

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER
OF EDUCATION

GEORGE B,

vs.

NORTH KINGSTOWN
SCHOOL COMMITTEE

DECISION

HELD: School Committee met its statutory obligation under R.I.G.L. 16-21-1 to provide suitable transportation to the appellant's children.

October 1, 1992

Travel of the Case

This case was appealed to Commissioner Peter McWalters on August 19, 1992, and a hearing held by the undersigned, designee of the Commissioner, on September 15, 1992.

Subsequently, a view of the area was taken by the hearing officer, since the issue in the case centered on the suitability of the transportation provided to the appellant's children and the safety of the children's route to the bus stop.

Jurisdiction to hear this appeal lies under R.I.G.L. 16-39-2. The record in the case closed on September 29, 1992 upon the hearing officer's receipt of additional information on the school committee's busing policy.¹

Findings of Relevant Facts

- o The appellant, George B , lives at Pinecrest Drive, North Kingstown, R.I., with his wife and twin daughters.
- o Mr. B 's daughters turned five in July and are attending kindergarten at the Fishing Cove School in North Kingstown.
- o The B 's home is one of seven houses built recently in a cul de sac at the end of Pinecrest Drive.
- o Pinecrest Drive is a paved road which runs off West Allenton and is intersected at two points by Sweet Meadow Road, which is U-shaped. (Appellant's Ex. 1)
- o There are no sidewalks on Pinecrest Drive. (Tr. p. 9)

1. The record was unclear whether door-to-door transportation was provided to all kindergarten children in the district except those who live in the neighborhood of the appellant. The letter of Walter D. Kettelle dated September 28, 1992 and incorporated in the record as hearing officer Exhibit A, was requested to clarify the district's policy/practice with respect to door-to-door pickup of kindergarten children.

- o There is very little traffic on Pinecrest Drive, and most of the cars traveling that road are those of residents of the area going to and from their homes.
- o The bus stop to which the B children and one other kindergartener must walk is located approximately five hundred feet from the B house at the northerly intersection of Sweet Meadow and Pinecrest Drive. (Tr. p. 75)
- o The childrens' route of travel on Pinecrest Drive is on that section of the road which rises to a slight crest, reducing visibility ahead and creating a blind spot into the area where the road forms the cul de sac. (Tr. p. 28,33)
- o The North Kingstown school committee's policy on walking distances provides for a walking distance (to either school or the bus stop) of 5/8 radial mile for kindergarten children, subject to a "waiver" of that distance if a safety factor is involved. (S.C. Ex. 1)
- o A kindergarten school bus will, under some limited circumstances, stop at the door of a kindergarten child's house. (Hearing Officer Exhibit A)
- o The 71-passenger bus used for kindergarten pickup could not turn around without backing up if the bus proceeded into the cul de sac to pick up the B children at their door. (Tr. p. 71-72, 85)
- o A 24-passenger mini-bus, usually reserved for special-needs children, could not accommodate the number of kindergarten children presently transported on this particular kindergarten

route. If it were used, the mini-bus could turn in the Pinecrest Drive cul de sac without backing up.

DECISION

The question to be resolved in this case is basically a factual one - whether the location of the present bus stop makes the route to be taken by the appellant's daughters "impractical". Well-established is that safety factors, as well as the distance to be traveled by the students, on their own, determine the "practicality" of their travel. Brown v. Elston, 445 A2d 279 (1982) Also well-established is the obligation of the Commissioner to make a de novo determination of these issues, despite a natural inclination to defer to the judgment of local school officials who make day-to-day assessments of the safety of their school transportation system.²

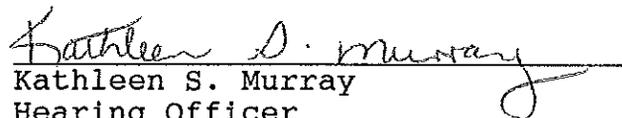
One could take the position that even given a short distance to travel and a safe road, no child of age five should walk unaccompanied (for school transportation purposes one must assume that a child is unescorted by an adult). However, for us to read in a door to door transportation requirement to R.I.G.L. 16-21-1 for all kindergarten children given the present language of the statute would be unsupportable, and it is not an interpretation urged upon us by the appellant. We note this because it is our view that implicit in the travel of any extremely young child on any given route to school is an element of danger - one which

2. See footnote 6 La Chappelle v. Charlestown, decision of the Commissioner dated Sept. 7, 1983 and footnote 9. Taboada v. Hopkington, decision of the Commissioner dated June 27, 1985.

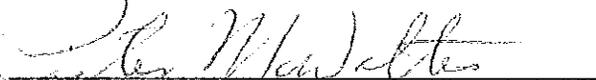
could be eliminated only by a door-to-door pick up of the child. The analysis of whether the proposed route is safe for a child is, therefore, not premised on a requirement that any risk of danger be entirely eliminated. This, as we noted, would for a five year old child probably require a bus stop at the child's door. Neither do we feel that a finding of "extreme danger" is required to impose upon a school committee the obligation to relocate a proposed bus stop or to provide transportation to a student. Rather, the determination should be that the child's route of travel is reasonably safe, i.e. that the child is not subject to an unreasonable risk of harm by traveling the route in question.

In this case we find that the "blind spot" and lack of sidewalks are factors which increase the risk encountered by the children walking to the present bus stop. The distance they must travel is very short and there is very little traffic in the area. There is also room for the children to walk (on one side) without walking in the road itself. The record before us also contains the report of Sergeant Albert W. Truchon, of the North Kingstown Police Department who investigated the safety of the present bus stop. His opinion, to which we give considerable weight, was that requiring the school bus to back up (which it would have to do given the turning radius of the 71-passenger bus) creates a safety hazard. Balancing the risks here, we feel it is better not to require the bus to go into the cul de sac to pick up the appellant's children.

Taking all safety factors into consideration, we feel that the children's route to the bus stop is reasonably safe. We would suggest, however, that the stop be relocated to the other side of Pinecrest Drive, so that the children will not have to cross the street if they walk along the grassy side of Pinecrest Drive.


Kathleen S. Murray
Hearing Officer

APPROVED:


Peter McWalters
Commissioner

October 1, 1992