

To be argued by
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10 minutes requested

Supreme Court of the State of New York
Appellate Division – Third Department

UNITED JEWISH COMMUNITY OF BLOOMING GROVE,
INC., JOEL STERN, as Parent and Natural Guardian of
K.S., M.S., R.S., B.S., and F.S., Infants Under the Age
of Eighteen Years, and YITZCHOK EKSTEIN, as Parent
and Natural Guardian of J.E., C.E., M.E., and P.E.,
Infants Under the Age of Eighteen Years,

No. 534406

Petitioners/Plaintiffs-Respondents,

v.

WASHINGTONVILLE CENTRAL SCHOOL DISTRICT and
THE NEW YORK STATE EDUCATION DEPARTMENT,

Respondents/Defendants-Appellants.

**REPLY BRIEF FOR DEFENDANT
STATE EDUCATION DEPARTMENT**

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Dated: March 10, 2022

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PRELIMINARY STATEMENT

Petitioners in this hybrid declaratory judgment action and C.P.L.R. article 78 proceeding seek to set aside the State Education Department (SED)'s longstanding interpretation of Education Law § 3635. While Supreme Court, Albany County (Lynch, J.), entered judgment annulling SED's interpretative guidance, that judgment was based on an erroneous reading of the statute, and this Court should reverse.

Education Law § 3635 requires central school districts to provide “[s]ufficient transportation facilities” for resident school children to and from their schools. SED reasonably interprets the statute as requiring that school districts provide equal transportation services, on the same days, to public and nonpublic school children alike. Such transportation is sufficient within the meaning of § 3635. Petitioners’ interpretation, by contrast, impermissibly reads words into the statute; they argue that § 3635 requires school districts to transport nonpublic school students whenever their nonpublic schools choose to be open. But the statute contains no such requirement, and for good reason—otherwise, a nonpublic school could demand transportation on holidays, weekends, or

during the summer. The Legislature could not have intended to burden school districts with such an unconditional obligation.

Petitioners' reliance on legislative history is unavailing. Petitioners point to no authority from the statute's 80-year history supporting their interpretation. To the contrary, this history establishes both that the Legislature has long been aware of SED's construction of Education Law § 3635, and that the Legislature has declined to override that interpretation. Indeed, the Legislature has considered multiple bills that would have required central school districts to transport nonpublic school students even when public schools are closed, and has rejected all of them. This legislative history conclusively establishes the Legislature's acquiescence to SED's longstanding interpretation of § 3635.

Finally, petitioners fail to show that the Court should affirm on any alternative ground. Education Law § 3635 does not lack a rational basis, as petitioners contend. Nor did SED's interpretive guidance exceed SED's statutory authority or violate the State Administrative Procedure Act (SAPA). Thus, the Court should reverse the judgment below and enter a declaratory judgment upholding SED's interpretation of § 3635 as both correct and lawful.

ARGUMENT

POINT I

PETITIONERS FAIL TO REBUT SED'S REASONABLE INTERPRETATION OF EDUCATION LAW § 3635

SED interprets Education Law § 3635 as permitting, but not requiring, central school districts to provide transportation to nonpublic school children when public schools are closed. This longstanding interpretation is reasonable and consistent with legislative history. Petitioners' interpretation, by contrast, reads words into the statute that are not there. And petitioners cite no authority—no court case, Commissioner's decision, or legislative material—that supports their interpretation. This Court should reject petitioners' attempt to reinterpret § 3635 in a manner that would both lead to absurd results and be inconsistent with the statute's 80-year history.

A. SED's Longstanding Interpretation of Education Law § 3635 Is Reasonable and Avoids Absurd Results.

Petitioners fail to show that SED's interpretation of Education Law § 3635 is unreasonable. The law states:

Sufficient transportation facilities (including the operation and maintenance of motor vehicles) shall be provided by the school district for all the children residing within the school

district to and from the school they legally attend, who are in need of such transportation because of the remoteness of the school to the child or for the promotion of the best interest of such children.

Education Law § 3635(1)(a). SED interprets this statute as requiring a central school district to provide transportation to nonpublic school students, on par with the transportation it offers to its public school students.

While the statute does not explicitly state *when* school districts must provide transportation (whether to public or nonpublic schools), it is clear that such transportation need only be “sufficient,” *i.e.*, adequate. See Black’s Law Dictionary (11th ed. 2019). Petitioners echo Supreme Court’s holding that the term “sufficient” “speaks to the means, not the scope, of the transportation mandate.” (R. 16; Br. 26-27.) But the statute makes no such distinction. The statute does not state, for example, that school districts must provide transportation to all students, and separately that the means of transportation must be sufficient. Instead, the statute states only that “[s]ufficient transportation facilities” shall be provided for all students. Because “transportation facilities” is the only operative subject, it necessarily encompasses both the scope and the

means of the transportation mandate, and the term “sufficient” likewise qualifies both the scope and the means.

Central school districts satisfy their obligation under Education Law § 3635 by offering transportation, on the same days, to public and nonpublic school children alike. State law requires public schools, though not private schools, to be open for instruction on 180 days per calendar year (less certain conference days). *See* Education Law § 3604(7). Thus, transportation on those days is sufficient for nonpublic school children to receive an education that is substantially equivalent to that offered by a district’s public schools. *See id.* § 3204(2) (providing that “[i]nstruction given to a minor elsewhere than at a public school shall be at least substantially equivalent to the instruction given to minors of like age and attainments at the public schools of the city or district where the minor resides”). Section 3635 does not require additional transportation for nonpublic school students.

Of course, as petitioners note (Br. 28-29), nonpublic schools may choose to close on days when public schools are open, and may choose to open when public schools are closed. That is their right. It does not follow, however, that school districts have the concomitant obligation to provide

transportation services *whenever* nonpublic schools choose to be open. SED has not interpreted § 3635 in that way, nor are we aware of any other authority that has interpreted § 3635 so expansively. Rather, as SED explained in its opening brief and as further explained below, § 3635 has long been interpreted as mandating transportation services for nonpublic school students only when public schools are open. Districts may choose, but are not required, to provide transportation to nonpublic schools on days when the public schools are closed. And, if a district fails to cooperate in a reasonable manner regarding the scheduling of classes and transportation to nonpublic schools, an appeal to the Commissioner of Education may be taken. *See Appeal of Frasier*, 35 Ed. Dep't Rep., Decision No. 13,612, 1996 WL 34568914 (1996) (ordering district to provide transportation for nonpublic school student which district had unreasonably denied).

Petitioners seek to upset this settled interpretation. Petitioners argue that the plain text of Education Law § 3635 unambiguously requires school districts to transport nonpublic school children whenever their schools are open, even if the district's public schools are closed. (Br. 23-24.) That language, however, does not appear in the statute. As

petitioners themselves note (Br. 32), courts “cannot read into the statute that which was specifically omitted by the legislature.” *Commonwealth of the N. Mariana Islands v. Canadian Imperial Bank of Commerce*, 21 N.Y.3d 55, 62 (2013).

Moreover, the Legislature certainly knows how to mandate transportation services on days when public schools are closed. Education Law § 3635(2-a) requires the New York City school district to provide transportation on five (or, in certain years, ten) such days to nonpublic school children. No similar language appears in subsection (1)(a) applicable to central school districts. This omission must be deemed intentional. *See Patrolmen’s Benevolent Ass’n of City of New York v. City of New York*, 41 N.Y.2d 205, 208-09 (1976) (“[W]here as here the statute describes the particular situations in which it is to apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded.” [citation and internal quotation marks omitted]). Supreme Court thus erred in reading into the statute the requirement that central school districts provide transportation to nonpublic school students even when public schools are closed.

Petitioners argue that because Education Law § 3635(1)(a) *lacks* an exception for days when public schools are closed, the Legislature must have chosen not to “carve out” such an exception. (Br. 25.) To be sure, the statute contains other exceptions to the general mandate, such as for city school districts. *See* Education Law § 3635(1)(c). But none of those exceptions is germane to the issue here. Rather, § 3635 mentions transportation on days when public schools are closed only in subsection (2-a), which *requires* such transportation in New York City. The omission of similar language in subsection (1)(a) reflects the Legislature’s deliberate choice not to impose a similar requirement on central school districts.

Petitioners’ interpretation, taken to its logical end, would also lead to absurd results. The Legislature could not have intended to impose an unlimited obligation on school districts to transport nonpublic school children whenever their nonpublic schools choose to be open—whether in summer, on weekends, on state or federal holidays, or when public schools are closed for weather or other emergencies. There must be some limit, then, to central school districts’ transportation obligation. But petitioners’ interpretation of the statute offers no such limit. Because

petitioners' interpretation would lead to absurd results, this Court should reject it. *See, e.g., People ex rel. McCurdy v. Warden, Westchester County Corr. Facility*, 36 N.Y.3d 251, 262 (2020) (courts must “interpret statutes so as to avoid an unreasonable or absurd application of the law” [citation omitted]); *Long v. State of New York*, 7 N.Y.3d 269, 273 (2006) (“[I]t is well settled that courts should construe [statutes] to avoid objectionable, unreasonable or absurd consequences.”).

SED's interpretation of Education Law § 3635, by contrast, offers a principled way to reasonably limit the scope of central school districts' transportation obligation. As interpreted by SED, the statute requires central school districts to provide the same transportation services to public and nonpublic school children alike. And so whenever a school district transports students to its public schools, *i.e.*, when those schools are open for instruction, the district must also transport nonpublic school students to and from their nonpublic schools. This interpretation is consistent with the plain text of the statute and avoids the absurd results created by petitioners' interpretation.

B. The History of Education Law § 3635 Conclusively Supports SED's Interpretation.

Petitioners also fail to show that the history of Education Law § 3635 supports their expansive reading of the statute. To the contrary, this history makes clear that the Legislature did not intend to impose an unlimited transportation obligation on central school districts. In accordance with that original intent, school districts have long transported nonpublic school students only on days when their public schools are open. The Legislature has acquiesced to that practical construction by repeatedly considering, and rejecting, bills that would effectuate petitioners' interpretation of the statute.

SED explained in its opening brief (at 23-24) that Education Law § 3635, as originally written, unambiguously did not require school districts to transport nonpublic school children on days when public schools were closed, and that understanding has been carried forward notwithstanding various changes to the provision over time.

Thus, the statute originally required "sufficient transportation facilities" for all children only insofar as the district was already "providing or granting transportation for children pursuant to the provisions of this chapter." Education Law former art. 18, § 503; L. 1939,

ch. 465, § 5. When school districts were not providing transportation for public school students, *i.e.*, when public schools were closed, it was clear that there was no obligation to provide transportation for nonpublic school students whose nonpublic schools were open.¹ The previous version of the statute, which the Court of Appeals struck down in *Judd v. Board of Education*, 278 N.Y. 200 (1938), likewise limited school districts' transportation obligation for nonpublic school students to services already offered to public school students. *See* Education Law former § 206(18); *Judd*, 278 N.Y. at 204-05 (interpreting Education Law former § 206[18]).

In practice, school districts have not regarded Education Law § 3635 as requiring transportation for nonpublic school students whenever their nonpublic schools are open. And petitioners point to no authority—no decision by the Commissioner of Education, judicial decision, or legislative materials—interpreting the statute in that way.

¹ The Legislature eliminated the above-quoted language as part of a technical amendment in 1960. *See* L. 1960, ch. 1074. As Supreme Court noted (R. 34), this 1960 legislation principally defined mileage limits for school districts' transportation obligation. Nothing in the bill jacket for this act suggests that the Legislature intended to require school districts to transport nonpublic school students when public schools were closed.

Rather, since at least 1992, SED has construed § 3635 as requiring transportation only on days when the public schools are open. *See* SED, Transportation Supervisor’s Handbook (1992) (R. 507; *see also* R. 727, 730). The Commissioner followed this interpretation in *Appeal of Brautigam*, 47 Ed. Dep’t Rep., Decision No. 15,772, 2008 WL 8715501 (2008) (R. 737).

In light of this longstanding interpretation, petitioners’ reliance on “the Legislature’s history of placing only express limitations upon the mandatory rights of nonpublic school students to transportation” (Br. 31) is misplaced. “Where the practical construction of a statute is well known, the Legislature is charged with knowledge and its failure to interfere indicates acquiescence.” *Engle v. Talarico*, 33 N.Y.2d 237, 242 (1973); *see also Matter of New York State Superfund Coal., Inc. v. New York State Dep’t of Env’tl. Conservation*, 68 A.D.3d 1588, 1590 (3d Dep’t 2009), *aff’d*, 18 N.Y.3d 289 (2011). In *Engle*, the Court of Appeals considered a question of statutory interpretation—whether depreciation could be deducted from net rental income under Tax Law § 467—that could not be resolved based on the text alone. *Engle*, 33 N.Y.2d at 242. The Court then noted that the relevant state agency had issued an opinion letter

answering that question in the negative, and that municipal tax assessors followed that opinion. *Id.* The Court regarded the Legislature’s failure to amend the law to override this interpretation as acquiescence to the agency’s interpretation, and as “additional evidence” of legislative intent. *Id.* The Court thus upheld the agency’s interpretation of the statute.

Here too, the Legislature’s failure to amend Education Law § 3635 to override SED’s longstanding interpretation indicates its acquiescence to that interpretation. As petitioners note (Br. 11-15, 32-37), § 3635 has been amended many times in its 80-year history. But it has never been amended to make clear that school districts must provide transportation for nonpublic school students whenever their schools are open.

The inference of legislative acquiescence is particularly strong here because the Legislature has considered—and ultimately failed to enact—several bills that would have required central school districts to provide the kind of transportation petitioners now request. In 1981, the Legislature considered a bill that would have added a subsection to Education Law § 3635 requiring school districts to “provide bus service for children attending non-public schools when such non-public schools

are in session and the public schools of the district are not in session.” 1981-1982 Regular Session Senate Bill 68 (*see* Addendum [Add.] 1).² As the bill’s sponsor, Senator Padavan, explained during a debate, “children in parochial schools, Yeshivas, Catholic schools and the like, are denied bus transportation normally provided to them because the public schools are closed.” *See* N.Y. Senate Debate on Senate Bill 68 (Jan. 25, 1982), at 133 (Add. 4). The bill was intended to provide for such transportation. *Id.* The bill passed the Senate, but was not voted on by the Assembly. 1982 Legislative Record & Index, S 9, A 168 (Add. 12-13). Such a bill would not have been necessary had the Legislature agreed with petitioners’ construction of § 3635.

The Legislature again expressed its limited interpretation of Education Law § 3635 in 1983, when it considered a bill that would have limited a school district’s ability to deny transportation to nonpublic school students on days when the district unexpectedly closed. The sponsor’s memorandum explained that nonpublic schools “have generally closely followed the public school schedules.” Sponsor’s Mem., 1983-1984

² These documents and others in the Addendum are in the public record. We are providing them for the Court’s convenience.

Senate Bill 4989 (Add. 13). But “[p]roblems have arisen” when “nonpublic schools have anticipated transportation services on particular days on which the public schools were scheduled to be in session, but where the public school authorities have decided to close the public schools, and have denied transportation to nonpublic schools.” *Id.* (Add. 13). The bill proposed to alleviate such problems by requiring school districts to transport nonpublic school students on all days when the public schools are *scheduled* to be in session, notwithstanding any mid-year changes to those schedules. 1983-1984 Regular Session Senate Bill 4989 (Add. 16). Clearly the Legislature was aware that school districts were not construing § 3635 as requiring transportation whenever nonpublic schools were open, and the Legislature took no action to correct that practical construction.

In 1985, as SED explained in its opening brief (at 26), the Legislature considered requiring school districts outside New York City to provide two alternative days of transportation to nonpublic school students. SED Mem. in Support, Bill Jacket, L. 1985, ch. 902, at 6. (R. 132); *see also* 1985-1986 Regular Session Senate Bill 5229 (Add. 17). But the Legislature omitted that requirement from the final bill. *See*

Letter from SED to Governor, Bill Jacket, L. 1985, ch. 902, at 18. (R. 144.)

Petitioners argue that the bill was intended to *limit* the rights of nonpublic school students (Br. 36), but they cite nothing from the legislative history suggesting any such intent. To the contrary, the stated purpose of the bill was to “*provide* for transportation to nonpublic schools on a limited number of days upon which public schools are scheduled to be closed.” SED Mem. in Support, Bill Jacket, L. 1985, ch. 902, at 5, 19 (emphasis added). (R. 131, 145.) Nor does the legislative history reflect the Legislature’s belief that Education Law § 3635 already required transportation for nonpublic students on days when public schools were closed, as petitioners contend (Br. 36-37). Both in 1985 and earlier, as noted above, the Legislature clearly was aware of how school districts were applying § 3635 in practice.

More recently, in 1999 and 2001, the Legislature again considered bills that would have required school districts to provide transportation for nonpublic school students when public schools are closed. The sponsor’s memoranda for both bills echoed SED’s guidance interpreting Education Law § 3635. The memoranda noted that “[c]urrently, school districts may—but are not required to—provide transportation for non-

public school children on days that the public schools are closed.” Sponsor’s Mem., 1999-2000 Regular Session Assembly Bill A7382 (Add. 18); Sponsor’s Mem., 2001-2002 Regular Session Senate-Assembly Bill S362, A150 (Add. 22). To override this construction, the bills would have amended the statute to give nonpublic schools the right to transportation on days when public schools are closed. The bills were never voted on.

Thus, the Legislature has long been aware of SED’s interpretation of Education Law § 3635 as permitting, but not requiring, central school districts to provide transportation for nonpublic school students on days when public schools are closed. And the Legislature has repeatedly considered, and rejected, attempts to override this longstanding interpretation. This legislative history strongly suggests legislative acquiescence to SED’s construction of the statute. *See Engle*, 33 N.Y.2d at 242. In light of this legislative history, SED’s interpretation of § 3635 is the only reasonable one, and Supreme Court erred in rejecting it.³

³ Alternatively, the Court should defer to SED’s reasonable interpretation of the statute as SED is the agency charged with its enforcement. *See Matter of Carmel Acad. v. New York State Educ. Dep’t*, 169 A.D.3d 1287, 1288 (3d Dep’t 2019), *lv. denied*, 35 N.Y.3d 901 (2020).

POINT II

PETITIONERS FAIL TO SHOW THAT THEY ARE ENTITLED TO RELIEF ON THEIR ALTERNATIVE CLAIMS

This Court should not affirm on the alternative grounds put forth by petitioners.⁴ First, petitioners fail to show that Education Law § 3635, as interpreted by SED—*i.e.*, as requiring central school districts to transport nonpublic school students only when the public schools are open—violates the New York State Constitution’s Equal Protection Clause. Nonpublic school students have no constitutional right to transportation beyond the minimum required by § 3635. As the Fourth Department explained in *Matter of Cook v. Griffin*, 47 A.D.2d 23 (4th Dep’t 1975), parents of nonpublic school children have no “right to equal aid or even to any aid at all in the absence of specific legislative authorization.” *Id.* at 28. Petitioners’ attempt to distinguish this case (Br. 48) is unavailing; here, as in *Matter of Cook*, the transportation petitioners request is not specifically guaranteed by statute.

⁴ Notably, petitioners do not seek affirmance on the ground that Education Law § 3635 violates the Free Exercise Clause of the New York State Constitution.

Moreover, petitioners fail to show that the statute lacks a rational basis. *See People v. Aviles*, 28 N.Y.3d 497, 502 (2016). The Constitution charges the Legislature with “provid[ing] for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.” N.Y. Const. art. XI, § 1; *see also New York Civ. Liberties Union v. State of New York*, 4 N.Y.3d 175, 182 (2005) (noting that “the State is responsible for providing sufficient funding to school districts”). Thus, the State has a legitimate interest in the “maximum support of [its] public schools.” *Bd. of Educ., Levittown Union Free Sch. Dist. v. Nyquist*, 57 N.Y.2d 27, 46 (1982). Limiting central school districts’ transportation obligation for nonpublic school students to services already offered to public school students rationally promotes that interest.

Petitioners’ expansive reading of Education Law § 3635, by contrast, would burden school districts both financially and logistically. As explained by *amicus curiae* New York State School Boards Association, Inc., school districts would have to assign bus drivers and aides to work on days they otherwise would have off, or hire additional employees. This would exacerbate the staffing shortage school districts

already face. Districts also would have to maintain transportation facilities, including the centralized pick-up points for children who reside in the district but attend a nonpublic school that is more than 15 miles from their home, on days when the public schools are closed. The impact would be particularly significant outside New York City and other large cities, given the lack of existing public transit systems throughout much of the State. Thus, § 3635 rationally requires that central school districts provide transportation for nonpublic school children only on days when public schools are open.

Second, petitioners fail to show that SED exceeded its statutory authority in issuing guidance on the scope of Education Law § 3635. As an initial matter, this argument is not an alternative basis on which to affirm. While petitioners assert that SED has “legislate[d] by adding a requirement through regulation or guidance” (Br. 51), their argument is premised on the correctness of petitioners’ own reading of the provision. Accordingly, for the reasons given in SED’s opening brief and above, SED has not added a requirement by regulation, but merely interpreted the scope of the transportation requirement set by statute. Where, as here, a petitioner challenges an agency’s construction of a statute, the court need

only interpret the statute. *See, e.g., Matter of New York Pub. Interest Research Group v. Town of Islip*, 71 N.Y.2d 292, 303-04 (1988). Nor does petitioners' challenge implicate the separation of powers doctrine discussed in *Boreali v. Axelrod*, 71 N.Y.2d 1 (1987). And neither of the cases petitioners cite in support of this claim—*Matter of Cook and Board of Education of Lawrence Union Free School District No. 15 v. McColgan*, 18 Misc. 3d 572 (Sup. Ct. Albany County 2007)—even addresses the separation of powers doctrine. Petitioners therefore are not entitled to relief based on their separation of powers claim.

Finally, petitioners fail to show that SED violated SAPA because SED did not promulgate its interpretation of Education Law § 3635 as a rule. That interpretation now appears as a question and answer on SED's website. (R. 730.) This question and answer merely interprets the statute and has no independent legal effect. As such, SED's guidance was not subject to SAPA's rulemaking requirement. *See* SAPA § 102(2)(b)(iv); *Matter of Suffolk Reg'l Off-Track Betting Corp. v. New York State Racing & Wagering Bd.*, 11 N.Y.3d 559, 571-72 (2008); *Matter of Elcor Health Servs. v. Novello*, 100 N.Y.2d 273, 279 (2003). Indeed, this Court has already held that a similar question and answer on SED's website is

merely an interpretive statement that did not need to be promulgated. *See Matter of Bd. of Educ. of the Kiryas Joel Vil. Union Free Sch. Dist. v. State of New York*, 110 A.D.3d 1231, 1234 (3d Dep’t 2013), *lv. denied*, 22 N.Y.3d 861 (2014).

Petitioners’ attempt to characterize SED’s interpretation as a rule falls flat. The interpretation does not constitute a “norm or prescription which establishes a pattern or course of conduct for the future,” *People v. Cull*, 10 N.Y.2d 123, 126 (1961), as petitioners contend (Br. 56-57). SED merely advised that central school districts may, but need not, transport nonpublic school children on days when public schools are closed. Each school district may set its own course of conduct, so long as it is consistent with Education Law § 3635. In the cases cited by petitioners, by contrast, the agency imposed some requirement on regulated entities that went beyond any statutory mandate. *See Matter of Council of the City of New York v. Dep’t of Homeless Servs. of the City of New York*, 22 N.Y.3d 150, 154 (2013); *Matter of Plainview-Old Bethpage Congress of Teachers v. New York State Health Ins. Plan*, 140 A.D.3d 1329, 1331-32 (3d Dep’t 2016), *lv. denied*, 140 A.D.3d 1329 (2017); *Matter of New York State Ass’n of Indep. Schs. v. Elia*, 65 Misc. 3d 824, 829-30 (Sup. Ct. Albany County

2019). SED has not imposed any such requirement here. Thus, petitioners are not entitled to relief on their SAPA claim.

The Court therefore should not affirm Supreme Court's judgment on any of these alternative grounds. Instead, as explained in SED's opening brief (at 34), the Court should enter a declaratory judgment in SED's favor.

CONCLUSION

For the foregoing reasons this Court should reverse the judgment of Supreme Court, and enter judgment declaring that (1) Education Law § 3635 requires central school districts to provide transportation to nonpublic school children residing within their district only when public schools are open; (2) this interpretation of § 3635 does not violate either the Equal Protection or Free Exercise Clauses of the New York State Constitution; and (3) SED neither exceeded its statutory authority nor violated SAPA in issuing its interpretive guidance.

Dated: Albany, New York
March 10, 2022

Respectfully submitted,

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Attorney General
State of New York
Attorney for Defendant State
Education Department

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PRINTING SPECIFICATIONS STATEMENT

Pursuant to the Uniform Practice Rules of the Appellate Division (22 N.Y.C.R.R.) § 1250.8(j), the foregoing brief was prepared on a computer (on a word processor). A proportionally spaced, serif typeface was used, as follows:

Typeface: Century Schoolbook

Point size: 14

Line spacing: Double

The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, or any authorized addendum containing statutes, rules, regulations, etc., is **4,446**.

ADDENDUM

STATE OF NEW YORK

68

1981-1982 Regular Sessions

IN SENATE

(Prefiled)

January 7, 1981

Introduced by Sens. PADAVAN, BERMAN, SOLOMON, WINIKOW—read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to transportation

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Section thirty-six hundred thirty-five of the education
2 law is amended by adding a new subdivision six to read as follows:
3 6. Each school district shall provide bus service for children at-
4 tending non-public schools when such non-public schools are in session
5 and the public schools of the district are not in session.
6 § 2. This act shall take effect on the first day of July next suc-
7 ceeding the date on which it shall have become a law.

EXPLANATION—Matter in *italics* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD1-56-27-3

DEBATES INFO

Date	Res Chap	Ca#	Senate#	Assembly#	Page#
1/25/1982		2	68		*132-138

Memo

7PGS. \$1.75

authorizing the Education Department to apportion certain transportation aid to the Somers Central School District.

ACTING PRESIDENT LACK:

Read the last section.

THE SECRETARY: Section 2.

This act shall take effect immediately.

ACTING PRESIDENT LACK:

Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT LACK:

The bill is passed.

Senator Smith.

SENATOR SMITH: Controversial.

ACTING PRESIDENT LACK:

Controversial calendar. Secretary will read.

THE SECRETARY: On page 11, Calendar Number 2, by Senator Padavan, Senate Bill Number 68-A, an act to amend the Education Law, in relation to transportation.

SENATOR GOLD: Explanation.

PAULINE E. WILLIMAN
CERTIFIED SHORTHAND REPORTER

ACTING PRESIDENT LACK: Senator Padavan, explanation is requested by Senator Gold.

SENATOR PADAVAN: Mr. President, this bill is essentially the same bill we've passed in other years in this Chamber, but it not having passed the Assembly, we're now forced to deal with it again.

Basically what it says is that, on certain days of the school year, children in parochial schools, Yeshivas, Catholic schools and the like, are denied bus transportation normally provided to them because the public schools are closed.

This bill, in effect, says that, if that child is normally entitled to bus transportation, that that transportation be provided irrespective of whether or not the public school is open on that given day.

I think the logic is clear. A first, second or third grader cannot take a public means of transportation, be given a token and expected to get on a public bus or subway in the

PAULINE E. WILLIMAN
CERTIFIED SHORTHAND REPORTER

City of New York, and the very essence of the bus program is that these children beyond certain distances from that school must be provided transportation. Otherwise, they would endure hardship and an unsafe condition, so this bill seeks to resolve that issue.

ACTING PRESIDENT LACK: Senator Gold.

SENATOR GOLD: Yeah. Senator, we have gone through this before so I'll try and be brief. Is there any limitation in this bill that I do not see as to the number of days involved, or is it -- the way I read it, any day that the non-public schools are in session, whether it is every day of the year or what, I don't seem to see any limitation. Is there any limitation in this bill at all?

SENATOR PADAVAN: The limitation relates to the school year and as a matter of fact, it says specifically from the period of September through June 30th, so that obviously is not the whole year.

PAULINE E. WILLIMAN
CERTIFIED SHORTHAND REPORTER

Now, the days within that year are obviously those that are defined by the particular board of education in terms of when those public schools will be closed and they vary, as you know.

SENATOR GOLD: Well, Senator, will you yield to a question? The --

SENATOR PADAVAN: Well, have I answered your first one?

SENATOR GOLD: Yeah.

SENATOR PADAVAN: Good.

SENATOR GOLD: Senator, Senator Donovan has a bill on the calendar which seems to be in the same general area where there's an anticipation of conversations between the public school people and the non-public school people in order to agree basically on what the school year will be.

In addition, I think there's language which indicates that if, for reasons of weather, the public schools close but if the non-public schools are in session, they would get

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the transportation on those days. Doesn't it make more sense to have some understanding at this point as to when the school years are rather than to give a blanket authority which could be interpreted to cover week ends. It could be interpreted to cover vacation periods. It could be interpreted to be a year-round bill.

SENATOR PADAVAN: Well, first, it isn't. It's very specific. It says "during the school year", and it defines the school year.

SENATOR GOLD: Well, Senator, where is the limit on the school year?

ACTING PRESIDENT LACK: One moment.

Senator Padavan, will you yield to a question from Senator Gold?

SENATOR PADAVAN: Yes. It says during the school year. That normally is from September to June, so it cannot be the whole year specifically.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT LACK: Senator

Gold.

SENATOR GOLD: On the bill.

ACTING PRESIDENT LACK: On the bill, Senator.

SENATOR GOLD: Mr. President, the "A" version which contains the language limiting the months is obviously better than the original version, but if I had my druthers, Senator Donovan has a bill on the calendar which I believe is in the same area and which I think is a better approach.

It suggests that, since we're dealing with taxpayer dollars and education of taxpayer children, that the -- perhaps the public and non-public schools ought to talk together and agree on basically what is a school year and a school year agenda.

If we are funding a program -- and I'm not against the funding of the program and I'm not against these children receiving the help -- but if we are doing that with taxpayer dollars, I see nothing wrong with Senator Donovan's approach

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CERTIFIED SHORTHAND REPORTER

where we know in advance what the programs are going to be in terms of the school year and we can fund it on an intelligent basis.

ACTING PRESIDENT LACK: Last section.

THE SECRETARY: Section 2.
This act shall take effect the 1st day of July.

ACTING PRESIDENT LACK: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT LACK:
Negatives raise their hands.

THE SECRETARY: Those recorded in the negative on Calendar Number 2 are Senators Ackerman, Bogues, Cook, Daly, Gold, Kehoe, Ohrenstein, Owens, Perry and Present. Ayes 41, nays 9.

ACTING PRESIDENT LACK: The bill is passed. Continue the calendar.

THE SECRETARY: Calendar Number 4, by Senator Babbush, Senate Bill Number 298.

Senator Babbush: Lay it aside

NEW YORK LEGISLATIVE RECORD AND INDEX

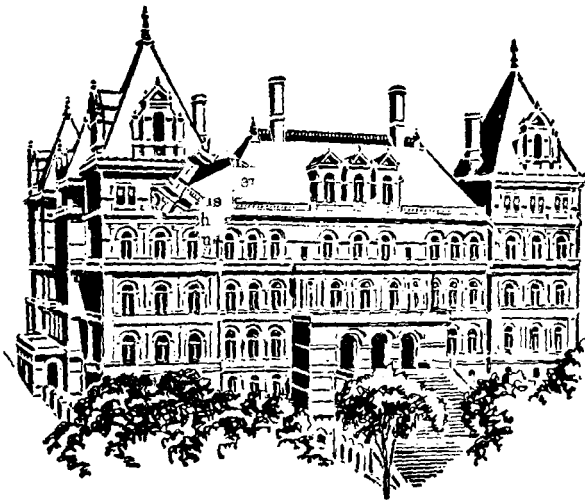
1982

A COMPLETE AND CUMULATIVE RECORD OF THE 205th ANNUAL LEGISLATIVE SESSION

- Comprehensive Summaries of all Bills Introduced with History of Action Thereon
- Individual Record of Senators and Assemblymen • Subject Index of Bills
- Resolutions • Subject Index of Laws • Other Information Covering the Annual Legislative Session

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State Capitol

From January 6 thru October 22, 1982*

** While the Legislature had not adjourned sine die as of October 22, this was the deadline date for delivery of the material herein for printing and binding in order that this publication would be available for use at the time of the convening of the 1983 legislative session in January. Detail of legislative activity, if any, transpiring between October 22, and the date of final adjournment will be included in a supplement to be affixed to the inside back cover of this volume.*

(ISSUED EACH WEEK DURING SESSION—COMPLETE TO DATE)

(See back of book for Contents)

61 CALANDRA, BERNSTEIN, FLYNN, GALIBER, RUIZ—Add §168-j, Insur L, to require that insurer issuing fire insur. policy include therein statement that when insurer reasonably concludes after consultation with authorized pub. or priv. fire prevention and control orgn. or local fire fighting officials that fire was result of arson perpetrated by unknown individual or known individual other than insured, payment will be made to insured only if he refurbishes or rebuilds at same location as damaged premises. Insur Com
Same as S 306; A 572, 2985

62 CALANDRA, BERNSTEIN, FLYNN, GALIBER, RUIZ—Amd §§202, 1307, Bus Corp L, §§202, 1307, N-PCL, §333, Real Prop L, to require that pres. of every domestic or foreign corp. and not-for-profit corp. which acquires real prop. in NY, notify secy. of st. within 90 days of such acquisition of location, acreage and gen. description of prop. and whether it is or will be covered by fire insur., names and addresses of officers, directors, stockholders and any person who derives financial gain from such corp. and address of corp. at its principal place of business, with recording officers not to record any conveyance of real prop. to such corps. unless instruments are accompanied by certif. from secy. of st. certifying that pres. of corp. has given such required notice. Corps Com
Same as A 2524

63 CALANDRA, BERNSTEIN, FLYNN, GALIBER, RUIZ, WEINSTEIN—
Amd §§70.00, 150.05, -10, -15, add §60.12, Penal L, amd §§220.10, -30, Crim Proc L, to increase felony classification of arson in 4th, 3rd and 2nd degrees and to require that person guilty thereof or pleading guilty thereto have imposed min. sentence of imprisonment applicable thereto and with ct. to impose max. sentence of imprisonment for person guilty of or pleading guilty to arson in 1st degree. Codes Com
Same as A 2279

64 LEVY—Amd §467, Real Prop Tax L, to exclude from income for purposes of determining eligibility for partial real prop. tax exemption for cert. persons 65 or over, soc. security benefits, and also increases from pension and retire. benefits granted after Jan. 1, 1981, or after such owners are granted such exemption, whichever is later, with such increases when computed together and expressed as percentage to be limited to percentage increase in max. individual soc. security benefit granted after such date as established by st. bd. Aging Com
Same as A 303

65 PADAVAN—Amd §80, Civ Serv L, to provide that civ. serv. member employed in uniformed services of NYC who was suspended on or after July 1, 1975 because of economy measures taken by NYC, who returns to service shall be deemed to have been in continuous service for purposes of determining seniority and length of service, regardless of duration of suspension. Civ Serv Com
Same as A 4768

66 PADAVAN—Amd §400.00, Penal L, to provide that license to carry or possess pistol or revolver shall be valid within NYC in absence of spec. permit issued by NYC police comr., if it is lawfully possessed by duly retired police officer from NY. Codes Com

67 PADAVAN, WINIKOW—
Add §366-c, Soc Servs L, to provide that resident 65 and over with annual income less than \$9,000 or married resident with combined

income of less than \$12,000 shall be eligible for pharmaceutical assistance to aged if not otherwise qualified for med. assistance for needy, whereby first dollar of each prescription or refill shall be paid by him and with balance to be reimbursed, with person whose drug costs are partially or wholly covered by other plan to receive supplemental assistance or none at all, as case may be; requires that comr. establish system of payments and for determining eligibility. Aging Com
Same as A 4392

68 PADAVAN, BERMAN, SOLOMON, WINIKOW, KNORR—Amd §3635, Educ L, to require that from Sept. 1 through June 30, each sch. dist. provide bus service for children attending non-pub. schs. when such non-pub. schs. are in session and pub. schs. are not. Educ Com
Jan 13 1st Rept Jan 18 2nd Rept Jan 19 3rd rdg
Jan 25 Passed. Jan 26 Assy Educ Com
68-A★

70 PADAVAN—Amd Chap. 254 of 1940 (Parimutuel Rev L), to require that st. racing and wagering bd. establish regulns. limiting use of advertising for OTB which shall provide that advertising be used only to inform public of location of OTB establishments and not for encouraging public to place bets. Fin Com
Same as A 2402

72 PADAVAN, BRUNO, NOLAN, VOLKER—Amd §130.25, Penal L, to make guilty of rape in 3rd degree, male employes of ment. hygiene facility who engages in sexual intercourse with female in-patient at such facility. Codes Com

75 PISANI—Add §4410, Educ L, to require that comr. create pilot program to implement use of child study teams to assist loc. sch. dist's. com. on handicapped in identifying children with handicapping conditions and to set down guidelines and requirements to be met by sch. dists. taking part in such program, which guidelines and requirements shall follow those established by senate multidisciplinary intervention model; makes related provisions. Educ Com

76 PISANI—Amd §125.25, Penal L, add §250.15, Crim Proc L, to make acting under extreme emotional disturbance for which there was reasonable explanation or excuse, affirmative defense to murder 2nd degree generally, instead of only to such crime which involves causing death of person or third person when acting with intent to cause death of another person; fixes new provisions requiring that defendant serve notice of intent to rely upon such affirmative defense upon people and file copy with ct. within 30 days of be examined by psychiatrist, with statements made during examination to be inadmissible. Codes Com

77 RUIZ, BARTOSIEWICZ, BEATTY, BERMAN, BERNSTEIN, GALLAGHER, GOLD, LEICHTER, BOGUES, FLYNN, GAZZARA, MARKOWITZ, MENDEZ, SOLOMON, WEINSTEIN, WINIKOW—

Amd §1220, add §1220-b, Veh & Traf L, to prohibit person from throwing, dumping, depositing or placing upon hway. or within right-of-way thereto or priv. or pub. lands adjacent thereto, any toxic substances, garbage of any kind or other disposable substance or material unless such lands have been designated as disposal or storage area for such substance; makes provisions as to seizure and sale of such vehs. by police used to transport such substances or materials which are thrown, dumped or deposited in violation hereof. Transp Com
77-A★

2833 ROBACH, BRAGMAN, MURPHY; M-S: DiCarlo, Hawley, Healey, Kuhl, Lafayette, Marchiselli, Morahan, Nagle, Pillittere, Robles, Saland, Schimminger, Sheffer, Yevoli—Amd §210, Tax L, to fix at 6 per cent, investment credit to be allowed taxpayer after Dec. 31, 1981, against franchise tax on business corps. W & M Com

2834 ROBACH, BRAGMAN, SCHIMMINGER; M-S: DiCarlo, Hawley, Healey, Kuhl, Lafayette, Marchiselli, Morahan, Murphy, Nagle, Pillittere, Robles, Saland, Sheffer, Yevoli—Amd §209, Tax L, to provide that for any taxable yr. with respect to which business has made subchapter S election, franchise tax imposed hereunder shall be computed only under clause 4 paragraph (a) subd. 1 of §210 hereof. W & M Com

2835 ROBACH, SCHIMMINGER, LAFAYETTE, M-S: Bragman, Butler, DiCarlo, Eve, Hawley, Healey, Kuhl, Marchiselli, Morahan, Murphy, Nagle, Pillittere, Robles, Saland, Sheffer, Yevoli—Amd §§210, 612, Tax L, §T46-112.0, NYC Ad Code, to change references from new business investment deferral to small business investment deferral, as defined herein, which definition includes requirement that such business is independently owned and operated, not dominant in its field, employs 100 or less persons, is not substantially similar in operation or ownership to business entity taxable or previously taxable hereunder and which meets asset and income requirements previously required of new business for new business investment deferral; makes related provisions. W & M Com
Same as S 2806

2835-B★

2836 SANDERS, FELDMAN—Add §366-c, Soc Servs L, to provide that resident 65 or over with annual income of less than \$10,000 shall be eligible for prescription drug assist. to aged as set forth herein, whereby he pays first \$1 of each prescription filled or refilled and is reimbursed for balance of such cost, except those whose prescription drug costs are wholly covered by other plan of assist. or insur., with comr. to provide syst. of payments or reimbursements and eligibility determinations. Aging Com

2837 SANDERS, FELDMAN; M-S: Hirsch—Amd §145.05, Penal L, to extend definition of crim. mischief, 3rd degree, by making person guilty thereof when, with intent to damage prop. of another, and having no right to do so nor reasonable grounds to believe that he has such right, he breaks, defaces, defiles or otherwise damages any bldg. of religious worship of any of its contents. Codes Com

2838 SANDERS, FELDMAN—Add §3211-a, Educ L, to require that results of reading test to determine grade level at which student is capable of reading administered by dist. or sch. be reported to parents of student who shall attain score 2 or more yrs. below reading level established as standard for his grade. Educ Com

2839 SANDERS, FELDMAN—Amd §§Y51-5.0, YY51-4.1, NYC Ad Code, to exclude soc. secur. disab. payments from computation of aggregate disposable income for purpose of qualifying for rent exemption order in NYC. Housing Com
Mar 17 Rept Ref to W & M Com

2840 SANDERS, FELDMAN—Add §235-e, Real Prop L, to provide that if mult. dwell. owner shall fail to provide heat or hot water to tenants within 24 hrs. of notification by tenant that he is not receiving hot water or is receiving insufficient heat, tenant shall have right to deduct one day's rent for each day

on which owner shall have failed to provide same. Judy Com

2841 SANDERS, FELDMAN—Add §235-e, Real Prop L, to provide that landlord has duty to maintain his premises in good repair, with tenant to have right to make repair at lowest cost possible and to deduct same from rent pymt. if landlord has not begun to make such repair within 90 days after written notice of need therefor. Judy Com

2842 MURPHY, SCHIMMINGER; M-S: D'Andrea, Gorski, Graber, Hague, Hannon, Harris, Hawly, Hoyt, Keane, Kelleher, Larkin, Lopresto, H. Miller, Nagle, Proud, Rappleyea, Robach, Ryan, Seminerio, F. Sullivan, Zimmer, Connors—

Add Art. 167, Penal L, and §218, Gen Bus L, to define crime of shoplifting and presumptions relative thereto and to make person guilty of shoplifting in 4th degree when he steals merchandise, in 3rd degree when after having been convicted of 4th or 2nd degree, he steals merchandise, in 2nd degree when he steals merchandise with value of \$250 or more and in 1st degree when after having been convicted of 4th or 2nd degree, he steals merchandise with value of \$250 or more. Codes Com
Same as A 160

2844 SCHMIDT—Add §4211, Educ L, to require that salary of each professional employee of st.-supported sch. for instruction of deaf and blind shall be guided by salaries of professional employees having similar educational credentials, experience and yrs. of service at BOCES or similar type service in sch. dists. not participating in BOCES located in same region in which such st.-supported sch. is located, with salary of professional employees of st.-supported sch. which does not exceed that of similarly situated professional employee, to be deemed aidable operating expense for purposes of st. aid. Educ Com

Mar 3 Rept Ref to W & M Com

2845 SCHMIDT—Amd §§8207, 8208, Educ L, to provide that every person regularly employed in teaching or working as speech pathologist or audiologist by st. or loc. govt. for not less than 2 yrs. prior to effective date hereof shall be issued speech pathology and/or audiologist license by dept. if he is person of good moral character, 21 or older, has been engaged in such practice in NY for at least 2 yrs., and is in possession of American Speech and Hearing Assn. certif. of clinical competence in speech pathology and/or audiology, or equivalent thereof, with application to be submitted within 18 mos. hereof. High Educ Com

2846 SEMINERIO—Amd §3635, Educ L, to require that sch. dist. provide bus service for children attending non-pub. schs. when such non-pub. schs. are in session and pub. schs. are not. Educ Com

2847 SEMINERIO—Amd §B18-45.0, NYC Ad Code, to require that retire. allowances for service on NYCPD be maintained at level of 50 per cent of salary of current and active members. Govtl Emps Com

2848 SEMINERIO—Add §B3-6.4, NYC Ad Code, to authorize employees of consultants who work on community renewal program or comprehensive planning project within NYC dept. of city planning, who are employed by city as of effective date hereof, to purchase service rendered on such project preceding membership as set forth herein, which shall be limited to service actually rendered on such program or project from Jan. 1, 1960 to Dec. 31, 1971 inclusive. Govtl Emps Com
Same as S 1264, 8004; A 10734

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Donovan - S. 4784

SED NO. 32

MEMORANDUM IN SUPPORT OF "AN ACT TO AMEND THE EDUCATION LAW, IN RELATION TO TRANSPORTATION TO NONPUBLIC SCHOOLS"

Purpose of the bill:

This bill would assure that students attending nonpublic schools will not be deprived of transportation between home and school as a result of the unscheduled closing of public schools on certain days.

Summary of provisions of the bill:

Education Law section 3635 would be amended to require that public school calendars be adopted after consultation with nonpublic school officials and not later than June 1, and to provide that nonpublic school pupils receiving transportation will be entitled to such transportation on each day the public schools are scheduled to be in session, or are actually in session, notwithstanding any later determination to close the public schools on one or more of such days. An exception would permit the denial of transportation when the public schools are closed because of hazardous driving conditions due to inclement weather.

The amendment would also provide that nonpublic schools educating pupils residing in a city school district with a population of more than one million may notify such district of not more than five alternative days on which the public schools are scheduled to be closed, but upon which the private school will be open, and upon which transportation will be required.

Statement in support of the bill:

In order for public school authorities to provide transportation to public and nonpublic school students efficiently and economically, it is important that the calendars of all schools in a given district be as uniform as possible with respect to the days upon which schools will be in session. Nonpublic school authorities have generally closely followed the public school schedules. This makes possible the efficient utilization of school transportation vehicles and the planning of routes and time schedules to give better service to both public and nonpublic school students at minimum cost.

Problems have arisen, however, where nonpublic schools have anticipated transportation services on particular days on which the public schools were scheduled to be in session, but where the public school authorities have decided to close the public schools, and have denied transportation to nonpublic schools, forcing them to close as well. This bill would prohibit such unilateral action, and enable nonpublic schools to operate in a more orderly manner and in reliance upon the previously adopted school calendar. The unscheduled denial of transportation would be permitted only in exceptional circumstances, when public school authorities determine that transportation cannot safely be provided because of hazardous driving conditions resulting from inclement weather.

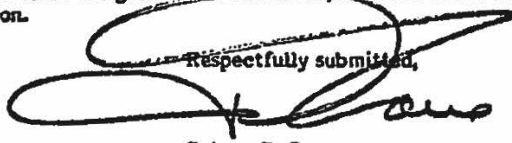
The provision for transportation on five alternative days for residents of a city school district with a population of more than one million would provide greater

flexibility in scheduling for those nonpublic schools. The availability of public transit facilities in such cities as a means of providing transportation and the general authority of the board of education of such a school district to establish mileage limitations and to limit transportation to schools located within the district would permit the conferral of this additional benefit without imposing an unreasonable additional burden or expense. A similar provision is not included for other school districts, because it would impose upon them a much greater burden in arranging for special transportation for one or a few pupils to numerous schools on odd days, and because the provision of such special transportation would necessarily involve a high cost per pupil transported and a substantial overall additional cost to the districts and to the taxpayers of the districts and of the State.

Budgetary implications of the bill:

Since it is anticipated that this legislation will result in closer cooperation between public and nonpublic schools in planning school closings, the additional cost to the State is estimated to be insignificant. Therefore, this bill would not require any additional appropriation.

Respectfully submitted,



Robert D. Stone
Counsel and Deputy Commissioner
for Legal Affairs
State Education Department

December 9, 1982

STATE OF NEW YORK

4989

1983-1984 Regular Sessions

IN SENATE

March 28, 1983

Introduced by Sen. DONOVAN -- (at request of the State Education Department) -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to transportation to nonpublic schools

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section three thousand six hundred thirty-five of the edu-
2 cation law is amended by adding a new subdivision two-a to read as
3 follows:

4 § 2-a. The superintendent of each school district shall prepare a pu-
5 blic school calendar after consultation with officials of nonpublic
6 schools to which transportation has been requested, and shall notify
7 such nonpublic school officials not later than the first day of June in
8 each year, of the days on which the public schools will be in session in
9 the following school year. Transportation to nonpublic schools required
10 or authorized by this section or by section four thousand four hundred
11 two of this chapter shall be provided, as needed, on all such days, and
12 on all additional days upon which the public schools are in session,
13 notwithstanding any subsequent changes in the public school calendar,
14 except for days upon which the public schools are closed because of
15 hazardous driving conditions resulting from inclement weather. A city
16 school district of a city having a population in excess of one million
17 which provides transportation to nonpublic schools shall provide such
18 transportation for the same number of days as the public schools are
19 open. Officials of each nonpublic school may notify such district, not
20 later than the first day of July of each school year, of a maximum of
21 five alternative days, exclusive of Saturdays, Sundays or legal holidays
22 upon which public schools are required to be closed, on which the public
23 schools are scheduled to be closed but such school district will be
24 required to provide for transportation to such nonpublic school.

25 § 2. This act shall take effect on the first day of May next succeed-
26 ing the date on which it shall have become a law.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD08810-01-3

STATE OF NEW YORK

5229

1985-1986 Regular Sessions

IN SENATE

April 22, 1985

Introduced by Sens. DONOVAN, PADAVAN, N. LEVY -- (at request of the State Education Department) -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to transportation to non-public schools

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section thirty-six hundred thirty-five of the education law
2 is amended by adding a new subdivision two-a to read as follows:
3 2-a. The superintendent of each school district shall prepare a public
4 school calendar after consultation with officials of nonpublic schools
5 to which transportation has been requested, and shall notify such nonpu-
6 blic school officials not later than the first day of March in each
7 year, of the days on which the public schools will be in session in the
8 following school year. Transportation to nonpublic schools required or
9 authorized by this section or by section forty-four hundred two of this
10 chapter shall be provided, as needed, on all such days, and on all addi-
11 tional days upon which the public schools are in session, notwithstand-
12 ing any subsequent changes in the public school calendar, except for
13 days upon which the public schools are closed because of hazardous driv-
14 ing conditions resulting from inclement weather. A school district which
15 provides transportation to nonpublic schools shall provide such trans-
16 portation for the same number of days as the public schools are open.
17 Officials of each nonpublic school to which transportation is provided
18 by a city school district of a city having a population in excess of one
19 million may notify such district, not later than the first day of April
20 of each school year, of a maximum of five alternative days, exclusive of
21 Saturdays, Sundays or legal holidays upon which public schools are
22 required to be closed, on which the public schools are scheduled to be

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD10151-01-5

1 closed but such school district will be required to provide for trans-
2 portation to such nonpublic school. Officials of each nonpublic school
3 to which transportation is provided by a school district other than a
4 city school district of a city having a population in excess of one mil-
5 lion may notify such district, not later than the first day of April of
6 each school year, of a maximum of two alternative days, exclusive of
7 Saturdays, Sundays or legal holidays upon which public schools are
8 required to be closed, on which the public schools are scheduled to be
9 closed but such school district will be required to provide for trans-
10 portation to such nonpublic school.

11 § 2. This act shall take effect on the first day of January next suc-
12 ceeding the date on which it shall have become a law.

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A7382C

SPONSOR: Colman

TITLE OF BILL: An act to amend the education law, in relation to transportation to nonpublic schools when public schools are closed.

PURPOSE OR GENERAL IDEA OF BILL: This bill would provide non-public school children with transportation on certain days that public schools are closed.

SUMMARY OF SPECIFIC PROVISIONS: Section one requires that city school district superintendents give a calendar of days school is in session to non-public school administrators when the school district has a population of 125,000 or more.

Section two authorizes school district superintendents to permit transportation of non-public school children to school on Saturday, Sunday or legal holidays. School districts would not be required to transport children on Thanksgiving, Christmas, New Year's day, snow days or during the months of July and August. This section also gives voters of any school district the ability to "opt-out" of or "opt-in" the requirements of this bill.

Section three authorizes non-public schools to operate on legal holidays and Saturdays.

Section four of this bill contains the effective date.

JUSTIFICATION: Currently, school districts may - but are not required to - provide transportation for non-public school children on days that the public schools are closed. This bill would require school districts to provide this service. New York City school districts are currently under similar transportation obligations. This legislation would expand

these requirements to the rest of the state.

This bill also provides for school district voters - at annual school district meetings - to ultimately decide whether to provide transportation for the non-public pupils.

LEGISLATIVE HISTORY: This is a new bill.

FISCAL IMPLICATIONS: Unknown.

EFFECTIVE DATE: This act shall take effect on September 1, 2001.

A07382 Text:

STATE OF NEW YORK

7382--C

1999-2000 Regular Sessions

IN ASSEMBLY

March 30, 1999

Introduced by M. of A. COLMAN -- read once and referred to the Committee on Education -- recommitted to the Committee on Education in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered

reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to transportation to nonpublic schools when public schools are closed

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 2-a of section 3635 of the education law, as
2 amended by chapter 34 of the laws of 1997, is amended to read as
3 follows:

4 2-a. The superintendent of each city school district, in a city having
5 a population [~~in excess~~] of one [~~million~~] hundred twenty-five thousand
6 or more, shall prepare a public school calendar and shall notify offi-

7 cials of nonpublic schools to which transportation has been requested
8 not later than the first day of June in each year, of the days of which

9 the public schools will be in session in the following school year. Such
10 school district which provides transportation to nonpublic schools shall
11 provide such transportation for the same number of days as the public
12 schools are open but shall not provide transportation services for more
13 than one hundred eighty days. Officials of each nonpublic school to
14 which transportation is provided by a city school district of a city
15 having a population [~~in excess~~] of one hundred twenty-five thousand or
16 more [~~million~~] may notify such district, not later than the first day of
17 July of each school year, of a maximum of five days, exclusive of Satur-
18 days, Sundays or legal holidays upon which public schools are required
19 to be closed, on which the public schools are scheduled to be closed,

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD08170-09-0

A. 7382--C

2

1 except that in any year in which the first or last day of Passover and
2 Easter Sunday are separated by more than seven days, such officials may
3 notify the district of a maximum of ten days, but such school district
4 will be required to provide for transportation to such nonpublic school
5 provided that such five or ten additional days, whichever is applicable,
6 are limited to the following: the Wednesday, Thursday and Friday after

7 Labor Day, Rosh Hashanah, Yom Kippur, the week in which public schools
8 are closed for spring recess and the week between Christmas day and New
9 Year's day.

10 § 2. Section 3635 of the education law is amended by adding three new
11 subdivisions 2-b, 2-c and 2-d to read as follows:

12 2-b. Notwithstanding any provision of any general law, special law or
13 local law to the contrary, a school district may provide transportation
14 services for children enrolled in nonpublic schools on any day any
15 nonpublic school is in session, including Saturdays, Sundays and legal
16 holidays.

17 2-c. Every school district, except a city school district of a city
18 with a population of one hundred twenty-five thousand or more, shall be

19 subject to the provisions of this subdivision. The sole trustee, trus-
20 tees or board of education of each such school district shall prepare a
21 public school calendar and shall notify officials of nonpublic schools
22 to which transportation has been requested not later than the first day
23 of June in each year, of the days on which the public schools will be in
24 session in the following school year. Officials of each nonpublic school
25 to which transportation is provided by such school district may notify
26 such school district, not later than the latter of the first day of July
27 of each school year or the thirtieth day after such officials received
28 the public school calendar, of (a) the days on which the public schools

29 are scheduled to be open and such nonpublic school will be closed and
30 (b) the days on which the public schools are scheduled to be closed but
31 such school district will be required to provide transportation to such
32 nonpublic school, provided that a school district shall not be required
33 to provide transportation on Thanksgiving Day, on the twenty-fifth day
34 of December, on the first day of January, on any day during the months
35 of July and August or on any day on which the public schools are closed
36 and fewer than one thousand children residing within such school
37 district and entitled to transportation services are scheduled to attend
38 nonpublic schools on such day. If, due to unsafe road conditions, the

39 school district does not provide transportation to nonpublic schools on
40 any day on which the children enrolled in nonpublic schools had been
41 scheduled for transportation, the officials of each affected nonpublic
42 school may select an alternate day on which the school will be

ADD 20

43 required to provide transportation, subject to the same restrictions
44 which were applicable to the initial selection.
45 2-d. The voters of any school district may adopt at any annual
46 district meeting a separate proposition providing that, commencing with
47 the ensuing school year, the requirements of subdivision two-c of this
48 section shall not apply to such school district. Subsequent to the

49 adoption of such proposition, the voters of such school district may
50 adopt at any annual district meeting a separate proposition providing
51 that, commencing with the ensuing school year, the requirements of said
52 subdivision be imposed upon such school district. Notwithstanding any
53 provision of this chapter to the contrary, any propositions submitted to
54 the voters pursuant to this subdivision need not state a specific appro-
55 priation amount.

A. 7382--C

3

1 § 3. Subdivision 8 of section 3604 of the education law, as amended by
2 section 44 of part L of chapter 405 of the laws of 1999, is amended to
3 read as follows:

4 8. No public school shall be in session on a Saturday, a Sunday or a

5 legal holiday, except general election day, Washington's birthday and
6 Lincoln's birthday, and except that driver education classes may be
7 conducted on a Saturday. A deficiency not exceeding three days during
8 any school year caused by teachers' attendance upon conferences held by
9 superintendents of schools of city school districts or other school
10 districts employing superintendents of schools shall be excused by the
11 commissioner, provided however, notwithstanding any other provision of
12 law, that during the nineteen hundred ninety-two--ninety-three through
13 the nineteen hundred ninety-nine--two thousand school years, the commis-
14 sioner shall excuse a deficiency not exceeding four days during such
15 school year caused by teachers' attendance upon conferences held by such
16 superintendents, provided that at least two such conference days during

17 such school year shall be dedicated to staff attendance upon conferences
18 providing staff development relating to implementation of the new high
19 learning standards and assessments, as adopted by the board of regents.
20 Notwithstanding any other provision of law, rule or regulation to the
21 contrary, school districts may elect to use one or more of such allow-
22 able conference days in units of not less than one hour each to provide
23 staff development activities relating to implementation of the new high
24 learning standards and assessments. A district making such election may
25 provide such staff development during the regularly scheduled daily
26 session and apply such units to satisfy a deficiency in the length of
27 one or more daily sessions of instruction for pupils as specified in
28 regulations of the commissioner.

29 § 4. This act shall take effect immediately, provided that prior to
30 September 1, 2001, no school district, other than a city school district
31 of a city with a population in excess of one million, shall be required
32 to provide transportation on any day its public schools are not in
33 session.

A00150 Memo:

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A150

SPONSOR: Colman

TITLE OF BILL: An act to amend the education law, in relation to transportation to nonpublic schools when public schools are closed.

PURPOSE OR GENERAL IDEA OF BILL: This bill would provide non-public school children with transportation on certain days that public schools are closed.

SUMMARY OF SPECIFIC PROVISIONS: Section one requires that city school district superintendents give a calendar of days school is in session to non-public school administrators when the school district has a population of 125,000 or more.

Section two authorizes school district superintendents to permit transportation of non-public school children to school on Saturday, Sunday or legal holidays. School districts would not be required to transport children on Thanksgiving, Christmas, New Year's day, snow days or during the months of July and August. This section also gives voters of any school district the ability to "opt-out" of or "opt-in" the requirements of this bill.

Section three authorizes non-public schools to operate on legal holidays and Saturdays.

Section four of this bill contains the effective date.

JUSTIFICATION: Currently, school districts may - but are not required to - provide transportation for non-public school children on days that the public schools are closed. This bill would require school districts to provide this service. New York City school districts are currently under similar transportation obligations. This legislation would expand

these requirements to the rest of the state.

This bill also provides for school district voters - at annual school district meetings - to ultimately decide whether to provide transportation for the non-public pupils.

LEGISLATIVE HISTORY: A.7382/S.6122 of 1999-2000.

FISCAL IMPLICATIONS: Unknown.

EFFECTIVE DATE: This act shall take effect on September 1, 2002.

A00150 Text:

STATE OF NEW YORK

S. 362

A. 150

2001-2002 Regular Sessions

SENATE - ASSEMBLY

(Prefiled)

January 3, 2001

IN SENATE -- Introduced by Sen. MORAHAN -- read twice and ordered printed, and when printed to be committed to the Committee on Education

IN ASSEMBLY -- Introduced by M. of A. COLMAN -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to transportation to nonpublic schools when public schools are closed

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 2-a of section 3635 of the education law, as
2 amended by chapter 34 of the laws of 1997, is amended to read as
3 follows:

4 2-a. The superintendent of each city school district, in a city having
5 a population [~~in excess~~] of one [~~million~~] hundred twenty-five thousand
6 or more, shall prepare a public school calendar and shall notify officials of nonpublic schools to which transportation has been requested
7 not later than the first day of June in each year, of the days on which
8

9 the public schools will be in session in the following school year. Such

ADD23

10 school district which provides transportation to nonpublic schools shall
11 provide such transportation for the same number of days as the public
12 schools are open but shall not provide transportation services for more
13 than one hundred eighty days. Officials of each nonpublic school to
14 which transportation is provided by a city school district of a city
15 having a population [~~in excess~~] of one [~~million~~] hundred twenty-five
16 thousand or more may notify such district, not later than the first day
17 of July of each school year, of a maximum of five days, exclusive of
18 Saturdays, Sundays or legal holidays upon which public schools are
19 required to be closed, on which the public schools are scheduled to be

20 closed, except that in any year in which the first or last day of Pass-
21 over and Easter Sunday are separated by more than seven days, such offi-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD00582-01-1

S. 362

2

A. 150

1 cials may notify the district of a maximum of ten days, but such school
2 district will be required to provide for transportation to such nonpub-
3 lic school provided that such five or ten additional days, whichever is
4 applicable, are limited to the following: the Wednesday, Thursday and
5 Friday after Labor Day, Rosh Hashanah, Yom Kippur, the week in which

6 public schools are closed for spring recess and the week between Christ-
7 mas day and New Year's day.

8 § 2. Section 3635 of the education law is amended by adding three new
9 subdivisions 2-b, 2-c and 2-d to read as follows:

10 2-b. Notwithstanding any provision of any general law, special law or
11 local law to the contrary, a school district may provide transportation
12 services for children enrolled in nonpublic schools on any day any
13 nonpublic school is in session, including Saturdays, Sundays and legal
14 holidays.

15 2-c. Every school district, except a city school district of a city
16 with a population of one hundred twenty-five thousand or more, shall be
17 subject to the provisions of this subdivision. The sole trustee, trus-

18 tees or board of education of each such school district shall prepare a
19 public school calendar and shall notify officials of nonpublic schools
20 to which transportation has been requested not later than the first day
21 of June in each year, of the days on which the public schools will be in
22 session in the following school year. Officials of each nonpublic school
23 to which transportation is provided by such school district may notify
24 such school district, not later than the latter of the first day of July
25 of each school year or the thirtieth day after such officials received
26 the public school calendar, of (a) the days on which the public schools
27 are scheduled to be open and such nonpublic school will be closed and

28 (b) the days on which the public schools are scheduled to be closed but
29 such school district will be required to provide transportation to such
30 nonpublic school, provided that a school district shall not be required
31 to provide transportation on Thanksgiving Day, on the twenty-fifth day
32 of December, on the first day of January, on any day during the months
33 of July and August or on any day on which the public schools are closed
34 and fewer than one thousand children residing within such school
35 district and entitled to transportation services are scheduled to attend
36 nonpublic schools on such day. If, due to unsafe road conditions, the
37 school district does not provide transportation to nonpublic schools on

38 any day on which the children enrolled in nonpublic schools had been
39 scheduled for transportation, the officials of each affected nonpublic
40 school may select an alternate day on which the school district will be
41 required to provide transportation, subject to the same restrictions
42 which were applicable to the initial selection.

ADD24

43 2-d. The voters of any school district may adopt at any annual
44 district meeting a separate proposition providing that, commencing with
45 the ensuing school year, the requirements of subdivision two-c of this
46 section shall not apply to such school district. Subsequent to the
47 adoption of such proposition, the voters of such school district may

48 adopt at any annual district meeting a separate proposition providing
49 that, commencing with the ensuing school year, the requirements of said
50 subdivision be imposed upon such school district. Notwithstanding any
51 provision of this chapter to the contrary, any propositions submitted to
52 the voters pursuant to this subdivision need not state a specific appro-
53 priation amount.

54 § 3. Subdivision 8 of section 3604 of the education law, as amended by
55 chapter 181 of the laws of 2000, is amended to read as follows:

S. 362

3

A. 150

1 8. No public school shall be in session on a Saturday, a Sunday or a
2 legal holiday, except general election day, Washington's birthday and

3 Lincoln's birthday, and except that driver education classes may be
4 conducted on a Saturday. A deficiency not exceeding three days during
5 any school year caused by teachers' attendance upon conferences held by
6 superintendents of schools of city school districts or other school
7 districts employing superintendents of schools shall be excused by the
8 commissioner, provided however, notwithstanding any other provision of
9 law, that during the nineteen hundred ninety-two--ninety-three through
10 the two thousand--two thousand one school years, the commissioner shall
11 excuse a deficiency not exceeding four days during such school year
12 caused by teachers' attendance upon conferences held by such superinten-
13 dents, provided that at least two such conference days during such
14 school year shall be dedicated to staff attendance upon conferences

15 providing staff development relating to implementation of the new high
16 learning standards and assessments, as adopted by the board of regents.
17 Notwithstanding any other provision of law, rule or regulation to the
18 contrary, school districts may elect to use one or more of such allow-
19 able conference days in units of not less than one hour each to provide
20 staff development activities relating to implementation of the new high
21 learning standards and assessments. A district making such election may
22 provide such staff development during the regularly scheduled daily
23 session and apply such units to satisfy a deficiency in the length of
24 one or more daily sessions of instruction for pupils as specified in
25 regulations of the commissioner. The commissioner shall assure that such
26 conference days include appropriate school violence prevention and

27 intervention training, and may require that up to one such conference
28 day be dedicated for such purpose.

29 § 4. This act shall take effect immediately, provided that prior to
30 September 1, 2002, no school district, other than a city school district
31 of a city with a population in excess of one million, shall be required
32 to provide transportation on any day its public schools are not in
33 session.