate it in safety.

In reaching this conclusion we do not suggest that in the future Gilbert Stuart Road could not be made safe for small pedestrians. In the South County area new homes are being built, traffic patterns are changing, roads and sidewalks are being built or rebuilt, and brush is being cleared. It is possible that at some later date it might be possible for young students to walk down Gilbert Stuart Road

**Conclusion**

If the North Kingston school committee concludes that an alternate method of transporting the petitioner's children to school would be safe and effective, it may adopt a resolution to this effect. This resolution, however, shall not be operative until the petitioner has had an opportunity to complete an appeal to the school committee and, if necessary, to the Commissioner of Education.

APPROVED:

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Forrest L. Avila, Hearing Officer

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Peter McWalters, Commissioner

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August 26, 2005  
Date