

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

Student B. Doe

v.

**Foster-Glocester Regional
School Committee**

.....

DECISION ON
REQUEST for INTERIM ORDER

Held: The request by Student B’s mother for the issuance of an interim order to change his dismissal time is denied. Evidence in this record supports the school’s position that his early dismissal is for safety reasons and to enable his teacher to work on the goals and objectives of his IEP. The record supports the district’s argument that safety considerations require his dismissal prior to the time when the general population of Ponaganset students leave the building at 2:10 p.m.

DATE: November 17, 2006

Travel of the Case

On October 31, 2006 Student B's mother requested an interim order hearing with respect to her son's schedule at Ponaganset High School where he is enrolled in a program of special education. The matter was referred to the undersigned and a hearing was scheduled by agreement for November 14, 2006. At the November 14, 2006 hearing, testimony and evidence were received on the issues. Given the time constraints on the issuance of decisions on interim order requests, this decision is based on the hearing officer's notes, and the single exhibit introduced at the hearing, Student B's Individualized Education Program, Joint Ex. I.

Issues

- Is Student B.'s school day being shortened because of the schedule followed by his special education bus which leaves Ponagansett High School at 2:00 pm.?
- Does Student B.'s early dismissal time violate the provisions of his current I.E.P.?
- If Student B.'s different dismissal time is due to safety issues, should the IEP team discuss this need and decide exactly how much earlier he needs to be dismissed?

Findings of Relevant Facts:

- Student J.B. is thirteen years old as is currently in a self-contained special education class at Ponaganset High School.
- Student J.B. is in a class comprised of three other students. There is a special education teacher and an aide assigned to the class. The students are met by the teacher and teacher assistant as they get off their buses at 7:40 a.m. and walk with them to the classroom. At dismissal time, the teacher and aide accompany the students from the classroom to the bus at 2:00 p.m.¹. The bus leaves ten (10) minutes before the rest of the students at the high school are dismissed at 2:10 p.m.

¹ The group leaves the classroom at 1:50 p.m. (note 9-1-2006 from Student B's teacher to Mrs. B.)

- In walking from the bus to the classroom and in going to the bus at the end of the day, Student Doe's teacher works on specific goals and objectives that are described in his current IEP.² Student Doe has mobility, balance and communication issues and with his teacher he works on "maneuvering the terrain" of the hallways and stairways and opening doors. This is also a time when the specific skills this student is working on in adapted physical education class are reinforced by his teacher, who attends physical education class with him.
- Student Doe's teacher also utilizes the walk to the bus as an opportunity for him to interact with adults and peers he meets along the way, to respond to greetings initiated by others. The IEP describes this interaction as a short-term objective toward an overall goal of developing his expressive and receptive language skills. Student Doe is currently non-verbal.
- Leaving the school building prior to the onslaught of students exiting at the regular dismissal time creates an environment that enables his teacher to work on the various activities described above. Walking out at a time when the general student population³ is also leaving the building would make working on these skills more difficult, if not impossible.
- Leaving the school building at the same time as the other students are exiting would create a safety hazard because of Student Doe's difficulty ambulating, the fact that he sometimes throws himself to the floor and he suffers from seizures.⁴
- Student Doe's current IEP does not describe the procedure/timeline for his dismissal from school and, according to his mother's testimony, there was no discussion by the IEP team members at the last meeting on the subject of safety issues at Ponaganset High School. Student Doe attended West Glocester Elementary School during the 2005-2006 school year.

Positions of the Parties

Student Doe's Mother

Mrs. B. objects to the shortening of her son's school day by ten minutes. She notes that at the start of this school year her son was dismissed as early as 1:45 p.m. and

² One of the goals on which the staff works with Student Doe is to maximize his overall safety, mobility, and independence in the school setting (see Goal #6 at page 11 of his IEP). Outside of the classroom, he walks with close supervision/hand-held assist and ascends stairs with handrail and hand-held assist. He wears a soft helmet during standing/ambulation activities for safety.

³ Stated to be approximately 1,000 students

⁴ We infer from the record that the dangers impact not only on Student Doe's safety, but also the safety of other students who might, for example, be in front of him on the stairs.

after she raised the issue, the time was moved back to 2:00 p.m. She testified that she was told by employees of the bus company that the reason for the timing of her son's dismissal from school was the bus schedule, and that early departure of the special education buses had been in effect for a long time. The first mention of her son's safety as the reason for a different dismissal time was when she talked to the district's director of special education. Her son's teacher had not mentioned safety as a factor in determining when he would leave the classroom in the afternoon, not even in her written response to Mrs. B.'s note on September 1, 2006. In prior years, he has always been dismissed from school at the same time as the rest of the students. There has never been, nor is there now, she contends, any safety issues posed by her son's walking out of the building with the rest of the students at dismissal time. She submits that the actual reason he is dismissed at 2:00 p.m., rather than at 2:10 with the rest of the students at Ponaganset High School, is to facilitate the busing schedule. The effect is to illegally shorten his school day. Early dismissal violates his IEP and is discriminatory. She requests that her son have the same school schedule as the other students at his school.

Foster-Glocester Regional School Committee

Counsel for the district argues that there is nothing discriminatory or illegal in the current procedure for dismissing this student. From a transportation standpoint, the bussing arrangements provide him with "suitable" transportation as required by R.I.G.L. 16-21-1. The dismissal time of Student Doe does vary slightly from that of the general student population at Ponaganset High School, resulting in a de minimis reduction in his school day. Many special education students are placed in programs which have a variety of schedules and if Student Doe were in one of these other programs, rather than at Ponaganset High School, his school day could be much different. There is nothing illegal about a school schedule which varies slightly among students enrolled at the same school. It is not discriminatory in any way.

Contrary to Mrs. B.'s assertion, the reason Student Doe leaves ahead of the other students is due to safety issues, not to facilitate the bus schedule. These issues result from placing a student with Student Doe's disabilities in a high school with over one thousand (1,000) students. Although last year his placement in the smaller and more orderly atmosphere of an elementary school did not require a different dismissal time, the situation this year is different. Counsel points to the testimony of his teacher that given his difficulties with ambulation, balance, and seizures, Student Doe could not safely maneuver to the bus in the afternoon with throngs of students overwhelming him, even with the assistance of his teacher. There is no competent evidence, counsel submits, that the bus schedule has anything to do with the time Student Doe is dismissed from school. Evidence bears out the district's argument that early dismissal is tied to Student Doe's needs.

DECISION

Mrs. B.'s assertion that her son is being dismissed ten (10) minutes early every day because of the schedule of his school bus has not been proven by a preponderance of the evidence. If this continues to be her position, it is likely that when this case is scheduled for hearing on the merits she will produce additional evidence that supports her position on this factual issue. We are unaware of any case which would support the notion that a student's school day is subject to a bus schedule, rather than conforming the bus schedule to the transportation needs of the students. Because there is sufficient proof that Student Doe leaves school early because of his own individual needs, we need not determine the merits of the district's position that special education programs placed at a school need not have the same schedule as that of the general education program.

The district submitted substantial evidence which linked Student B.'s early dismissal from school to his instructional and safety needs. His teacher's testimony regarding how the time spent going to and from the school bus each day is utilized for instructional purposes is borne out by his I.E.P. The activities and skills she works on when the two of them are walking at dismissal time are tied to the annual goals and short-term objectives listed in Student Doe's current I.E.P. Although it was not specifically noted at the hearing, the fact that instructional opportunities would be greatly reduced if the noise and bustle of passing students had to be contended with is evident. While in general "student passing time" is not instructional in nature,⁵ the time Student Doe spends each day with his teacher walking to and from the bus working on these various skills and social interaction is clearly instructional in his situation.

Similarly, the evidence supports the district's position that the reason for the dismissal of Student Doe⁶ prior to the general student population at Ponaganset High School is to ensure his safety and not to facilitate the bus schedule of the small, special education bus utilized to get him home from school. A review of Student Doe's IEP indicates how walking and ascending/descending stairs are difficult for him. He requires close supervision and hand-held assistance to maneuver safely. He wears a helmet to protect him in the event he falls. On the basis of this record, there is a strong inference created that if he and his teacher had to contend with the swarm of students exiting the building at dismissal time, his safety could be jeopardized.

The case presented by the Foster-Glocester School Committee at the hearing links his dismissal procedure to Student Doe's educational and safety needs. While it may be that these measures are implicit in his individualized education program, given the fact that his mother disagrees with them, a discussion of dismissal time and procedure by his IEP team would be appropriate. In this way, Mrs.B can participate in the decision-making process with respect to what is clearly an important element of her son's educational program. She is entitled to weigh in on this issue. The team can determine if

⁵ A fact recognized in the exclusion of "student passing time" in calculating the 330 minute school day required by the Board of Regents Regulations Governing the Length of the School Day (June, 2004).

⁶ Together with his three classmates, if notes made at the hearing are correct.

there is a consensus with respect to the current procedure and determine exactly how much earlier Student Doe needs to exit the building safely. It may be that the current ten minute “buffer” is not necessary. The team’s decision should be incorporated into his IEP. The team should also review the total minutes of instructional time in Student Doe’s shortened schedule to make sure that he is receiving 330 minutes of instructional time each day⁷. We direct that the team meet as soon as possible, but no later than December 15, 2006, to incorporate its decision with respect to Student Doe’s dismissal time and procedure into his IEP.

Mrs. B.’s request for issuance of an interim order is denied. This matter will be scheduled for a final hearing on the merits in early January, 2007.

For the Commissioner,

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

November 17, 2006
Date

⁷ A review of his IEP would indicate that even his lunch period is time spent working with certified staff on self-care and communication skills, so it is unlikely that the ten minute reduction in his day reduces his daily instructional time below the minimum required. This should be reviewed, however.