

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JOHN AND SHERRY K.  
V.  
CHARIHO REGIONAL SCHOOL  
DISTRICT

DECISION ON REQUEST  
FOR INTERIM ORDER

Held: Although the school district is not presently providing suitable transportation to the appellants' child, road conditions not within the control of the school committee (or the Town of Charlestown) prevent the School Committee from providing suitable transportation at the present time.

Date: February 24, 1995

### Travel of the Case

On November 22, 1994 John and Sherry K        appealed to Commissioner Peter McWalters from a decision of the Chariho School Committee regarding bus transportation for their kindergarten-age child. The matter was referred to the undersigned as the designated hearing officer. Hearing was deferred until Mr. K        's return from a job assignment out of state.

By agreement of the parties, the matter was heard on January 9, 1995. Documentary and pictorial evidence was submitted by the parties at that time. On January 18, 1995 the transcript of the hearing was filed in the Department of Elementary and Secondary Education. On January 27, 1995 the hearing officer viewed the area in question, the location of the bus stops designated for the Appellants' child, and the route of travel to and from the bus stops.

The record in the case closed on January 27, 1995 upon completion of the view by the hearing officer.

### Issue

Is the transportation presently provided for Joshua K        "suitable" as required under R.I.G.L. 16-21-1?

### Findings of Relevant Facts

- Joshua K        is five (5) years of age and enrolled in kindergarten in the Charlestown Elementary School. (Tr. p. 12)
- In the morning, the school bus stop for Joshua is at the intersection of Montauk Road and Mohegan Road, approximately .5 mile from his home. (Tr. pp. 10, 16; Appellants' Ex. D)
- In the afternoon, the school bus stop for Joshua is at the intersection of Prosser Trail and Mohegan Road, approximately .8 mile from his home (Tr. pp. 10, 16; Appellants' Ex. D)
- The K        family lives at        Duhamel Avenue in Charlestown, Rhode Island. (Appellants Ex. A and D)

- In order to get to his bus stop in the morning, Joshua must walk .5 of a mile along Duhamel Avenue, Sanctuary Road, and up Montauk Road to its intersection with Mohegan. (Appellant's Ex. D)
- On his return trip from school in the afternoon, the K child is dropped off at the intersection of Prosser Trail and Mohegan Road. (Appellant's Ex. D). From this point, he would walk .8 of a mile up Mohegan Road to Montauk Road, then onto Sanctuary Road and then onto Duhamel. (Tr. pp. 10, 25)
- Duhamel Avenue is a private road. (S.C. Ex. 2)
- The status of Sanctuary Road as a public or private road is not established on the record. It was established that Sanctuary Road is an area over which the state's Department of Environmental Management has a right-of-way. (S.C. Ex. 2. Stipulation, Tr. p. 42)
- The Department of Environmental Management has indicated that it will plow Sanctuary Road and Mrs. K testified that it is used by the public. (Tr. p. 39)
- Both Montauk Road and Mohegan Road are public roads under the jurisdiction of the Town of Charlestown. (S.C. Ex. 2)
- None of the roads traversed by the K child on his way to either bus stop have sidewalks. (Tr. p. 19; Appellants Ex. L, M, aa, bb, cc, dd, ee, ff, gg, hh, ii, ll)
- Sanctuary Road is bordered by Watchaug Pond, and at many points along that part of Sanctuary Road which is traversed by this child, the pond is very close to the road. (Tr. p. 19)
- The route traveled by the K child along Mohegan Road and Montauk Road contains several "blind spots" where visibility of pedestrians is made difficult because of hills or curves in the road. (Tr. pp. 21, 26; Appellants' Ex. bb, cc, dd, ee, ff, and gg)
- Cars traveling on Prosser Trail (which is the return drop off point of the school bus) travel well in excess of the posted twenty-five (25) miles per hour speed limit.<sup>1</sup> (Tr. p. 21)

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<sup>1</sup> At the appellants' request, in the course of viewing the route, this hearing officer followed traffic on Prosser Trail to determine the accuracy of their allegation that drivers of cars on Prosser Trail exceeded the speed limit.

- Sanctuary Road is a narrow, one-lane, partially-paved roadway. (Tr. pp. 52-53)
- Sanctuary Road contains many deep potholes and the middle of the road is higher than the tire tracks, making vehicular travel on this road extremely difficult and unsafe<sup>2</sup> (Tr. pp. 52-53; 94 and 95)
- If one uses Montauk Road to access Sanctuary Road (rather than Prosser Trail) the approach to Sanctuary Road on Montauk is a very steep hill which ends abruptly at the intersection of Sanctuary, a few feet from the pond. (Tr. p. 54; Appellants' Ex. gg, hh, and ii)
- There is no turn around space for even a small mini bus on Sanctuary Road. (Tr. p. 96)
- Approximately ten (10) year-round residences are located on Sanctuary Road. (Tr. p. 50). These homeowners traverse this road in many different types of vehicles year-round, as do delivery vehicles servicing these residences. (Tr. p31 Appellants' Ex. qq, rr, ss, tt, uu, and vv)
- The School Transportation Policy of the Chariho Regional School District provides for a walking distance for kindergarten children of one-quarter (1/4) mile. If the walking route presents a hazard to student safety, the bus stop will be adjusted. (S.C. Ex. I p.1)
- If the kindergarten child is on a "kindergarten-only" bus, the walking distance is to be adjusted to the closest point of public access to the property line. (S.C. Ex. 1)
- Measurements for walking distance begin, under the School Transportation Policy, at the point of access to a public road nearest a student's residence or to a public road accessible to a school bus. (S.C. Ex. 1 p.2 (III))
- Consistent with School Committee policy, even if Mr. or Mrs. K <sup>3</sup> is not present at the bus stop, Joshua will be dropped off. (Tr. p. 71)

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<sup>2</sup> Our view of the site included two excursions down the full length of Sanctuary Road.

<sup>3</sup> Or some other authorized adult.

## Position of the Parties

### The Appellants

Mr. and Mrs. K argue that the School Committee has not provided safe transportation for their son, given his age, the distance and dangerous route of travel to either of the bus stops in question. In addition, if these are the bus stops which their child must utilize, the policy of the district would permit Joshua to be dropped off even if his parent, or an adult authorized by his parent, was not present to meet him. This policy only compounds the hazards posed to him in being transported to and from the Charlestown Elementary School under the present arrangements with the school district.

Contrary to the School Committee, the appellants argue that Sanctuary Road is public and not unsafe for travel by a school van or minibus. They acknowledge, however, that a full-size bus could not maneuver the route that would be required to provide them with closer bus access. If their child were dropped off at the intersection of Sanctuary and Duhamel Road, this would provide him with transportation which they believe is safe and suitable, as required by state law.

### Chariho Regional School Committee

Counsel for the School Committee argues that Sanctuary Road is not a public road. Assuming that it is not public, the committee's position is that the transportation currently provided to the K child fully complies with the requirements of the School Committee's transportation policy. In the morning, Joshua's "kindergarten only" bus stops to pick him up the closest point of public access to the K's residence. In the afternoon, the bus, which at that time carries elementary school children of various ages, drops him off within one quarter (1/4) of a mile from the "point of access to a public road nearest (his residence) or to a public road accessible to a school bus". From a technical

standpoint, then, transportation arrangements here are consistent with the district's policy, which, absent a safety issue requiring alteration of the bus stop (as provided in the policy) is designed to provide suitable transportation "in a manner not inconsistent with Section 16-21-1" of the General Laws.

With regard to whether the transportation provided to the K child is, under the facts of this particular case, "suitable" as required by law, counsel argues that neither a regular-size school bus nor a mini bus could "safely traverse the lower portion of Montauk or Sanctuary Road to provide what clearly would be preferable transportation arrangements for the K child". (Tr. p. 128). Given the physical condition and characteristics of Sanctuary Road, which is not maintained by the town of Charlestown as a town road, not even a mini school bus could get closer access to the K home without compromising the safety of the driver and other students who would be passengers in that vehicle. Therefore, considering the School Committee's responsibility to provide for the safety of other children who would be riding the school bus, Chariho has placed the bus stop as close to the K home as it can be.

#### Decision

In Rhode Island, it is the obligation of school committees to provide suitable transportation to and from school for pupils who reside so far from the school which they attend as to make the pupil's regular attendance at school impractical. R.I.G.L. 16-21-1 (a). Our Rhode Island Supreme Court has instructed the Commissioner to consider "a host of factors affecting the practicality of traveling the distance to and from school". Brown v. Elston 445 A.2d 279, 283 (1982). These factors include the distance and safety of the route of travel, and the age of the child. As we have previously noted<sup>4</sup> the issue of practicality is based on

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<sup>4</sup> See Duff v. Woonsocket School Committee, decision of the Commissioner dated December 11, 1991 at page 2 citing Brown v. Elston's reference, at page 283 to a determination that "it would be impractical for a student to go back and forth to school on his own..."

the assumption that the student travels the route to school, or to the bus stop, on his own, unaccompanied by a parent or other responsible adult.

With specific reference to our findings of fact in this case and taking into account the "host of factors" as required by our Supreme Court in Brown v. Elston, we must conclude that it is impractical for Joshua to travel to either of the bus stops which have been provided for him by the Chariho School Committee. Considering that Joshua is a five year old child and that he must travel a route of great length along Sanctuary Road, which at many points is dangerously close to Watchaug Pond, we find that the route he must travel presents danger and creates a risk to Joshua's safety. In traveling on Montauk and Mohegan Road, Joshua would again be placed in a "position of peril"<sup>5</sup> because of the lack of sidewalks, the steep hill on Montauk Road, and the numerous points on Mohegan and Montauk where visibility of pedestrians is diminished.

Elimination of the dangers posed by Joshua's present route of travel to the bus stop requires relocation of the bus stop to the intersection of Sanctuary Road and Duhamel Avenue. This would provide suitable transportation as required by our statute. The School Committee argues that such relocation of Joshua's bus stop would a) require travel by a school vehicle on a roadway which is not a public road and b) require travel by a school vehicle on a road which is unsafe for travel even by a minibus, given the narrowness and surface conditions of Sanctuary Road. We cannot agree that, per se, travel on a private road when necessary to afford a child transportation services mandated by the General Laws is beyond the scope of what school committees are required to do. In fact, the record before us indicates that the Chariho School Committee presently sends a bus down a road

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<sup>5</sup> See the recent case of Houle v. Galloway School Lines, 643 A.2d 822 (R.I. 1994) which discusses the state's potential liability for negligent design of a school bus route.

classified as "a DEM right of way" which like Sanctuary Road, is not a public road under the jurisdiction of the town or the state.<sup>6</sup>

The School Committee's second objection, i.e. the condition and structure of Sanctuary Road does raise a significant legal issue of first impression. We fully agree with the School Committee's argument that present road conditions and lack of space for a turn around make Sanctuary Road inaccessible by either a regular or a mini-school bus. Based on our travel down that road, we find that it is presently unsafe for vehicular travel of any kind, much less a bus or van full of school children.

We recognize that two prior decisions of the Commissioner<sup>7</sup> have held that difficulty in providing the required transportation does not relieve a school committee of its obligations under R.I.G.L. 16-21-1 (a). The Commissioner in Robinson v. Coventry School Committee went so far as to suggest that the School Committee could fulfill its obligations by using a private car to transport the children to and from school, given that testimony showed the road in question could not be traversed safely by a school bus. In Balkun v. Exeter-West Greenwich, it was noted that travel by a large school bus to the newly-required bus stop would be unsafe. The School Committee was nonetheless directed to meet its statutory responsibility by such measures as adopting a new bus route, using a smaller bus or van, or some other means within the committee's discretion. See Balkun at page 7.

In the appeal before us the facts differ from both Robinson and Balkun in two significant respects. First, the roads which were required to be traversed in those cases were public roads. In Robinson the Commissioner noted that widening

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<sup>6</sup> However, this road is safe and fully accessible by school bus. The School Committee has also been assured that DEM will maintain the road. (Tr. pp. 100-101)

<sup>7</sup> Robinson v. Coventry School Committee February 11, 1983 and Balkun v. Exeter-West Greenwich, August 5, 1992.



and improving the road to the newly-required bus stop would probably "render unnecessary" the special and costly modes of transportation the School Committee would otherwise be forced to utilize. See Robinson footnote 6 page 6. In the instant case, neither the Town of Charlestown nor the state of Rhode Island, or any other public entity has been shown to have legal title to the roadway in question. Thus, there is no legal authority and therefore no practical ability for the town or state to alter Sanctuary Road and improve the conditions of the only route of travel to the intersection at Duhamel Avenue. Secondly, with the present conditions of Sanctuary Road, the School Committee confronts not just difficulty in providing transportation, but it appears impossible to send any vehicle to the intersection of Sanctuary and Duhamel without risk of damage to that vehicle and danger to its occupants.<sup>8</sup> Thus, we conclude that the condition of Sanctuary Road, coupled with the lack of authority/ability of the town or some other public entity to improve or alter these conditions, operates to relieve the School Committee of its obligation to send a vehicle to the intersection of Duhamel Avenue and Sanctuary Road. Stated another way, the School Committee is, under the facts contained in this record, prevented from complying with the statutory requirement to furnish suitable transportation to this child.

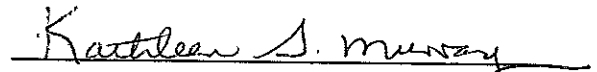
The School Committee should, however, relocate the afternoon bus stop for Joshua to the same location as his pick-up point, i.e. the intersection of Montauk and Mohegan Road. This is the closest point of safe bus or vehicular access at present. Also, given our findings with regard to the dangers posed to Joshua by his walking route, and the present inability of the School Committee to provide him with suitable transportation, he should not be dropped off unless he is met at the stop by his parent or an adult authorized by his parent. Although the School

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<sup>8</sup> Adjacent property owners on Sanctuary Road willingly undertake the risk of damage to their vehicles, but it would, in our opinion, be wrong to require the School Committee to send a person and a car over Sanctuary Road.

Committee's drop off policy<sup>9</sup> operates rationally when the child's travel home is practical and safe, in Joshua's particular case, it does not.

Should Mr. and Mrs. K be successful in any efforts to make Sanctuary Road safe for vehicular access, the School Committee will at that point need to reevaluate its ability to provide suitable transportation to the K child.

  
Kathleen S. Murray, Hearing Officer

Approved:

  
Peter McWalters, Commissioner

February 24, 1995  
Date

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<sup>9</sup> i.e. to drop off a child whether or not an adult is present at the bus stop.