

**STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS**

**COMMISSIONER OF  
EDUCATION**

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**Student J. B. Doe**

**v.**

**Exeter-West Greenwich School Department**

.....

**DECISION**

**HELD:** This cross-district transportation appeal must be denied and dismissed because the petitioner is not entitled to receive the transportation requested either under the state's Cross-District Transportation Law (R.I.G.L. 16-21.1-1, et seq.) or the state's Regional Vocational Schools Act (R.I.G.L. 16-45-1).

Date: December 31, 2009

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

This is an appeal in a cross-district transportation case. Jurisdiction is present under R.I.G.L. 16-39-1, R.I.G.L. 16-39-2, and R.I.G.L. 16-21.1 -5. Under R.I.G.L. 16-21.1 -5 the Commissioner hears cross-district transportation appeals directly.

## **Position of the Parent**

The parent in this case, who lives in West Greenwich, contends that the Exeter-West Greenwich Regional School District is obligated to transport her son to the New England Laborers'/Cranston Public Schools Construction Career Academy (Laborers' Career Academy), a charter school located in the City of Cranston. The parent points out that the Exeter-West Greenwich Regional School District transports some of its students to the Regional Career Technical Center at Coventry High School. She argues that similar services should be available to students attending the Laborers' Career Academy.

## **Position of the State Operated Cross-District Busing Program and the Exeter-West Greenwich Regional School District.**

The state's Cross-District Busing Program (R.I.G.1.16-21.1-8) and the Exeter-West Greenwich Regional School District contend that no law or regulation obligates them to provide the requested transportation.

## **Findings of fact**

1. The petitioning parent lives in West Greenwich with her son. Until recently her son attended the regular public schools of the Exeter-West Greenwich Regional School District.<sup>1</sup>
2. The petitioner's son, who has an IEP, now attends the Laborers' Career Academy, a charter school located in the City of Cranston.<sup>2</sup>
3. The student appears to have had academic difficulties in the schools of Exeter-West Greenwich. These difficulties caused the school district to bring the Laborers' Career Academy to the attention of the student and his parent.<sup>3</sup>
4. The Exeter-West Greenwich Regional School District did not arrange for the placement of the student at the Laborers' Career Academy. The student's placement at the Career Academy was not a special education placement made by the school district.<sup>4</sup>

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<sup>1</sup> Transcript, page 4.

<sup>2</sup> Transcript, page 4.

<sup>3</sup> Transcript, page 11.

<sup>4</sup> Transcript, page 13.

5. Still, the student’s IEP team, “took him to the Career Academy and exposed him to it, and it was noted in the minutes of [the student’s] IEP meeting that he was going there. And Gwen Spencer, who was the Assistant Director of Special Education at that time, had agreed that it would be a perfect fit for his needs.”<sup>5</sup>
6. The student is on the honor role at the New England Laborers’/Cranston Public Schools Construction Career Academy.<sup>6</sup>

**Conclusions of Law**

**A. Transportation under Rhode Island’s Cross-District Transportation Law (R.I.G.L. 16-21.1-1.**

Rhode Island has a law which provides for a defined range of cross district transportation.<sup>7</sup> For purposes of this law the state is divided into five transportation regions:

*SCHOOL BUS REGIONS*

REGION I	REGION II	REGION III	REGION IV	REGION V
Burrillville Cumberland North Smithfield Woonsocket	Coventry East Greenwich Foster Glocester Scituate Warwick West Warwick	Barrington Bristol Central Falls Cranston East Providence Johnston Lincoln North Providence Pawtucket Providence Smithfield Warren	Charlestown Exeter Hopkinton Jamestown Narragansett New Shoreham North Kingstown Richmond South Kingstown West Greenwich Westerly	Little Compton Middletown Newport Portsmouth Tiverton

In the case now before us we note that the student lives in West Greenwich which is located in Region IV. The Career Academy is located Region III. The student is therefore not entitled to transportation to the Career Academy under the cross-district transportation law. In reaching this conclusion we are aware of the variance provision to the cross-district transportation law which is found at R.I.G.L. 16-21.1-3:

**R.I.G.L. 16-21.1-3 Variances permitted.** – (a) Variances to require a city or town to provide bus transportation to a pupil who attends a school, except a special education facility, outside the region in which the pupil resides shall be granted by the commissioner of elementary and secondary education if he or she finds that:

<sup>5</sup> Transcript, page 13.

<sup>6</sup> Transcript, page 6.

<sup>7</sup> R.I.G.L. 16-21.1-1, Transportation of School Pupils Beyond City and Town Limits

- (1) There is no similar school within the region;
- (2) The transportation is necessary to provide an educational opportunity which the pupil has a right to pursue; and
- (3) The school building which the pupil attends is **within fifteen (15) miles** of the city or town of which the pupil is a resident.

(b) Variances to require a city or town to provide bus transportation to a pupil entitled to **enrollment in a special education program**, provided in accord with regulations of the board of regents for elementary and secondary education, shall be granted by the commissioner of elementary and secondary education if he or she finds that the transportation is necessary in order that the pupil enroll in a special education facility located outside of the region and there is no similar facility within the region. (Emphasis added)

We find that the variance discussed in subparagraph (a) of R.I.G.L.16-21.1-3 is not available in this case because the First Circuit Court of Appeals has declared this part of the cross-district busing law to be unconstitutional.<sup>8</sup>

We further find that the special education program variance permitted by subparagraph (b) of R.I.G.L.16-21.1-3 is not available in this case because this student was not placed through the IEP process at the Laborers' Career Academy and because the Laborers' Career Academy, while it may provide a measure of special education, is not a licensed "special education facility" as defined by the special education regulations of the Board of Regents.<sup>9</sup> In the end we must conclude that the student in this case is not entitled to transportation under Rhode Island's cross-district transportation law.

## **B. Vocational Education Transportation**

The parent in this case points out that the Exeter-West Greenwich Regional School District transports students to the Career and Technical Center at the Coventry High School. She therefore contends that the Exeter-West Greenwich Regional School District should transport her son to the New England Laborers'/Cranston Public Schools Construction Career Academy. She contends that since Exeter-West Greenwich transports students out of district to the Career and Technical Center at the Coventry High School it should provide the same transportation services to her son who attends a Career Academy in Cranston. It must be conceded that this argument has at least some surface plausibility.

Still, the short answer to this argument is that New England Laborers'/Cranston Public Schools Construction Career Academy, despite its name, is not part of the Rhode Island's system of Regional Vocational Schools established under R.I.G.L. 16-45-1. Schools become part of this system of Regional Vocational Schools either through direct legislative action or through Board of Regents regulatory action implementing the Regional Vocational Schools Act. More specifically, The Davies Regional Vocational

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<sup>8</sup> R.I.G.L.16-21.1-3 (a) See: *Members of the Jamestown School Committee v. Schmidt*, 699 F.2d 1 (1st.Cir.) and *Frances v. Department of Education*, Commissioner of Education, August 30, 2004.

<sup>9</sup> Board of Regents Special education Regulation 300.115 (A).

School, the Providence Metropolitan School, and the Newport Metropolitan Schools were directly established by the General Assembly. (R.I.G.L.16-45-6.1) The other Regional Vocational Schools—located in Coventry, Cranston, East Providence, Newport, Warwick, Woonsocket, and Richmond – were established Under the Regional Vocational School Act by Board of Regents regulatory action.<sup>10</sup>

Charter schools, such as the Cranston Career Academy and the Blackstone Academy, have not been incorporated by the Board of Regents into the state system of Regional Vocational Schools created by R.I.G.L.16-45-1, et seq. Students attending these charter schools are therefore not entitled to receive transportation services provided under the authority of R.I.G.L.16-45-1, et seq. and its associated Board of Regents regulations.

We note that if the Cranston Career Academy were part of the state’s Regional Vocational School system the parent would have a good argument that the Exeter-West Greenwich school system would have to transport her son to the Cranston Career Academy if a similar vocational education program did not exist at the Coventry Regional Vocational School.<sup>11</sup>

**Conclusion**

The appeal must be denied and dismissed since the petitioner is not entitled to receive transportation services either under the state’s Cross-District Transportation Law (R.I.G.L. 16-21.1-1, et seq.) or the state’s Regional Vocational Schools Act (R.I.G.L. 16-45-1) and its associated Board of Regents Regulations.

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Forrest L. Avila, Hearing Officer

APPROVED:

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Deborah A. Gist, Commissioner

December 31, 2009  
\_\_\_\_\_  
Date

<sup>10</sup> SEE: Exhibit O to the Regulations of the Board of Regents Governing the Management & Operation of Area Vocational-Technical Centers in Rhode Island.

<sup>11</sup> Regulations...Governing...Area Technical Centers in Rhode Island, Page 35