

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY**

Norristown Area School District,	:	
Petitioner	:	
	:	
v.	:	Docket No. BBFM: 13-2012-02
	:	
Renaissance Academy Charter School,	:	
Respondent.	:	
	:	
	:	
	:	

DECISION AND ORDER

Before the Secretary for final agency action is a complaint filed by the Renaissance Academy Charter School (“Renaissance”) concerning the Norristown Area School District (“Norristown”) pursuant to Section 1726-A of the Public School Code of 1949, 24 P.S. § 17-1726-A (“Section 1726-A”).¹ Section 1726-A, which was first adopted as part of the Charter School Law, mandates that a school district provide free transportation to students residing within its district to any charter school within the district or within ten miles of the district boundary. Id. Section 1726-A further requires that if the Secretary of Education determines that a school district is not providing “the required transportation” to students to the charter school, the Department shall pay directly to the charter school for costs incurred in the transportation of its students. Id. Such payments are to be deducted from amounts the Department otherwise pays to the district. Id.

¹ Although Norristown is listed on the caption of this matter as “Petitioner,” this case was actually initiated by a complaint filed by Renaissance on October 28, 2011. The Secretary appointed a hearing officer in this matter on August 19, 2013, before whom an evidentiary hearing (the “Hearing”) was held on October 30, 2013. Briefing by the parties was completed on January 28, 2014.

This case involves a long-running dispute between Renaissance and Norristown over the quality and safety of transportation provided by Norristown to Renaissance students. Although Renaissance is within 10 miles of the Norristown district border, due to geography and traffic, Renaissance students have a long daily commute to school. Renaissance alleges that Norristown has not provided “the required transportation” to its students because the transportation services provided have been unsafe and otherwise substandard. Prominent among the safety claims is that Norristown allegedly has not done enough to remedy a significant number of student behavior problems on the buses. As a remedy, Renaissance seeks payment pursuant to Section 1726-A² or, the imposition of several conditions on the transportation to be provided by Norristown.³

² To be more precise, Renaissance seeks that it be given the opportunity to determine what amounts would be paid to it pursuant to Section 1726-A and then decide whether or not it is economically feasible for it to “take over” transportation of its Norristown students in return for these payments.

³ Renaissance requests that the Secretary impose the following conditions on Norristown:

1. Norristown Area School District shall provide a sufficient number of buses to safely transport Renaissance Academy students such that the two high school and/or middle school students per seat ratio is consistently maintained.
2. Norristown Area School District shall take roll of all students who board the bus in both the morning and afternoon utilizing a roster/checklist to ensure that students are using the bus(es) to which they are assigned.
3. Each week, Norristown Area School District shall provide copies of any and all completed rosters/checklists via electronic mail to the transportation liaison at Renaissance Academy by close of school on the Monday of the following week.
4. Norristown Area School District shall implement and enforce seat assignments developed by Renaissance Academy personnel for all Renaissance Academy bus routes.
5. Norristown Area School District shall ensure that all buses utilized to transport Renaissance Academy students are equipped with working video recording devices.

In its defense, Norristown argues that it has been providing Renaissance students with the required free transportation and that Renaissance has failed to provide evidence that the transportation services provided by Norristown is in any way substandard. Further, Norristown argues that Renaissance cannot seek relief in this case because it has failed to demonstrate that it has actually incurred any costs in providing substitute transportation.

As more fully explained below, based on the evidence presented at the Hearing, the Secretary concludes that Norristown has demonstrated that it provides Renaissance students with the "required transportation" as set forth under Section 1726-A of the School Code. As Norristown has complied with the requirements of Section 1726-A and Renaissance has articulated no other sound legal or factual basis for the Secretary to impose conditions on the

-
6. Norristown Area School District shall provide access to video footage to Renaissance Academy from any Renaissance Academy bus route within 24 hours of receipt of the written request.
 7. Norristown Area School District shall enforce the rules related to student bus behavior, as developed by Renaissance Academy. Norristown Area School District shall provide a written incident report via electronic mail to the Dean of Students at Renaissance Academy within 24 hours for any instance of student misconduct.
 8. Norristown Area School District shall immediately remove any driver utilized to transport Renaissance Academy students who is found texting, talking or otherwise using his/her cell phone while operating the school bus. (Said prohibition shall not apply to emergency situations where the bus driver has stopped the bus and pulled safely onto the side of the road to call for assistance.)
 9. Norristown Area School District shall designate a specific person to receive complaints and/or concerns raised by Renaissance Academy related to the transportation of its students. (To the extent the person(s) identified by Norristown Area School District to receive complaints are changed, Norristown Area School District shall advise Renaissance Academy of the identify (sic) of the new person(s) within twenty-four (24) hours of the change).
 10. Norristown Area School District shall, at a minimum, acknowledge receipt of an issue or concern raised by Renaissance Academy within twenty-four (24) hours of receipt.

transportation services provided by Norristown, the Secretary will decline to impose them.

Accordingly, Renaissance's request for relief will be denied.

The Secretary makes the following findings of fact:

Findings of Fact

The Parties

1. Norristown Area School District ("Norristown") is a Pennsylvania public school district. 24 P.S. § 9-901-A.
2. Renaissance Academy Charter School ("Renaissance") is a Pennsylvania public charter school located in Phoenixville, Schuylkill Township, Chester County, Pennsylvania. (N.T. at 26, 264, 281).
3. Renaissance is less than 10 miles from the nearest border of Norristown. (N.T. at 8).

Testimony of Carl Foster

4. Carl Foster, Norristown's transportation coordinator and one of the bus drivers to Renaissance, testified credibly at the Hearing concerning Norristown's transportation practices and its relationship with Renaissance. (N.T. at 19).
5. Norristown provides transportation to Renaissance students living in Norristown utilizing name and address information for students supplied by Renaissance. (N.T. at 21).
6. Student bus routes and assignments are calculated by Norristown using a computerized assignment system, the same as used to assign Norristown students to district bus routes. (N.T. at 21-22).
7. Norristown utilizes a total of seven, seventy-two person capacity yellow school buses to transport Renaissance students. (N.T. at 22, 24). The seventh bus was added last year. (N.T. at 106).

8. None of the buses are run at full capacity with the highest capacity buses carrying a number of students "in the high 50s." (N.T. at 24).

9. The approximate length of the route for Norristown buses serving Renaissance students is an hour. (N.T at 81).

10. The length of the ride for Renaissance students on Norristown buses is due to heavy traffic in the heavily populated area between Norristown and the Phoenixville location and the necessity of crossing the Schuylkill River. (N.T. at 26).

11. Unlike other bus routes for the district which run separate buses for high school, middle school and elementary students, the Renaissance buses have all grades on each bus. (N.T. at 26).

12. Student "misconduct report" forms are completed by Norristown bus drivers. Within the past several years reports include multiple incidents such as failure to stay seated (N.T. at 44), eating on the bus (N.T. at 47), students riding buses to friend's houses (N.T at 49) and fighting (N.T. at 58). (See also Exhibits D1-D8.).

13. Despite a rule against eating on buses, Renaissance sold food to students as students were getting on buses. (N.T. at 48).

14. After the misconduct forms are completed by a bus driver the misconduct forms are forwarded to Renaissance to be evaluated by the school for student discipline. Whatever action taken by the school is supposed to be noted on the form and returned to the bus driver. (N.T. at 36-37).

15. On multiple occasions Foster was not informed by Renaissance of any discipline imposed on students following discipline form write-ups. (N.T. at 50-52, 62).

16. Following reports of students getting on the wrong buses, Norristown began taking attendance of students on the Renaissance buses, something that it does not do on its district bus routes. (N.T. at 64).

17. Norristown started using its own buses and employees to transport Renaissance students in September of 2012 after using First Student, an outside contractor, to do so. (N.T. at 71, 80).

18. First Student had a "hard time" finding bus drivers who wanted to take the Renaissance route due to the disciplinary issues of the students on the bus. (N.T. at 80.).

19. At times, Norristown has used seat assignments on the Renaissance buses. (N.T. at 90-91).

20. At the beginning of the 2013-14 school year, Norristown had video cameras installed on all the Renaissance school buses. Prior to that time not every bus had video cameras. (N.T. at 98-99).

21. There was one incident in the past year where a Norristown bus driver was verbally reprimanded by Norristown for using a cell phone while on route. The driver had pulled over to use the phone to call Foster to report a problem on the bus. (N.T. at 101, 144). There was a separate incident of a bus driver buying pizza for students. (N.T. at 103). Foster was unaware of any other infractions by bus drivers. (N.T. at 102).

Testimony of Robert Malkowski

22. Robert Malkowski, who holds the position of Director of Operations for Norristown, testified credibly at the Hearing concerning Norristown's transportation practices. (N.T. at 116).

23. Malkowski identified roster seat charts he had compiled demonstrating the allocation of students on the Norristown buses to Renaissance in accordance with the state

requirement of at least 13 inches of space per student. He compiled these charts after receiving a complaint that the buses were overcrowded. (N.T. at 118-119). None of the charts showed that any of the buses were overcrowded. (N.T. at 124, 128, Exhibit D-12-14).

24. Malkowski has met on numerous occasions with representatives of Renaissance to discuss busing arrangements at the school. (N.T. at 129-130). Malkowski and other school district administrators have visited Renaissance to take attendance on buses. (N.T. at 131). Bus service was taken in-house to help alleviate some of the complaints of Renaissance. (N.T. at 135).

25. Norristown bus drivers are trained concerning safety. (N.T. at 144).

Testimony of Anne Marie Rohricht

26. Anne Marie Rohricht, the Chief Financial Officer of Norristown testified credibly at the Hearing concerning Norristown's transportation practices. (N.T. at 148).

27. Rohricht testified that she has had meetings with Renaissance requesting that they address bus-hopping by students, stop selling pretzels after school, and assist in assigned seating. She has also discussed student discipline with Renaissance and the importance of bus drivers receiving reports back from Renaissance concerning discipline imposed. (N.T. at 155-156). Norristown still struggles with getting "firm responses" from Renaissance on discipline matters. (N.T. at 157). The state police checked for overcrowding on the buses and did not find overcrowding. (N.T. at 157).

28. Norristown spends more time dealing with Renaissance transportation problems than that of any other school in the district. (N.T. at 157).

Testimony of Karen Keating

29. Karen Keating, the location manager for "First Student," a school bus transportation company, testified credibly at the Hearing. (N.T. at 176-177).

30. First Student had difficulty attracting bus drivers to drive Renaissance students to school because “the kids were out of control.” (N.T. at 177). She testified that she believed there was no “support” from Renaissance for the school bus drivers and no improvement in student behavior after students were reported to the school. (N.T. at 179).

Testimony of Harold Smith

31. Harold Smith, the dean of students at Renaissance, testified credibly at the Hearing concerning Renaissance’s procedures for addressing reports of student misconduct on school buses. (N.T. at 188).

32. Smith testified that he conducts an investigation of incidents on school buses. These investigations include speaking to students and reviewing video from buses. (N.T. at 189).

33. Smith identified a photograph of a bus driver speaking on a cell phone. (N.T. at 195, Exhibit R-1.)

34. Smith testified that reports were not returned to Norristown concerning discipline imposed because his procedure was to enter the discipline into Renaissance’s computerized discipline log. (N.T. at 205-206).

Testimony of Naomi Elizabeth Seidlecki

35. Naomi Elizabeth Seidlecki, the transportation liaison at Renaissance, testified credibly at the Hearing concerning Renaissance’s issues with communication with Norristown and complaints received by Renaissance parents. (N.T. at 211). She also testified concerning incidents where students got on the wrong bus (“bus-hopping”) and confusion concerning bus numbering. (N.T. at 214 -216).

Testimony of Craig Pavel Gibson

36. Craig Pavel Gibson, a lower school support specialist at Renaissance testified credibly at the Hearing concerning his investigation of student misconduct on buses. (N.T. at

225). The investigations typically include interviews of the students involved as well as other students on the bus (N.T. at 226-227). Mr. Gibson stated that not all instances of student discipline would have been communicated to bus drivers. (N.T. at 229).

Testimony of Kristie Hawk

37. Kristie Hawk, the principal of Renaissance, testified credibly at the Hearing. She testified that there had been complaints of bus drivers yelling and cursing at students. (N.T. at 251).

38. Hawk testified that the transportation situation had improved since Norristown took over from First Student. (N.T. at 252).

39. There have been a disproportionate number of discipline infractions on the Norristown buses compared with other districts that send students to Renaissance. (N.T. at 254). Phoenixville has a comparable amount of students and a comparable commute time. (N.T. at 257).

40. Hawk could not attribute the misconduct to any one factor. (N.T. at 269).

Testimony of Gina Guarino Buli

41. Gina Guarino Buli, the CEO of Renaissance, testified credibly at the Hearing. (N.T. at 280).

42. Buli stated that she had received complaints of bus drivers driving too quickly or running stop signs. (N.T. at 288).

Analysis

In this case the Secretary is asked to determine if the Norristown School District has provided “the required transportation” to students of Renaissance within the meaning of Section 1726-A of the School Code. There is no dispute in this case that Norristown provides free, round-trip transportation to all eligible resident Renaissance students. (N.T. at 9-10). There also

is no dispute that Norristown provides transportation to all the students it should and on the proper days (N.T. at 9-10). Instead, what Renaissance argues is that the transportation provided by Norristown is substandard. While Renaissance has had a number of complaints about Norristown over the past several years, the thrust of the school's current complaint is that Norristown bus drivers continue to exhibit unsafe behavior and neglect to address matters of student behavior. Norristown argues that it has provided the "required transportation" and sought to demonstrate at the Hearing that its transportation services are being provided in accordance with applicable safety regulations.

As a threshold matter, the parties differ on who bears the burden of proof. Renaissance argues that once it has challenged whether or not Norristown has met its obligation to transport students under Section 1726-A, Norristown bears the burden of establishing that it has complied with all relevant statutes and regulations. Admitting that this issue is one of first impression, Renaissance cites the precedent of the withholding cases brought under Section 1725-A of the Charter School Law, where courts have found that a school district has the burden of proof in demonstrating that withholding is not appropriate in a funding dispute with a charter. See generally, Chester Community Charter School, v. Department of Education, 996 A.2d 68 (Commwth. Ct. 2010). However, Norristown argues that the charter school withholding cases are not applicable to this transportation matter. Moreover, Norristown argues that unlike the withholding cases where a charter school has provided documentation to the Secretary prior to a withholding that a district must challenge, Renaissance has merely alleged noncompliance without providing any proof of such noncompliance.

The parties also differ only slightly on the meaning of the precise definition of "the required transportation." Both seem to agree that the Secretary's analysis should be motivated by her consideration of whether any health or safety issues are present. Renaissance argues that the

term “the required transportation” embodies more than a “bare minimum of service” and must be “transportation which ensures the health, safety and welfare of the students.” By contrast, Norristown argues that the Secretary’s inquiry must be limited to determining whether it has violated specific legal requirements for bus transportation.

While the School Code does not provide an exact definition of the “required transportation,” the Secretary generally agrees with the parties that under applicable regulations unless a school district is failing to provide transportation at all, the Secretary’s inquiry should be limited to determining whether transportation provided by a school district violates applicable laws and regulations. See 22 Pa Code § 23.1 (requiring school districts to comply with the School Code, Vehicle Code as well as regulations adopted by the Commonwealth Department of Transportation). As school boards are primarily responsible for establishing transportation policies such a review should not be license for the Secretary to micromanage a district’s transportation procedures. See 22 Pa. Code § 23.4 (Stating that school boards are the parties “responsible for all aspects of pupil transportation programs . . .”).

With this background in mind, and assuming *arguendo* that Norristown bears the burden of proof of demonstrating that it has provided the required transportation, the Secretary concludes that Norristown has adequately demonstrated that it provides transportation that ensures the health, safety and welfare of students.⁴

It is undisputed that Norristown provides transportation to all required Renaissance students. Moreover, testimony at the Hearing made it clear that the bus rosters were developed by Norristown with lists supplied by Renaissance. With regard to the only specific provision of regulations pertaining to student transportation alleged to have been violated concerning

⁴ Assuming Renaissance has the burden of proof in this matter, the result would be the same in this case as the Secretary would find that the school has not provided evidence to persuade her that Norristown transportation is unsafe, substandard or violates any applicable law or regulation.

overcrowding⁵, the testimony at the Hearing demonstrated beyond cavil, with detailed charts, that the Norristown buses are not overcrowded. Further, the evidence produced at the Hearing demonstrated that Norristown bus drivers are trained in safety and follow a proper procedure in writing-up students who misbehave on the buses. Further, it is clear that Norristown has made several important steps to try to improve service to Renaissance students, including adding an extra bus to service, charting student seating, taking attendance rolls on the buses and assuming responsibility for the service in-house after the service was formerly contracted out. Aside from an isolated incident of a bus driver speaking on a telephone while on the bus, and a driver offering pizza to students, the Hearing presented not a single documented case of any bus driver infraction relating to student safety.⁶

While it is true that student behavior appears to be unacceptable on these buses, the Secretary finds there is no evidence that is due to any misconduct by Norristown school bus drivers.⁷ To the contrary, the Secretary concludes that the testimony at the Hearing overwhelmingly demonstrated that Norristown bus drivers have taken an active role in properly writing-up students for their misconduct. In turn, Renaissance bears a significant responsibility for this situation by failing to fully support the bus drivers with timely punishment of students for

⁵ See 75 P.S. §4552(d) (“Adequate seating space of safe design and construction shall be provided for each passenger and no passenger shall be carried for which adequate seating space is not available and used.”). See also 67 Pa. Code. 171.69(2) (providing that each passenger must have a space 13 inches wide).

⁶ Because the matters at issue here are of significant importance, the Secretary gives little weight to hearsay reports of complaints concerning Norristown bus drivers that are not documented or are supported by other competent evidence.

⁷ Renaissance has not argued that Norristown should discipline Renaissance students, but rather that the Norristown bus drivers have failed to set the proper “tone” on the buses. However, other than as noted above, there is no evidence that the bus drivers have acted anything but professionally. Indeed, the only Norristown bus driver who testified at the Hearing (Carl Foster) appeared to be quite experienced and professional and the Secretary has no doubt based on his testimony that he is capable of setting the proper “tone” for students on his buses.

bus infractions. The evidence was clear at the Hearing that bus drivers do not always get feedback from Renaissance concerning student discipline imposed despite the dogged investigation of such complaints by Renaissance and the considerable amount of “due process” afforded to students. This regrettable lack of support for bus drivers was confirmed by the credible testimony of one of Norristown’s current drivers, Carl Foster, as well as a representative of the former bus driving company, First Student.

Having concluded that Norristown has provided the required transportation, the Secretary declines to direct Norristown to take any of the additional steps requested by Renaissance. Section 1725–A quite plainly only requires an offending school district to be assessed a financial charge, and only does so if the Secretary finds that a school district has not provided the required transportation. Moreover, as noted above, the Secretary is persuaded that Norristown has already taken substantial measures to address the problems on the Renaissance buses and finds that it would be inequitable to force Norristown to take additional measures even if it appears willing to do so. The parties are encouraged to continue to work cooperatively to address the significant problems of student discipline on these school buses, but the Secretary will not force a solution on Norristown in the absence of statutory authorization and culpable conduct.

Accordingly, the following Order is entered:

