

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

PIERRE AND SARAH MORENON

VS.

PROVIDENCE SCHOOL BOARD

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DECISION

Held: Under R.I.G.L. 16-21.1-1,
Providence School Board must
provide transportation during
Providence public school vaca-
tion to resident children
attending private school in
East Providence.

Introduction

This matter concerns an appeal by Pierre and Sarah Morenon from the Providence School Department's refusal to provide their children with transportation to the Gordon School in East Providence during Providence's April 1993 public school vacation.¹

For the reasons set forth below, we sustain the appeal.

Background

Appellants reside in Providence. Their two children attended the 5th grade and kindergarten at the Gordon School during the 1992-1993 school year. The Gordon School is a private, non-sectarian² school located in East Providence.

During the course of the 1992-1993 school year, the Providence School Department provided Appellants' children with transportation to the Gordon School. Transportation was not provided during the April 1993 public school vacation, however. The April vacation was different from prior 1992-1993 Providence public school vacations in that no students, including those in 230-day special education programs, attended Providence public schools during that vacation. As a result, the Providence School Department did not have any vehicles in its transportation fleet providing service to public school students on those days in April. Because its buses were not in operation, the school district did not provide transportation to Appellants' or other children attending private schools

1 This appeal was assigned to the undersigned hearing officer. It was heard on August 12, 1993. The record closed on August 24, 1993.

2 We take official notice of the non-sectarian nature of the Gordon School, which, as a private school, is registered with the Department of Education.

during the April public school vacation.

Contentions of the Parties

Citing R.I.G.L. 16-21.1-1, Appellants contend that the School Board is required to provide their children with transportation to the Gordon School, which is located in the same transportation region as Providence. Appellants ask that the School Board be ordered to resume transportation for their children during the April vacation and to provide transportation "even on days when the public schools are not in session . . ." (Transcript, p. 3).

The School Board argues that to require school districts to provide transportation to private school students on days when children are not attending the public schools and buses are not in operation exceeds the scope of R.I.G.L. 16-21.1-1. The School Board asserts that, under the case of Members of the Jamestown School Committee v. Schmidt, 699 F.2d 1 (1st Cir. 1983), a school district is not obligated to provide transportation to private school students when public schools are not in session if such transportation results in added costs to the school district.

Discussion

R.I.G.L. 16-21-1, entitled "Transportation of Public and Private School Pupils," states in pertinent part that

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.

R.I.G.L. 16-21.1 is entitled "Transportation of School Pupils Beyond City and Town Limits." R.I.G.L. 16-21.1-1 states that

This chapter shall be construed and applied to create a state plan for the busing of pupils beyond city or town limits, in recognition of the legislative policy to encourage the establishment of and continuance of consolidated and regional schools, to provide a unified statewide busing service, to afford to pupils who attend public schools the opportunity at the election of the school committee of the city or town in which the pupils reside, to attend a public school, either full time or part time, not available within the city or town in which the pupil resides, as authorized by Sec. 16-3.1-1 et seq., to afford to handicapped children equal educational opportunity, to afford bus transportation to pupils who attend non-public non-profit schools which are consolidated, regionalized, or otherwise established to serve residents of a specific area within the state, and who may be counted for purposes of reimbursement to cities and towns under the state aid formula provided by Sec. 16-7-22 et seq., to conserve valuable natural resources by reducing the number of vehicles necessary to transport pupils to school, and to provide for the transportation of public school students who attend schools located outside of the city or town in which they reside, to protect the health, safety, and welfare of pupils who live at such distances from the schools which they attend as to make it impractical or hazardous to require the pupil to walk to school.

R.I.G.L. 16-21.1-2 establishes 5 school bus districts within the state "to provide bus transportation in the interest of public safety, health, and welfare for pupils . . ." It also provides that pupils

in the interest of public safety, health, and welfare, shall be provided with bus transportation to the school or facility which the pupil attends, within the region in which the pupil resides, by the school committee of the city or town within which the pupil resides.

As set forth in R.I.G.L. 16-21.1-2(a)(3), transportation region III includes both Providence and East Providence.

There is no dispute in this matter concerning the School Board's general obligation to transport Appellants' children to the Gordon School. Nor is there any disagreement as to the particular arrangement in effect on the days the School Board provided transportation to the Gordon School. The dispute herein centers on whether the School Board is required to provide transportation to the Gordon School on days in which all Providence public school students are on vacation.

The issue in this case has not previously been addressed in this forum. Based on our review of the applicable statutes and the court decisions in the Jamestown School Committee case, we hold that the School Board breached its statutory duty by failing to provide Appellants' children with transportation to the Gordon School during the public school vacation in April 1993.

The Jamestown School Committee case originated in federal district court. Prior to deciding the federal constitutional issues raised therein, the court certified several state constitutional issues to the Rhode Island Supreme Court. That court upheld R.I.G.L. 16-21.1-1 against the state constitutional challenges, including a claim that the statute violated article XII³ of the Rhode Island Constitution by diverting tax dollars appropriated for the support of public schools to the transportation of students

3 Article XII states that "it shall be the duty of the general assembly to promote public schools, and to adopt all means which they may deem necessary and proper to secure to the people the advantages and opportunities of education."

enrolled in nonpublic schools.

The Rhode Island Supreme Court embraced the "child-benefit theory" in its decision in the Jamestown case. The Court stated that

Under this theory, transportation of pupils is viewed as a legitimate function of the governmental police power to protect the health and safety of all students who are compelled by law to attend school. In order to fall within this theory, however, the benefit must reach children attending public as well as private schools. Note, Lemon v. Kurtzman, 403 U.S. 672, (1971), 4 Conn. L. Rev. 541, 542 (1971-72). Ibid. at 20.

The Court also stated that

Use of the police power to further the well-being of private-school children by providing bus transportation has been analogized to police and fire-department protection of nonpublic-school occupants and nonpublic-school buildings. (citations omitted). Each of these protective services constitutes a public expenditure of money that indirectly benefits private schools. In view of the purpose of the act, which is to protect the health, safety and welfare of Rhode Island pupils, we agree that providing bus transportation to students is a legitimate exercise of the police power. Ibid.

The Court viewed R.I.G.L. 16-21.1-1 as a response to the
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dictates of the compulsory education law in that it enables "all

4 405 A.2d 16 (1979).

5 Rhode Island's compulsory attendance law, R.I.G.L. 16-19-1 to 16-19-10, requires that "[e]very child who has completed six (6) years of life and has not completed sixteen (16) years of life shall regularly attend some public day school during all the days and hours that the public schools are in session in the city or town wherein the child resides . . ." An exception to this requirement is provided for a child who "has attended for the required period of time a private day school approved by the commissioner of elementary and secondary education . . ." Furthermore, R.I.G.L. 16-2-28 provides that children shall be (continued on next page)

citizens to comply easily and safely with that law." Ibid. at 21.

The United States Court of Appeals also found R.I.G.L. 16-21.1-1 to be constitutional, but limited its approval of the statute in light of prior United States Supreme Court decisions upholding the transportation of sectarian students as part of a "general" program "neutrally" provided "in common" to "all" school children. 699 F.2d at 9. The Court interpreted the decisions as limiting the degree of disparity in access or expenditure permitted under the federal Constitution. Specifically, the Court stated that public and parochial-school students "must be eligible for busing to their schools on the same terms," and that "the relative costs per-student of sectarian and public student busing must remain roughly proportional." Ibid. at 9-10. (emphasis in original).

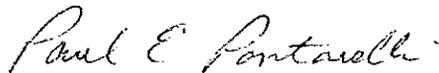
We find that the overriding purpose of R.I.G.L. 16-21.1-1 is to protect the health and safety of all Rhode Island students, whether they attend public or private schools. We also recognize the Court of Appeals' insistence in its Jamestown decision that public and parochial school students be eligible for busing to their schools on the same terms. In the context of this case, we interpret the statutory language and the Court of Appeals' decision as requiring the School Board to provide for Appellants' children what it provides for its public-school students -- suitable transportation to their schools if it is otherwise impractical for them to attend, and transportation on the days their schools are

5 (continued) eligible to attend first grade only upon the completion of a state recognized or accredited kindergarten program" unless a waiver is obtained pursuant to regulations promulgated by the commissioner.

required to be in session. Furthermore, because the Gordon School is a private, nonsectarian school, its students fall squarely within the Rhode Island Supreme Court's Jamestown School Committee decision validating the state's use of its police power to assist all parents in complying with the compulsory education law. Children attending private schools are expected to attend such schools "for the required period of time." The School Board therefore must provide Appellants' children with transportation to the Gordon School on required days of attendance during the school year regardless of whether public school students are attending school on that particular school day.

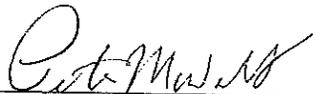
Conclusion

The appeal is sustained on the grounds that the Providence School Board failed to provide Appellant's children with transportation to the Gordon School during the April 1993 public school vacation as required by R.I.G.L. 16-21.1-1.



Paul E. Pontarelli
Hearing Officer

Approved:



Peter McWalters
Commissioner of Education

Date: January 4, 1994