

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
COMMISSIONER OF EDUCATION

STUDENT A. DOE, by her mother,	:	
<i>Petitioner,</i>	:	
	:	
vs.	:	RIDE No. 18-063 A
	:	
EAST GREENWICH SCHOOL	:	
COMMITTEE,	:	
<i>Respondent</i>	:	

DECISION AND ORDER

Held: Parent’s appeal of a school committee decision affirming its superintendent’s denial of a request to restore a recently-cancelled bus route to middle school was denied by the Commissioner, who found there was no persuasive evidence that cancelling the route posed a safety hazard to children or otherwise constituted a violation of the school committee’s statutory duty to provide “suitable transportation” to and from school when the distance of a student’s residence from school renders the pupil’s “regular attendance at school impractical.”

September 4, 2018

On June 29, 2018, Petitioner, the mother of Student A. Doe, a rising eighth grader at Cole Middle School (“Cole”) in the Town of East Greenwich (the “Town”), wrote the Commissioner on her daughter’s behalf and requested a hearing to review the February 27, 2018 decision of Respondent, East Greenwich School Committee (the “School Committee”) affirming the December 15, 2017 decision of the East Greenwich Public School Superintendent (“EG” and the “Superintendent”, respectively) denying her request, and the request of an additional fifty-seven (57) Town residents, to restore a recently-cancelled bus route from the Town’s Hill and Harbor District to Cole.

I. Jurisdiction and Standard of Review

The Petitioner has standing as an “aggrieved” party and the Commissioner has jurisdiction to hear the matter under RIGL § 16-39-2, which provides that he shall “examine and decide” appeals from school committee decisions “and decide the appeal without cost to the parties involved.” *Id.* The applicable standard of review in such cases is *de novo*, as the Commissioner has noted on many occasions. *See, e.g., Alba v. Cranston School Committee*, 90 A.3d 174, 184-85 (R.I. 2014), citing *Slattery v. School Committee of Cranston*, 116 R.I. 252, 262, 354 A.2d 741, 746 (1976).¹

II. Facts

The following facts were found following an evidentiary hearing before the undersigned Hearing Officer on August 16, 2018 and are based on the numerous documents that were introduced into evidence by the parties as well as the testimony of: (1) Student A. Doe’s mother, who appeared *pro se*; (2) the mother of Student M. Doe, a rising ninth grader who had attended Cole during the prior three school years; (3) the Superintendent; (4) the Chair of the

¹ A hearing *de novo* is one which is heard as if for the first time, i.e., as an entity with original, as opposed to appellate, jurisdiction, would hear it. *See Black’s Law Dictionary* at 649 (West, 2014).

School Committee's Transportation Subcommittee (which is a subcommittee of the School Committee's Finance Committee); (4) the Chair of the School Committee's Finance Committee; and (5) a patrolman employed by the East Greenwich Police Department (the "Patrolman" and the EGPD", respectively).

1. Prior to May of 2017, the transportation policy in effect in EG provided that students attending Cole were entitled to bus transportation only if they lived more than two (2) miles from the school.

2. However, in 2002, some fifty (50) residents of the Town's Hill and Harbor District presented a petition to the School Committee requesting that an exception to the two-mile walking requirement be made for children in the District attending Cole, citing the fact that students walking to Cole were "crossing intersections that are heavily traveled during the morning commute, and carrying 32-40 lb. heavy backpacks, gym bags and musical instruments for long distances." *See* Resp. Ex. 9.

3. The issue was considered by the School Committee on November 21, 2002. The Captain of the EGPD testified that "there was a safety concern on Kenyon Avenue because there is no place to walk safely," *see* Resp. Ex. 6, and the EG superintendent at the time testified in support of making the requested exception to the two-mile walking requirement and adding a bus to service students in the Hill and Harbor District attending Cole.

4. The School Committee eventually adopted the recommendation of the former EG superintendent and sometime in either the 2002-03, or the 2003-04 school year added bus service from the CVS store located near the intersection of Main and Greene Streets in the Hill and Harbor District (the "CVS Bus") to Cole.

5. In 2016, the School Committee, having concluded that its two-mile walking policy was not being enforced in a uniform manner and that the EG bus routes were in some cases unnecessarily circuitous, charged its Finance Committee's Transportation Subcommittee to undertake a study of all the school bus routes.

6. Thus, during most of January through August of 2017, the Subcommittee met on a weekly basis and questioned involved parents as well as representatives of the bus company retained by EG and of the EGPD about safety and other issues relevant to bus route efficiency.

7. In addition to input from the EGPD's traffic safety expert, EG's bus company made its nationally- recognized school transportation software program, "Versatrans", available to the Subcommittee. The software automatically highlights safety issues such as a lack of sidewalks and/or traffic control devices at high-traffic intersections.

8. As a result of recommendations from the Transportation Subcommittee, the School Committee:

- (a) revised its transportation policy to provide that students attending Cole shall be provided with bus transportation if they lived "more than one and one-half (1 and ½) walking miles from their school." *See* EG Policy 2160, Respondent's ("Resp.'s'). Ex. 3; and
- (b) cancelled the CVS Bus, commencing with the 2017-18 school year.

9. As noted, the cancellation of the CVS Bus was opposed by Student A. Doe's mother. Moreover, an additional fifty-seven (57) Town residents submitted a petition to the School Committee requesting the immediate reinstatement of the CVS Bus, stating that "the need to cut busing costs should not come at the cost of our children's safety." *See* Pet.'s Ex. 2. (According to the School Committee Finance Committee Chair, it would cost EG approximately \$75,000 to reinstate the CVS Bus).

10. On December 15, 2017, the Superintendent denied the request to reinstate the CVS Bus in writing, having found that the configuration of the EG bus routes for 2017-18, and specifically the cancellation of the CVS Bus, complied with EG Policy 2160. He noted that:

Throughout the course of the last several months of the school calendar year and, specifically, after the final approval of [EG's Policy 2160] on May 2, 2017, this office, the Transportation Subcommittee, and representatives of the East Greenwich Police worked in concert to ensure that the implementation of this policy primarily considers the factors of student age, walking distance, and roadway hazards. EGPD representatives attended Transportation Subcommittee meetings . . .

Based upon this work, there is no evidence that current walking distances or the roads along which students are walking are 'unexpected' and/or 'extraordinary' to the point that they would require modification of eligibility provisions and/or adjustments.

See Resp.'s Ex. 1 at 3.

12. On February 27, 2018, the School Committee affirmed the Superintendent's decision, *see Resp.'s Ex. 2 at 4-5*, and as noted, Student A. Doe's mother appealed to the Commissioner on June 29, 2018.

III. Positions of the Parties

1. Student A. Doe

Student A. Doe's mother emphasized that the CVS Bus originally had been instituted in response to parental initiative in 2002 as an exception to the two-mile walking requirement then in effect, and noted that its institution was in accord with the recommendations of both EG's former Superintendent as well as of an EGPD Captain, who opined at the time that there were no sidewalks or places to walk safely on Kenyon Avenue. *See Pet.'s Exs. 6, 12-13 and 17.* And she made the point that EG's current Superintendent was not even aware of this history when the decision was made to cancel the Bus.

In addition, Student A.'s mother argued, among other things, that:

- (1) Applying the 1 and ½ mile walking requirement to the residents of the Hill and Harbor District was unfair since forty-two percent (42%) of EG school buses made stops within 1.3 miles of Cole, whereas “some” Hill and Harbor addresses are 1.6 miles from Cole. *See* Pet.’s Ex. 6; and
- (2) It was not safe to require children “as young as 11 years old” to “walk 1.3 miles to school,” in “weather as cold as 10 degrees”, “carrying forty pound backpacks” and “often traversing over nineteen (19) crosswalks” and “walking along a four-lane state road with a speed limit in excess of 30 mph.” *See* Resp.’s Ex. 1 at 13-15.

2. The School Committee

The School Committee argued that while the cancellation of the CVS Bus may be inconvenient for certain parents in the Hill and Harbor District, there was no persuasive evidence that it posed a safety hazard to children. In addition, the School Committee alleged that the decision to cancel the Bus:

- (1) was made only after its Transportation Subcommittee, along with the EGPD and the bus company retained by EG, had carefully studied the safety and efficiency of all EG bus routes; and
- (2) was reviewed and approved by the EGPD.

IV. Decision

School committees in Rhode Island are under a statutory duty to provide “suitable transportation” to and from school when the distance of a student’s residence from school renders the pupil’s “regular attendance at school impractical.” *See* RIGL § 16-21-1. In construing the relevant statute, the Rhode Island Supreme Court has noted that § 16-21-1:

should not be read so narrowly as to preclude consideration of factors other than distance in determining whether or not a child is entitled to bus transportation. The critical issue under the statute is whether the distance the child travels is so great as to make it impractical for the child to attend school regularly. The commissioner therefore may properly consider a host of factors affecting the practicality of traveling the distance to and from school.

See Brown v. Elston, 445 A.2d 279, 282-83 (R.I. 1982); *see also Houle v. Galloway School Lines, Inc.*, 643 A.2d 822, 826 (R.I. 1994) (“municipalities must provide school-bus service to each such pupil's residence that is located beyond a reasonable walking distance from the school”). And the Commissioner has made clear that in addition to distance, age and hazard are among the factors that may be relevant. *See In the Matter of Student K.M.*, RIDE No. 0036-00 (October 26, 2000).

Here, although both Student A.'s mother and Student M.'s mother did not feel it was safe for middle school-aged children to walk along “a four-lane state road with a speed limit in excess of 30 mph,” those lay opinions, standing alone, were insufficient to rebut the contrary opinions of EPGD's highway and traffic safety expert as well as of the chair of the Transportation Subcommittee, which had conducted an eight-month study of bus safety and efficiency in EG. *See supra* at § II, ¶¶ 6-7 at 4.

Although the EPGD Patrolman did testify that a portion of Kenyon Avenue lacks sidewalks and would not be safe for children to walk in order to get to school – thus agreeing with Student A.'s mother and Student M.'s mother, as well as with the opinion of the EPGD Captain in 2002 – *there was no testimony establishing that the cancellation of the CVS Bus required any children to actually do so*. Student A.'s mother identified five (5) families as having “students who walk Kenyon.” *See* Pet.'s Ex. 12. However, none of the families actually testified and it is not apparent from their location that any were actually required to walk the particular stretch of Kenyon Avenue that was identified as unsafe. Indeed, it appears at least that alternative routes were available.² Moreover, the School Committee testified that it provides

² And the fifty-eight signatories to the 2017 petition advocating reinstatement of the CVS Bus merely identified themselves as residents of the Town (or were from Florida, New Jersey, Hawaii and North Scituate, as the case may be).

suitable individual transportation to children if the location of their residence poses a unique challenge. Yet, no such request was made by any of the families alleged to include “students who walk Kenyon.”

Student A.’s mother presented national statistics suggesting that accidents involving students walking to school may be on the rise, state accident data by date and location, and alleged that “some” addresses located within the Hill and Harbor District are 1.6 miles from Cole. Yet, as with respect to the allegedly unsafe portion of Kenyon Avenue, the statistics presented were not connected to the specific claim, i.e., that the discontinuance of the CVS Bus constituted a violation of the School Committee’s statutory obligation to provide suitable transportation to Cole. There was no evidence that there was any increase in accidents in the routes children would likely walk, nor was there specific evidence that a student attending Cole actually resided outside the 1 and ½ walking mile requirement necessary to obtain transportation under the transportation policy currently in effect.

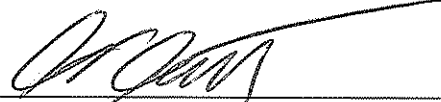
Finally, Student A.’s mother presented absolutely no evidence suggesting that the unavailability of the CVS Bus during the 2017-18 school year had any impact on any student’s “regular attendance” at Cole.

In summary, Student A. Doe’s mother failed to establish that the School Committee’s decision to cancel the CVS Bus was a violation of its statutory obligation to provide “suitable transportation” to Cole to children residing in the Hill and Harbor District.

V. Order

For all of the above reasons:

1. Student A. Doe's appeal from the February 27, 2018 decision of the East Greenwich School Committee affirming its Superintendent's decision to deny the request to restore bus service from the Town's Hill and Harbor District to Cole Middle School is hereby denied and dismissed.



ANTHONY F. COTTONE, ESQ.,
as Hearing Officer for the Commissioner



KEN WAGNER, Ph.D.,
Commissioner

Date: September 4, 2018