



## **Travel of the Case**

Seven members<sup>1</sup> of the Prudence Island School Working Committee (the “PISWC”), an ad hoc committee formed by the Portsmouth School Committee at its June 27, 2006 meeting, filed an appeal with Commissioner Peter McWalters on April 19, 2007. The PISWC requested that the Commissioner reverse the April 10, 2007 decision of the Portsmouth School Committee to close the Prudence Island School and asked that the school be kept open until the PISWC had an opportunity to present its findings and recommendations<sup>2</sup> to the School Committee. Thereafter a second appeal challenging the closure of the school was filed on May 14, 2007 by the parents<sup>3</sup> of a child who currently attends the Prudence Island School. Their appeal alleged that requiring their nine-year-old son to commute to the Melville School each day constituted an excessive hardship. At the time of hearing, the parent of the second child<sup>4</sup> currently attending the school joined in the appeal. All of these appeals were consolidated for hearing and decision.

The matter was scheduled for expedited hearing and decision so that a resolution could be timely for both the district and the appellants. Hearings were held by the undersigned hearing officer on May 22, 2007 and June 15, 2007 and the final brief in this matter was filed on June 28, 2007. On June 29, 2007 counsel for the School Committee wrote to the hearing officer to confirm that the Portsmouth School Committee had voted to delay the implementation of the closure decision for a period of one year, thereby obviating the need for an expedited decision.

## **Issues**

Did the Portsmouth School Committee have “good cause” to close the Prudence Island School as required by R.I.G.L. 16-2-15 when it voted to do so on April 10, 2007?

Did the Portsmouth School Committee fail to consider the health, safety and well-being of the Prudence Island K-4 students when it voted to close the Prudence Island School?

Did the Portsmouth School Committee propose to provide suitable transportation to the students who will be leaving the island and attending Melville Elementary School?

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<sup>1</sup> The seven members of the PISWC who filed the appeal were the seven Prudence Island residents who had served on the committee since its creation in June of 2006.

<sup>2</sup> The PISWC had been exploring options to keep the school open on a permanent basis.

<sup>3</sup> Allan Barse and Elizabeth Volkmann

<sup>4</sup> Denise Allard

### **Findings of Relevant Facts:**

- Prudence Island is located in Narragansett Bay and forms part of the town of Portsmouth, Rhode Island. The Prudence Island School, built in 1896, has been operating as a school serving residents of the island since that date, except for a brief period in which the school was closed from 1982-1989. PSC Ex.K; Tr. Vol.I, pp.54, 156-157.
- Over the period of the last ten years, enrollment at the Prudence Island School has been steadily declining. During school year 2006-2007 there were two students – one (1) in kindergarten and one (1) in grade 3. The enrollment projection for the school, which houses grades K-4, for 2007-2008 was also two (2) students. PSC Ex.F.
- During the past two fiscal years, the Portsmouth school department has been operating under severe budgetary constraints. A projected deficit for fiscal year 2006 was avoided through measures taken by both the town of Portsmouth and the School Committee, including several rounds of budget cuts to the approved FY 2006 school budget. In fiscal year 2007, the School Committee was required to challenge the sufficiency of its funding through a “Caruolo” action in the Rhode Island Superior Court. The court’s decision mandated increased school funding, but the increase, in part, drew upon one-time cash reserves. The budget submitted to the Town Council for fiscal year 2008 included, among other measures, staff reductions in areas of declining enrollment in order to bring the budget within the 5.25% cap on the increase in municipal funding put in place by 2006 amendments to R.I.G.L. 16-2-21. PSC Ex.C,D,E, and G; Tr. Vol.I, pp. 19-52.
- The Superintendent of the Portsmouth school department recommended a 2007-2008 budget to the School Committee at its April 3, 2007 meeting. The proposed budget presumed the closure of the Prudence Island School and the elimination of its elementary-level teacher.<sup>5</sup> PSC Ex.A. Superintendent Susan F. Lusi’s reasons for recommending closure of the Prudence Island School were budget constraints and declining enrollment. Tr. Vol.I p.52. The budget was approved by the School Committee by unanimous vote at its April 3, 2007 meeting. PSC Ex.A.
- At its April 10, 2007 meeting, the Portsmouth School Committee considered the specific issue of closing the Prudence Island School effective at the end of the 2006-2007 fiscal year. The Superintendent presented information on the current and projected enrollment at the school, the savings which could be effected by closure of the school (\$75,002)<sup>6</sup> and the proposed arrangements for the first and fourth graders who would be transported to attend school on the mainland. PSC Ex.A and H. The

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<sup>5</sup> Both of these facts were mentioned in the discussion of the proposed budget and the budget materials reviewed by the School Committee at its April 3, 2007 meeting. Additional reductions in the number of elementary-level teaching positions (due to declining enrollment) were also included in the proposed 2007-2008 school budget.

<sup>6</sup> Later revised to a savings of \$70,881. The additional cost of a monitor to accompany the children on the ferry and the bus and a greater savings in the amount of the teacher’s salary being eliminated were calculated. See PSC Ex. H.

School Committee heard the concerns of parents about the ferry ride, the ten-hour length of the school day for the two young students involved, and the long daily separation of the children from their parents. The Committee also heard from two members of the Prudence Island School Working Committee who requested an extension of time for the Working Committee to do its job of finding alternatives to keep the school open. After taking these comments, the School Committee voted to close the Prudence Island School, approving the motion by a vote of 6 to 1. PSC Ex.A. and H.

- When the closure of the Prudence Island School is implemented (now deferred to school year 2008-2009) the two students will join eight other Prudence Island students who commute to schools on the mainland in Portsmouth. The two students, who will then be in grade 2 and 5, will attend the Melville Elementary School in Portsmouth<sup>7</sup>. PSC Ex.F
- Students who currently attend the Prudence Island School will, next year when the closure is implemented, travel by bus from their homes at approximately six o'clock (6:00 a.m.), take the 6:25 a.m. ferry from Prudence Island to the dock in downtown Bristol. A school bus will transport all of the Prudence Island students to their respective schools. The two students will reach the Melville School at 8:00 a.m. where they will begin their school day at 8:00 a.m. At the end of their school day (2:30 p.m.) they will then travel by school bus back to the ferry dock in Bristol where they will take the 3:30 p.m. ferry back to Prudence Island. The school bus will then get them back to their homes at approximately 4:30 p.m. PSC Ex. O. Tr. Vol.I.pp.79-84; 154, 160, 164, 171, 191; Vol. II, p.49.<sup>8</sup>
- A monitor will be assigned to assist the younger students in boarding and disembarking from the ferry, and a bus monitor will also be utilized. Tr. Vol.I.p.53,85.
- There is one fully-enclosed cabin on the ferry with seating for twelve passengers. The other two cabins are not fully enclosed. Tr. Vol. I. p.194; There are two portable electric heaters used to warm the enclosed cabin in the winter and on school mornings, passengers stand in the enclosed cabin to stay warm. Tr. Vol. II, p.13, 28-29, 41. Appellants Ex.2. The bathroom on the ferry is not always accessible.<sup>9</sup>
- Weather or tide conditions caused the cancellation of the Prudence Island Ferry during school year 2006-2007 at times the ferry would be utilized by students on seven occasions. On two occasions, conditions caused the cancellation of the 3:30 p.m. run and students took the 5:30 p.m. ferry back to Prudence Island. Tr. Vol.II. p.22; PSC Ex.N.

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<sup>7</sup> In a vote also taken on April 10, 2007 the School Committee approved a motion to move grade 5 from Portsmouth Middle School to the elementary schools.

<sup>8</sup> The hours of the school day of the Melville School and Portsmouth Middle School were realigned to extend from 8:00 a.m. to 2:30 p.m. during the course of hearings in this matter. See Tr.Vol.I. p.58; Vol. II, pp. 44-45; PSC Ex.O.

<sup>9</sup> The hearing officer did take a "view" of the ferry trip with the consent of the parties. The bathroom was not functioning on that day.

- In the event a Prudence Island student is stranded on the mainland because of bad weather, parents are expected to provide the school department with a plan for their child to stay at the home of a classmate identified at the beginning of the year. Tr. Vol. I, pp.68-69; in the event of an emergency and parents cannot get to the mainland, school department personnel are responsible for the child until the parent or another authorized adult is able to reach the child. Tr. Vol.I, p.72.
- On June 27, 2006 the Portsmouth School Committee established the Prudence Island School Working Committee, a group of island residents and town officials. The purpose of the PISWC was to study and recommend long term solutions for maintaining the school building and continuing to operate an elementary school on Prudence Island. PSC Ex.A and B.
- During the 2006-2007 school year volunteers from Prudence Island performed routine maintenance and a number of needed repairs to the Prudence Island School. Labor and materials for the maintenance projects were donated by residents. The PISWC reported regularly to the School Committee on the work done by the volunteers, as well as on its research on various strategies to continue to operate the school on Prudence Island. PSC Ex. A and K.; Tr. Vol. I, pp.99, 184-186.
- At the time the School Committee voted to close the Prudence Island School, the PISWC had not yet had an opportunity to present its final recommendations, and requested that the School Committee defer its vote on school closure until such presentation could be made. PSC Ex.A. and I.; Tr. Vol.I, p. 186-188.
- Although there was no deadline on the presentation of the PISWC's recommendations to the School Committee, the time frame of the School Committee's decision on whether to close the Prudence Island School was constrained by time limitations for submission of the budget to the Portsmouth Town Council. PSC Ex.B; Tr. Vol.I pp. 111-112;189-190.
- When young students commute approximately four (4) hours to school every day, they will have limited time for any other activities, and such travel every day could negatively affect their physical and mental health and compromise their ability to learn. Tr. Vol.I pp.142-144.

## **Positions of the Parties**

### **The Appellants**

#### **I. Denial of Due Process to the Members of the Prudence Island School Working Committee:**

The Appellants argue that when the Portsmouth School Committee established the Prudence Island School Working Committee in June of 2006 it committed itself, in good

faith, to consider the options developed by the PISWC before making any decisions with respect to the school. All parties proceeded on the good faith assumption that this would be the process followed by the School Committee. Working without a deadline, the PISWC met frequently over the course of the year to explore options and to oversee the work of the volunteers. Island residents, seeking to minimize the cost of continuing to operate the school, donated labor and materials to maintain and repair the school building. At its February meeting, the group finalized a powerpoint presentation it intended to make to both the School Committee and the Town Council. The PISWC was never afforded the opportunity to make its presentation. As the testimony of the vice chair of the School Committee established, members were given short notice of the presentation of a budget in which the closure of the school was a fait accompli. Some ten days after the email notice, the vote to close the school was taken on April 10, 2007. The record thus establishes that due process rights were violated, and the decision was made without any meaningful input from the PISWC. Had the PISWC been permitted to make its formal presentation, it would have recommended that the School Committee defer any decision to close the school until after the PISWC had additional time to explore new options and explore those already identified in more depth.<sup>10</sup>

## II. Failure to Consider the Health, Safety, and Well-being of the Prudence Island Students in Grades K-4:

Another element of defective process, the Appellants argue, is that the Portsmouth School Committee failed to consider the health, safety and well-being of the Prudence Island K-4 students when it voted to close the school. The members of the Committee, prior to voting, failed to investigate and assess the potential harm that closing the Prudence Island School might cause to the island's youngest students. The Superintendent's testimony with respect to her recommendation to the School Committee on closing the school likewise indicates that specific information with respect to student safety or welfare was not within her frame of reference. Although she was generally aware of the lengthy school day that would be imposed on the Grades K-4 students from Prudence Island, no determination of the negative impacts, or even specific safety hazards was made by Superintendent Lusi. Her concerns were focused on the budget, declining enrollment, and whether education for these students could be provided on the mainland. (Tr. Vol.I. p.65).

Implicit in the argument of the Appellants is that a consideration of these factors - the health, safety, and well-being of the Prudence Island students - renders the School Committee's decision to close the school an abuse of its discretion. Although implicitly conceding that good cause to close the Prudence Island School may exist,<sup>11</sup> the Appellants argue that "common sense and principles of fundamental fairness dictate that this discretion (to close the school) cannot be exercised in a manner that impacts negatively on the health, safety or well-being of the students affected by the closing of the school". (Appellants' Brief, p.3) A review of the facts in the record would indicate that the effects

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<sup>10</sup> The record does not indicate if the School Committee's subsequent decision to defer implementation of its decision to close the school until June of 2008 nonetheless allowed for continuation of, or receipt of future input from, the PISWC.

<sup>11</sup> We assume on the basis of declining enrollment and budgetary constraints.

on the children's health and emotional well-being if the school is closed could be significant. The parents' testimony establishes the specific hardships that the children will experience – rising at or before daybreak, a total commute of four hours, a ferry ride presenting safety hazards and potential exposure to harsh winter weather. Access to the restroom on the ferry is another issue of concern to the parents of the students.

Expert testimony documents that these factors will have negative effects on the students currently attending the Prudence Island School. They could lead to exhaustion, perhaps even sleep deprivation, for such young children. The anticipated effects on their physical and emotional health include reduced ability to fight infection and difficulty with emotional stability. The children's learning ability could also be compromised. Although she had not met the two children affected by the school's closure, the expert witness based her opinion on the anticipated effects of such factors on "the general population". Given the evidence in the record documenting the age of the children, the realities of school attendance off of Prudence Island, the nature of the transportation arrangements, and even the possibility of these very young children being "stranded" on the mainland, the Appellants submit that the School Committee's decision should be reversed.

#### Portsmouth School Committee:

In the written arguments submitted on behalf of the School Committee, counsel argues that "good cause" for the closing of the Prudence Island School has been established. A steady decline in enrollment at the Prudence Island School, with no increase projected, left the School Committee in the position of seeking creative solutions for the continued operation of the school. A fiscal crisis forced the School Committee to initiate "Caruolo" litigation against the city for additional funds to operate schools during 2006-2007. This litigation required the School Committee to pare down the educational program of the district to the minimum required by law. The impact of the decision in this litigation, coupled with the 5.25% cap on any increase in the local appropriation in 2007-2008, left the School Committee with no way to justify the per-pupil cost of educating Prudence Island students on the island, conservatively placed at \$38,462. In this dispute, the existence of "good cause" to close the Prudence Island School has really not been contested. Rather, the two groups of Appellants have relied on other bases to challenge the School Committee's decision.

The appeal filed by some (but not all) members of the PISWC seeks to overturn the School Committee's action because it "abrogated" the Committee's "promise and responsibility, under the original charter of the PISWC" to receive the recommendations of the PISWC prior to voting on whether to close the school. In response, the School Committee asserts that the PISWC was created as an "ad hoc committee", existing at the pleasure of the School Committee. It had a clearly-defined mission as set forth in its charter and as the written motion for its creation indicates, no delegation of the School Committee's authority was made to the PISWC. According to the testimony of the chair of the PISWC (who is also the vice-chair of the School Committee) – as quoted in the School Committee's brief at page 7 – "we weren't abrogating any of our rights as a School Committee to any action that may be taken". The School Committee submits that it was

not legally bound to receive the formal presentation of the PISWC before it voted on closure of the school. Its vote to close the school should not be invalidated for this reason.

Implicit in the School Committee's argument is the notion that if time had permitted, it would have scheduled the anticipated workshop to receive the PISWC's formal report. But even if it had heard the presentation planned by the Working Committee, the evidence shows that the presentation contained no solution to the "expense problem" because the Working Committee had not yet found a solution. Prior to its vote, the School Committee in fact heard from two members of the PISWC with respect to the "bottom line" of the group's recommendation – a request for an extension of time for the Working Committee to do its job of finding a viable alternative to closing the school. However, there was no time available to permit the PISWC to undertake further exploration of options in time to impact the 2007-2008 school budget. Thus, the School Committee argues, there is no reason established by the PISWC to rescind its vote to close the school.

The appeal of the parents of the two students affected by the closure of the school is similarly without merit, argues the School Committee. As with the PISWC appeal, the parents evidently do not dispute that a decrease in enrollment and inordinate expense constitute "good cause" to close the school under R.I.G.L. 16-2-15. There is no evidence that closing the Prudence Island School violates any state or local educational policy. The assertion that an excessive hardship is imposed on the younger students or that commuting will be detrimental to the health, safety, or welfare of these younger students has not been substantiated in this record. The older Prudence Island students have been successfully navigating their way to and from school on the mainland for decades. As a precaution for the younger students, the Superintendent has proposed a "monitor" to accompany them on the ferry each day. With this accommodation, and with a contingency plan in place should the ferry be cancelled and the students stranded on the mainland, the attendance of the K-4 Prudence Island students at the Melville School is entirely reasonable under the circumstances. There is, again, no violation of local or state policy which results.

The parents who have appealed to the Commissioner cite a host of complaints with respect to services provided to students traveling on the Prudence Island ferry – including deficiencies in bathroom facilities, heating, and snow removal in areas surrounding the approach to the ferry. Counsel for the School Committee notes that there is no evidence that any of the older students, or their parents, have registered complaints with the Portsmouth School Department with respect to the transportation services provided by the ferry over these many years. In addition, the ferry owner's testimony establishes that no complaints have ever been registered with either of the two agencies which regulate this mode of transportation, the PUC and the U.S. Coast Guard. His experience with the ferry services extends over a thirty-year period. Thus, the School Committee submits, these alleged deficiencies have not been substantiated. Furthermore, in 2006-2007, a year of unusually inclement weather, interruptions in ferry service to students attempting to get to the mainland for school occurred on only four (4) occasions. Therefore, one could expect that the transport of students from the island to the mainland (and back again) will continue smoothly once the younger students join those commuting every day from Prudence Island.

With respect to the expert testimony offered by the Appellants that a ten hour school day will have a negative impact on the health and well-being of these young students, the School Committee first argues that the Superintendent revised her testimony on the second day of hearing to indicate that the school day will be shorter than anticipated. Even if the school day does extend for ten hours, this is consistent with the length of the day for many young children who are in day care before and after school. This has become an established societal norm in an age in which many children come from families in which both parents work. Children adjust to this situation and one could anticipate that the Prudence Island K-4 students would adjust without problem, rather than suffer undue anxiety or exhaustion.

Finally, the School Committee argues that if there will be inconveniences associated with school attendance of the K-4 students when the island school closes, or experienced by the older students over the years, this is the result of a choice these families made in selecting Prudence Island as their home. The life style of those who choose to live on an island is different from those who choose a less adventurous life. In fact, the parents of one of the children actually chose to live on Prudence Island during the 1980's when the Prudence Island School was closed. The appellants should not be supported by the Commissioner in challenging one of the elements of a life style they knowingly chose.

### **DECISION**

The decision to close the Prudence Island School was clearly driven by economics and fiscal exigency. The number in attendance at the school dwindled to two students in school year 2006-2007, with no projected increase in enrollment for the 2007-2008 school year. The Portsmouth School Committee had this information, together with the savings to be effectuated if the school were closed during 2007-2008, as it grappled with the task of allocating its limited funding to provide a sound educational program for all the students in the district. Although the School Committee did not articulate a finding that “good cause” existed to close the Prudence Island School at the time it voted to do so<sup>12</sup> it is clear that the Committee had good cause as required under R.I.G.L. 16-2-15. Ample evidence in this record establishes that severe fiscal constraints, including the “cap” on municipal appropriations and other factors, converged to create a budgetary crisis. This caused a heightened focus on each expenditure contained in the 2007-2008 budget, a budget for an educational program already pared down in the prior fiscal year to a “mandated minimum” by virtue of the decision of the Superior Court in the “Caruolo” litigation initiated by the School Committee. Justification for the expenditure of over \$70,000 for the education of two students in a general education program could evidently not be found by the six members of the School Committee who voted in favor of closing the Prudence Island

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<sup>12</sup>Or at the time it approved the 2007-2008 budget which presumed the Prudence Island School would be closed down. We do not find any reference in the record to a finding or conclusion of the School Committee in regard to “good cause”.

School. From the record of the meeting<sup>13</sup> at which closure of the school was approved, we conclude that the decision to close the Prudence Island School, rather than abandon it permanently, is a matter that will be subject to subsequent review by the School Committee, and that its reopening will be based on future budgetary situations, potential future enrollment<sup>14</sup>, and a host of other factors.

Although it is true that the School Committee took action to close the Prudence Island School without first receiving the formal recommendations of the ad hoc committee (the PISWC) formed in June of 2006 to study the options for continuing the education of K-4 students on the island, this fact does not invalidate the School Committee's action. Clearly, the School Committee had delegated none of its authority to the PISWC and could legally act on the issue at any time, as long as it acted with proper notice and in a reasonable and non-arbitrary manner. Any initial inference that the School Committee acted in bad faith or arbitrarily by first creating a study committee, but then not receiving that committee's final recommendations before making its decision was rebutted by testimony that the placement of the issue on the April 10, 2007 agenda was not based on an intent to undermine the PISWC's work or avoid taking into account the recommendations the PISWC wished to make.

The evidence demonstrates that the timing of the School Committee's decision was driven by time limits imposed by the Portsmouth Town Council for submission to it of an approved school budget. As soon as the determination was made that the 2007-2008 proposed school budget would not contain funding for operation of the Prudence Island School, Mr. Carpender emailed all members of the PISWC with this information. It was clearly the timelines of the budgetary cycle that then prevented the scheduling and receipt by the School Committee of the formal report of the PISWC prior to the votes on the budget and on closure of the school. There was no proof that the sequence of events was orchestrated to prevent the PISWC from making its report. It is also true, as the School Committee has pointed out, that two members of the PISWC were able to deliver its "bottom-line" conclusion and recommendation at the April 10, 2007 meeting. The PISWC was not disbanded by the School Committee and at least one member of the School Committee (Mr. Carpender) expressed his desire to hear the full presentation the PISWC had prepared at a later date. Given the non-permanent nature of the school's closing<sup>15</sup>, a discussion on April 10, 2007 of a future report by the PISWC would not appear to be disingenuous. Finally, it is clear on this record that even if the PISWC had given its formal presentation prior to the vote, the decision of the School Committee would not have been different. For all of these reasons, the argument of the Appellants in this regard is without merit.

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<sup>13</sup> As well as based on the clarification provided by counsel for the School Committee (Tr. Vol.I p.5) that the only issue passed on by the School Department is the closing of the school, not its abandonment

<sup>14</sup> The record in this matter contained enrollment projections only for school year 2007-2008. There is no information in the record as to the population or demographics of Prudence Island. The record also does not contain facts such as the total tax base of Prudence Island property, the effect, if any, of the closure of the school on property values and the potential tax base, or the proportion of Town services utilized by residents of the island.

<sup>15</sup> As well as the subsequent decision of the School Committee to defer implementation of its decision until the close of the 2007-2008 school year

The Appellants have argued that the Portsmouth School Committee failed to consider the health, safety and well-being of the K-4 Prudence Island students in its decision making process. Taken literally, this argument would require evidence of the state of mind of each and every member of the School Committee at the time of the vote. There is no evidence in this record as to the factors *known and considered* by each of the members of the Portsmouth School Committee when they voted to close the Prudence Island School. Taken less than literally, the Appellants' argument in this regard is construed to be that the School Committee had before it insufficient information on the negative effects closing the school would have on these young students. The School Committee, argues the Appellants, took no steps to assess the nature and extent of negative consequences to these young children, but rather focused only on the cost savings that would be realized. A reasonable process would have included information on disadvantages to these children as well as benefits to the system as a whole.

Although the Superintendent's presentation at the April 10, 2007 meeting was clearly focused on the financial analysis, the basic facts that two young students in Grade 1 and Grade 4 would be traveling on the ferry with the older Prudence Island students, that they would be attending the Melville School, and that their school day was aligned with that of the Portsmouth Middle School was information the School Committee received verbally and in a Powerpoint presentation. Comments from parents of the two affected children highlighted their concerns with respect to a ten-hour school day. (PSC Ex.A and H). This basic information was sufficient for the members of the Portsmouth School Committee to weigh the benefits and disadvantages of the proposal under consideration and make an informed decision. There were clear disadvantages to the two students who would no longer be able to receive their education near their homes, would be required to withstand a long commute to school, and be separated from the parents for a long period during the day. These essential facts were available for the School Committee's consideration in making the difficult decision it was required to make. The record made at the Commissioner's level does contain expert testimony with respect to the precise nature of the potential negative impacts to the health and well-being of the young Prudence Island students. However, the failure of the School Committee to seek out this type of information prior to the April 10, 2007 vote does not invalidate the School Committee's decision making process. The general nature of the disadvantages was evident and sufficient for an informed decision to be made. See Lusignan v. East Providence School Committee, decision of the Commissioner dated June 17, 1999.

The Appellants submit that substantively, the School Committee's decision was unreasonable and an abuse of its discretion. The Commissioner is urged to reverse the decision because it does not give proper weight to the harm caused to the Island's youngest students, for a savings of roughly \$70,000. As we have observed in prior cases<sup>16</sup>, the Commissioner's review of school committee action is de novo. The Commissioner has authority to make an independent judgment based on consideration of the facts in the record (which, as we have noted here, are different from the facts before the School

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<sup>16</sup> See Lusignan, supra and Spohn v. Newport School Committee, decision of the Commissioner dated October 7, 1998

Committee) and the applicable law. The Commissioner's exercise of independent judgment has, historically, been exercised with restraint in cases of this type. The decision of local school committees, which under Title 16 have the authority to control the public school interests of their respective cities and towns, has been overturned only when the committee's decision is not reasonable, or is contrary to state law, regulation, or statewide educational policy.

We find in this case that although the decision to close the Prudence Island School is accompanied by good cause, it does not comply with R.I.G.L.16-21-1 in that the same decision requires these two students to commute four (4) hours every school day. R.I.G.L. 16-21-1 requires that "suitable transportation" be provided to students. The Rhode Island Supreme Court indicated in Brown v. Elston, 445 A. 2d 279 (R.I. 1982) that the Commissioner must consider a "host of factors" affecting the practicality of traveling the distance to and from school and emphasized that the purpose of the statute requiring suitable transportation was to "encourage school attendance and to protect the health, safety and welfare of the pupil". The Commissioner has followed the directives of our Supreme Court in hearing appeals and has reviewed a "host of factors" determining not only whether a student must be provided with transportation instead of walking to school, but whether the transportation provided is in fact "suitable". These factors have included the age of the children, the length of the ride to and from school, the distance and the efficiency of the transportation arrangements.<sup>17</sup> In this case the Appellants have challenged the transportation arrangements and have documented a potential for harm to their children's physical and mental health. Although the Appellants have not specifically cited a violation of R.I.G.L. 16-21-1, it is our finding that the four-hour length of the children's daily commute to school, considered in and of itself, does not provide them with suitable transportation as required under the statute. We would note that the attendance of these young students in school, every day the schools are in session, is compulsory attendance required under the law. Thus, their ten-hour days differ from those of their counterparts in day care for the same period of time in that the day care schedule is by parental choice. While it is true that the Appellants have chosen an "island lifestyle" they have not waived, nor could they, the right their children have under Rhode Island law to suitable transportation to and from school.

The other concerns registered by the Appellants with respect to the rigors and hazards of daily travel on the ferry, especially in cold weather, are not unreasonable<sup>18</sup>, but can be addressed by such measures as an assigned monitor to assist them and to ensure that they obtain space in the enclosed cabin of the ferry in cold weather. It is the total time involved in the journey on a daily basis that is inconsistent with the notion of suitable

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<sup>17</sup> See Forest Hills Homeowners v. Exeter-West Greenwich Regional School Committee, decisions of the Commissioner dated January 22, 2004 and April 20, 2004; Henry R. v. Newport School Committee, decision of the Commissioner dated April 23, 1999 (a special education context); Hordes v. East Greenwich School Committee, decision dated July 12, 1995 ( regional school transportation); Noack v. Barrington School Committee, April 5, 1989 (regional school transportation); Carvalho v. Barrington School Committee, January 4, 1994(regional school transportation).

<sup>18</sup> Whether such travel on the ferry presents an "unreasonable risk of harm" such that liability would result from any accident or injury to these young children is a matter for the School Committee to determine in conjunction with its legal advisors.

transportation for such young children. The time involved in getting to and from school, at such a young age, presents more than an undue level of inconvenience<sup>19</sup>, but is so extreme as to render the proposed transportation arrangements “unsuitable” under state law.

Our record does not indicate the reason for the School Committee’s subsequent vote to defer implementation of the closure of the Prudence Island School until next year. In light of our finding with respect to the need to comply with R.I.G.L. 16-21-1, the School Committee will, by its own action, have additional time to determine an alternative plan, if there is a viable one, for the two students who would be displaced by closure of the school. It is evident that until suitable transportation arrangements are made<sup>20</sup>, the Prudence Island School would of necessity remain open. This is a situation which the drafters of our early education laws may have contemplated when they determined that:

(a)Except as specifically provided in this section, every city or town shall establish and maintain ...a sufficient number of schools in convenient places...In lieu of convenient location the school committee may provide transportation for pupils to and from school in accordance with the provisions of chapter 21 of this title. (R.I.G.L. 16-2-2)

In light of our findings with respect to the need for suitable transportation arrangements to be made, the April 10, 2007 decision of the Portsmouth School Committee to close the Prudence Island School is upheld in part and reversed in part, and this matter is remanded to the School Committee for further consideration and appropriate action.

For the Commissioner,

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Kathleen S. Murray, Hearing Officer

APPROVED:

\_\_\_\_\_  
Peter McWalters, Commissioner

\_\_\_\_\_  
October 3, 2007  
Date

<sup>19</sup> See the discussion of this issue in Carvalho, supra, at pages 7-8.

<sup>20</sup> Or a viable alternative, such as tuitioning the students in to a Bristol elementary school (pursuant to R.I.G.L. 16-2-19), which would cut approximately two hours from their daily commute and might also permit the children to take a later ferry each day.