



COMMONWEALTH of VIRGINIA

Office of the Attorney General

William C. Mims
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

March 18, 2009

The Honorable Jill H. Vogel
Member, Senate of Virginia
117 E. Piccadilly Street
Winchester, Virginia 22601

Dear Senator Vogel:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask which of two students has the superior right to ride a school bus when one student has a service dog and the other student is allergic to dogs.

Response

It is my opinion that a school board, charged with the responsibility to operate and supervise the public schools, is the appropriate arbiter to resolve a dispute over transportation of pupils. It further is my opinion that based on the facts you present, the decision to permit the two students to ride separate buses is not unreasonable or unlawful.¹

Background

You state that two students who attend the same public school potentially would ride the same bus to school. Student A is a student with a disability and has been diagnosed with Asperger's Syndrome, an autism spectrum disorder. Student A, who receives education services as prescribed in an individual education plan ("IEP"), is assisted by a service dog although his IEP does not require the use of a service animal. The school division permits the service dog to accompany Student A on the special education school bus; however, his parents have requested that he ride a regular school bus with his service dog. You state that Student B has a "severe" allergy to dogs, and his parents have requested that the service dog not be permitted on the regular school bus. You relate that the school division has considered other options, such as a modification of bus routes, but it does not have a cost effective alternative to permit both students to ride regular, but separate, school buses.

¹Attorneys General defer to interpretations of the agency charged with administering law unless the agency's interpretation clearly is wrong. *See, e.g.*, 2002 Op. Va. Att'y Gen. 293, 294 and opinions cited therein.

Applicable Law and Discussion

As a student with a disability, Student A is afforded the rights provided under the federal Individuals with Disabilities Education Act² (“IDEA”). The centerpiece of these rights is a “free and appropriate public education.”³ A student’s achievement goals, the educational services to be provided, and the criteria for evaluating progress are contained in the student’s IEP.⁴ You state the IEP for Student A does not include the use of a service animal. Therefore, under IDEA, the school division is not obligated to provide or accommodate the service dog used by Student A.

Although IDEA does not require the school division to provide or accommodate a service animal, other provisions of law must be considered. Section 51.5-44(B) of the *Code of Virginia* enumerates certain rights of persons with disabilities, which include

full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, subways, boats or any other public conveyances or modes of transportation, restaurants, hotels, lodging places, places of public accommodation, amusement or resort, *public entities including schools*, and other places to which the general public is invited subject only to the conditions and limitations established by law and applicable alike to all persons.
[Emphasis added.]

In addition, any “disabled person shall have the right to be accompanied by a dog, trained as a service dog, in a harness, backpack, or vest identifying the dog as a trained service dog” in any of the places listed in § 51.5-44(B).⁵ For purposes of this opinion, I assume that Student A’s service animal is trained and wears the appropriate equipment to identify it as a service dog. Accordingly, Student A is entitled to be accompanied at school by his service dog. Based on the facts you provide, it appears the school division has complied with the requirements of § 51.5-44.

The school division has permitted Student A’s service dog to accompany him on the school bus. Therefore, it is not necessary for me to opine whether such transportation to and from school is a means of transportation within the meaning of § 51.5-44. However, I note that state law requires school divisions to provide transportation to school at no cost for students with disabilities when “enrolled in and attending a special education program” provided pursuant to § 22.1-216 or § 22.1-218 “if such transportation is necessary” for the student to obtain the educational benefit.⁶ Apart from that exception, state law permits but does not *require* school divisions to provide transportation to students.⁷

²See 20 U.S.C.A. §§ 1400 to 1482 (2000 & Supp. 2008) (codified in scattered sections).

³*Id.* § 1412(a)(1)(A) (Supp. 2008).

⁴See *id.* § 1414(d)(1)(A) (Supp. 2008).

⁵VA. CODE ANN. § 51.5-44(E) (Supp. 2008). “As used in [Chapter 9], ‘*service dog*’ means a dog trained to accompany its owner or handler for the purpose of carrying items, retrieving objects, pulling a wheelchair, alerting the owner or handler to medical conditions, or other such activities of service or support necessary to mitigate a disability.” *Id.*

⁶See VA. CODE ANN. § 22.1-221(A) (2006).

⁷See § 22.1-176(A) (2006).

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I find no provision of state or federal law that applies to the situation you describe, nor do I find any case law on point. You offer a number of arguments and documents proposed by the two sides in this dispute; however, none are controlling.

Some disputes between parties are best resolved by appealing to reason and compromise and not by recourse to laws and the court system. A local school board has the power to operate, maintain, and supervise the public schools.⁸ Therefore, the school board is the appropriate arbiter to resolve the dispute.⁹ The solution reached permits the students to ride separate buses to school. Although the parent of one student is not pleased with the solution, I find no statutory law or case law to suggest that the compromise is unlawful.

Conclusion

Accordingly, it is my opinion that a school board, charged with the responsibility to operate and supervise the public schools, is the appropriate arbiter to resolve a dispute over transportation of pupils. It further is my opinion that based on the facts you present, the decision to permit the two students to ride separate buses is not unreasonable or unlawful.¹⁰

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. C. Mims', with a stylized flourish at the end.

William C. Mims

6:1355; 1:941/08-085

⁸ See *Bradley v. Sch. Bd.*, 462 F.2d 1058, 1067 (4th Cir. 1972), *aff'd* 412 U.S. 92 (1973).

⁹ See *id.*; see also *supra* note 1.

¹⁰ See *supra* note 1.