

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER
OF
EDUCATION

.....

In the Matter of Student A.

.....

Interim Order

Held: This is an interim order hearing brought on behalf of a special education student [Student A] whose aide has been physically attacked several times by another student [Student B] during the daily school bus ride. As the duration and present structure of this bus ride do not address the needs created by Student B's disability, we conclude that: 1) Student B's IEP team must be reconvened, 2) steps must be taken to shorten the bus ride, and 3) If necessary, individual transportation will be provided to Student A and her aide for the duration of the school year.

Date: May 21, 2001

Travel of the Case

This is an interim order hearing brought on behalf of a special education student [Student A] whose aide has been physically attacked several times by another student [Student B].¹ These attacks took place during a school bus ride that is a related service that is needed to provide both students with a free appropriate public education.² These attacks are a product of Student B's disability. They are not the result of malice. The facts of the case show that standing to bring this petition is present. These attacks make the bus ride dangerous and difficult for all.

Findings of Fact

Student A, who attends the Meeting Street School, is a wheelchair bound student with significant medical problems requiring careful management by an attendant. As a result of her medical problems Student A needs to be accompanied by a personal aide on her bus ride to school. When neither the Bus Company nor the school was able to find a registered nurse to serve as an aide, a decision was made to hire the 18-year-old sister of Student A to fill this role. We will refer to this older sister as "the wheelchair aide." This older sister has the special training needed to care for her younger sister and, as a family member, she may legally perform the medical tasks that are part of her duties. The family physician has approved this arrangement.

There are 4 or 5 other children who ride the small school bus with Student A. The bus ride has a total one way duration of 2 hours and 20 minutes. One of the students who rides the bus, Student B, has handicapping conditions which have resulted in his placement at a facility which specializes in educating students with very significant disabilities. Student B is 18 years old. He is six feet tall and weighs about 250 pounds:

[Student B] is a very large young man. On the day of observation, his hair was uncombed and his clothes were untidy. He is prone to make sudden movements and loud unexpected noises. Due to appearance and mannerisms [Student B] might be a disconcerting presence to someone who does not know him. It is understandable that [Student B] might intimidate people when they first meet him. However, *there was no*

¹ R.I.G.L.16-39-3.2

² RISE 300.24

*behavior during this one hour bus ride that was dangerous, given the system that is in place.*³ (Emphasis added)

The problem however in this case, *as the author of the above quoted language already knew*, is not that Student B has an intimidating presence, but rather that his disabilities, *in fact*, can cause him to act aggressively.

The "crew" of the bus in this case consists of a *driver*, a *bus aide*, and the older sister who serves as the *wheelchair aide* to Student A. The *bus aide* is a woman who is about 5 feet, 2 inches tall. She appears to be under instructions from the Bus Company not to attempt to intervene physically if Student B becomes unruly. The Bus Company is being practical here since it is evident that the present bus aide has neither the training, nor the physical presence, to control Student B's behavior. The school report makes this point:

What is noteworthy is that [the bus aide] indicated that she does not intervene with [Student B] because the bus company does not allow employees to be trained in physical restraint and she does not feel comfortable. She sits in the front of the bus *well away from* [Student B].⁴ (Emphasis added)⁵

No one disputes that on January 12 of this year Student B became aggressive toward the wheelchair aide and "kicked her twice and slapped her once as the bus pulled onto Route 95 South from Branch Avenue."⁶ The bus aide made no effort to stop this assault. School authorities studied the situation, made some psychological treatment recommendations, and obtained a cover for Student B's seatbelt that was supposed to keep him restrained in his seat. This solution did not work. On May 4th Student B again assaulted the wheel chair aide. The school's report states:

[The Wheelchair aide] indicated that she was seated on the right side on the bus. [Student B] was on the left, two seats up, [the Wheelchair aide] stated that she was looking out the window when suddenly [Student B] was in front of her. He apparently went to grab her shirt, which ripped and then he slapped her with open hands. [The bus driver] told him to sit down, which he did. He sat for awhile and then he got up and slapped her. [The bus driver] said that [Student B] did not respond to his verbal cue this time. [The bus driver] pulled over on Branch Ave. and held [Student B's] hands. Student B then calmed down. [The wheelchair aide asked that the police be called which [the bus driver] subsequently did.

³ Exhibit SC 12

⁴ Exhibit SC 12

⁵ There is testimony in the record indicating that the bus aide is afraid of Student B.

⁶ Exhibit C: Rhode Island State Police Report.

When the police arrived, they decided to escort the bus to [Student B's placement.]

We find that while the school is taking efforts to manage this student through psychological intervention the distinct possibility remains that Student B will act out again, and attempt to injure another passenger. This is dangerous; not only to the person who might be harmed by the assault, but also to all the passengers on the bus who run the risk of becoming involved in a traffic accident that might result from an altercation on the bus. It is also extremely unfair to Student B who should not be put in a position where his disabilities can harm others. Even if the danger here were not self-evident, the fact that the state police felt that it was appropriate to invest their time in escorting the school bus to Student B's placement should give a prudent observer cause for concern.⁷

For the record, we note that the petitioner has submitted an exhibit in the form of a log kept by a bus aide in 1999. This log contains reports of 5 or 6 other occasions when Student B slapped, punched, or bit other students. While this log is hearsay as to the specific incidents it records, we find that a prudent school administrator would take this document into consideration when attempting to assess the overall risk that this situation presents. A writing of this nature is not composed in jest.

We recognize that the school district is now suggesting that Student B should wear a harness on the bus to keep him in his seat and that steps could be taken to be sure that an empty seat is kept between student B and the other passengers on the bus. The harness proposed however appears to be nothing more than a car safety device which, according to its labeling, is not appropriate for a child who weighs more than 160 pounds. Moreover, we are not convinced in the least that Student B could not extricate himself from this harness. Furthermore, the problem remains of how to control Student B's behavior before his harness is affixed to his seat. Further experimentation with safety on this bus ride is not warranted.

We find that the school district has failed to provide safe transportation to the students on this bus and to the aide whose presence is needed to enable Student A to enjoy a free appropriate public education. We further find that the bus ride in this case is greatly in excess of the applicable state standard and that no good cause has been shown to justify its duration. The applicable regulation states:

⁷ R.I.G.L.42-35-10(a)

300.310 Transportation Services for Children with Disabilities...(4)

Scheduling of transportation vehicles shall be planned whenever possible in such a manner as to provide for the least amount of travel time necessary to transport children with disabilities from home to school and back home again. When travel time for children with disabilities who are receiving special transportation is found to exceed one (1) hour to or from the location of special education services, the parent(s) shall be notified in writing. The notification shall include a description of the parent's right to an appeal. The school district will submit a copy of the notification to the Director of the Office of Special Needs at the RIDE. This notice will include the reason(s) for the duration of travel time.

In fact it is evident to us, as it should be to local officials, that the duration of the bus ride is one of the problems in this case. We further find that the present structure of this bus ride denied a free appropriate public education to student B since it does not address the needs created by his disability.

Conclusion

1. Student B's IEP team must be reconvened to determine what sort of transportation services, restraints, and aide services are needed to transport him in a way which is safe to him, and to others. This might include the provision of individual transportation or the employment of an aide with the training and physical ability to control Student B's behavior. We find that there is no assurance at this time that the harness proposed by the school will sufficiently control Student B's behavior.
2. We find that this bus ride is too long and that steps will have to be taken to shorten it.
3. The school will provide individual transportation to Student A and her aide for the duration of the school year if it is not able to secure the services of a bus aide with the ability to control Student B's aggressive behavior.

APPROVED:

Forrest L. Avila, Hearing Officer

Peter McWalters, Commissioner

May 21, 2001
Date