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School Transportation Law Course

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I. Entitlement to Transportation In General

A. General Duty to Provide Transportation Services

School districts, other than city school districts, have a general obligation to transport students to and from the school they legally attend. This general obligation derives from Section 3635 of New York's Education Law.

Different and/or additional responsibilities can be found in other provisions of law discussed in other sections of this course book. Those include, for example, Education Law Section 3209(4) regarding the transportation of homeless students, and Sections 4401(2)(k) and 4402(4) regarding the transportation of students with disabilities.

Scope of General Obligation

1. School districts, other than city school districts, must transport students in grades kindergarten through 12 who reside in their district to and from the school they legally attend whether it is a public, non public or charter school. Educ. Law §3635.
2. Districts may provide transportation to pre-kindergarten children only if they attend a state-approved universal pre-kindergarten program sponsored by the district. Educ. Law §3602-e; 8 NYCRR §151-1.2(a); *Appeal of McColgan*, 47 Ed. Dep't Rep. 132 (2007), *aff'd Bd. of Educ., Of Lawrence UFSD v. McColgan*, 18 Misc.3d 572 (Albany Co. 2007); *Appeal of Neubauer*, 32 Ed. Dep't Rep. 320 (1992).
3. Districts also may transport a child of less than school age who is accompanying a parent under age 21 to and from the parent's school. Educ. Law §3635(1)(f); see *Appeal of a Preschool Student with a Disability*, 43 Ed. Dep't Rep. 343 (2004).
4. To be entitled to transportation,
 - Students in grades kindergarten through 8 must live between 2 and 15 miles from school.
 - Students in grades 9 through 12 must live between 3 and 15 miles from school. Educ. Law §3635(1)(a).

Transportation for lesser or greater distances must be approved by a school district's voters. *Id.*; *Appeal of Powell*, 46 Ed. Dep't Rep. 565 (2007); *Appeal of Wenger*, 37 Ed. Dep't Rep. 5 (1997); *Matter of Zakrzewski*, 22 Ed. Dep't Rep. 381 (2984); *Matter of Silver*, 1 Ed. Dep't Rep. 381 (1959).

5. A school district's general duty to transport students to and from school does not entitle students to door-to-door transportation. Educ. Law §3635(1)(d); *Ossant v. Millard*, 72

Misc.2d 384 (1972); see *Appeal of Petrella*, 48 Ed. Dep't Rep. 45 (2008); *Appeal of Clancy*, 37 Educ. Dep't Rep. 280 (1998).

6. The provision of transportation services previously supplied in error does not obligate a school district to continue to provide such services. *Appeal of Fleming*, 43 Ed. Dep't Rep. 391 (2004); *Appeal of Turner*, 40 Ed. Dep't Rep. 156 (2000); *Appeal of Whitaker*, 33 Ed. Dep't Rep. 59 (1993).

Rules for City School Districts

In contrast to other types of school districts, city school districts may, but are not required to, provide school transportation. Educ. Law §3635(1)(c).

City school districts choosing to provide school transportation to their students must do so based on a reasonable and consistent policy that treats all children in "like circumstances" in a similar manner.

- Students in different grade levels are not considered to be in "like circumstances".
- A city school district may provide transportation to students in certain grades and not others, based on its policy. *Appeal of Cassin*, 32 Ed. Dep't Rep. 373 (1992).

Rules for Enlarged City School Districts

Different than the rules which apply to regular city school districts, enlarged city school districts:

- Must provide transportation to those students residing outside the city limits.
- May, in their discretion to provide transportation to children living within the city limits. Educ. Law §2503(12).

As a result, the transportation policy of an enlarged city school district may distinguish between students residing within city limits and those outside the corporate boundaries. *Matter of Collar*, 14 Ed. Dep't Rep. 327 (1975).

B. Duty to Transport Students To and From Child Care Locations

A school district is not required to, but in its discretion may, provide transportation services between a child's school and before and/or after school child care locations, in lieu of the transportation provided between home and school. Educ. Law §3635(1)(e). If it does, it must do so in accordance with the specific requirements of Section 3635 of the Education Law. Educ. Law §3635(1)(e); *Appeal of Berkins*, 39 Ed. Dep't Rep. 620 (2000).

Limitations on Child Care Location Transportation

Pursuant to law, when a school district elects to transport students to and/or from a child care location, such transportation is subject to certain limitations.

- The option applies only to students attending kindergarten through 8th grade.
- Transportation to and from child care locations are subject to a district's general transportation mileage limitations.
- The cost of providing such transportation is eligible for state aid. Educ. Law §3635(1)(e); *Appeal of Berkins*.
- The term child care location refers to a place within a district, other than a child's home, where care for less than 24 hours a day is provided on a regular basis. Educ. Law §3635(1)(e).
- There is no statutory authority to transport students to and/or from a child care location outside the district where they attend school. *Appeal of Krevoy*, 48 Ed. Dep't Rep. 103 (2008); *Appeal of a Student Suspected of Having a Disability*, 38 Ed. Dep't Rep. 507 (1999).

In addition, school districts that elect to transport students to and/or from a child care location may further restrict the availability of such transportation. Pursuant to law,

- A district can require that an unlicensed child care location be within the attendance zone of the school the child requesting such transportation attends.
- On the other hand, those licensed pursuant to section 390 of the Social Services Law may be located anywhere within the district. Educ. Law §3635(1)(e); *Appeal of Tighe*, 47 Ed. Dep't Rep. 206 (2007); *Appeal of Grove*, 33 Ed. Dep't Rep. 176 (1993).

Parental Request Requirement

A child's parents must file a written request for transportation to and/or from a child care location no later than **April 1** preceding the next school year. Families moving into a school district after that day must submit their request within 30 days of establishing residency in the district.

- A district may not deny transportation to a child care location just because a child is not transported there every day.

Upon request, a district would have to transport a student to his or her child care location on some days and his or her home on other days, provided both locations are within the district's distance mileage limitations. *Appeal of Seibt*, 40 Ed. Dep't Rep. 186 (2002).

- A district may not deny transportation to a child care location just because a student is not eligible for transportation between home and school.

Such transportation must be provided as long as the distance between the student's school and his or her child care location falls within the district's distance mileage limitations, measured by the nearest available route. Educ. Law §3635(1)(e); *Appeal of Berkins*.

C. Transportation To and From Athletic Events and Field Trips

School districts and boards of cooperative educational services (BOCES) that transport students to a school-sponsored field trip, extra-curricular activity, or any other similar event must transport those students back to either the point of departure or an appropriate school.

- A student's parent or guardian may authorize an alternative form of return transportation for the student by providing the school district written notice in accordance with district policy.

If a student's parent or guardian has not authorized an alternative form of return transportation and intervening circumstances make it impractical for the district to provide return transportation, a district or BOCES representative must:

- Contact the student's parents and inform them of the intervening circumstances.
- Remain with the student until he or she has been delivered to his or her parents. Educ. Law §§1604(41); 1709(41); 1804(11); 1903(2); 1950(19); 2503(20); 2554(27); 2590-e(10).

Bus Driver Qualifications

Limitations on the number of consecutive hours school bus drivers can operate a school bus may impact the scheduling of transportation to and from athletic events and field trips.

- School bus drivers with ten (10) hours of driving time within a period of fifteen (15) consecutive hours cannot continue or go on duty again without at least eight (8) consecutive hours off duty, even if part of the driving time was outside New York. 17 NYCRR §723.10(g).¹ Driving time refers to time spent at the driving controls of a motor vehicle in operation. 17 NYCRR §723.1(b).
- School bus drivers on duty for fifteen (15) hours in any consecutive 24 hour period cannot continue or go on duty again without eight (8) consecutive hours off duty, even if part of the hours of duty were outside New York. 17 NYCRR §723.10(i)(1). On duty

¹ Title 17 of the New York Code of Rules and Regulations Parts 721, 722 and 723 can be found at: <https://www.nysdot.gov/divisions/operating/oss/bus-repository/busregs.pdf>

refers to time spent performing duties for a motor carrier irrespective of whether those duties involve driving a motor vehicle. 17 NYCRR §723.10(1)(2).

Guidelines

1. The New York State Police has developed a Field Trip Attendance System to help school districts prevent problems that may arise during school field trips. It is available at: <http://www.troopers.state.ny.us/PSAC/fieldtripsindex.html> for schools and organizations that may not have such a system in place, and also as supplemental material for those that do.
2. The NYS Education Department has issued suggested guidelines for use in screening motor carriers and drivers, and choosing a motor carrier. The guidelines can be accessed at: <http://www.emsc.nysed.gov/schoolbus/TransDirector/htm/FieldTripGuidelines.htm> They can help districts avoid booking charter trips with companies that are out of compliance with law, and that might assign a driver with less than a clean driving record, or a non-qualified or unreported driver, to a district's charter trip.

Upon a school district's request, the Division of Program Regulations of the Department of Motor Vehicles will provide information regarding a motor carrier's and bus driver's compliance and qualification status.

The Education Department regulations include recommendations that apply, before booking a charter trip; on the day of the trip; on the road during the trip, and after the trip.

Before booking a charter trip:

- Ask the prospective carrier if it is in compliance with Article 19A (intrastate) and federal Department of Transportation regulations (interstate).
- Require the bus company to provide three or four names and a recent driver license abstract for a pool of drivers that can be assigned to the district's charter trip.
- Make sure the bus company drivers are "school bus qualified" (fingerprinted and criminal history cleared) under Section 509 of the Vehicle and Traffic Law.
- Review each of the prospective drivers' Article 19-a files.
- Contact the Bus Driver Certification Unit at the Department of Motor Vehicles to request the compliance status of the bus company and the driver qualification status of each prospective driver.
- Allow sufficient time to receive the findings of the Department of Motor Vehicles.
- Check with the New York State Department of Transportation regarding the bus company's equipment and maintenance record.

- Develop guidelines and protocols for the adult chaperone/school official assigned to the trip to follow both before and during the trip, including providing such individual(s) with the authority to terminate the trip if the condition of the equipment or the driver (fatigue, speeding, etc.) poses a significant threat to the safety of the students on the trip.

On the day of the trip:

The adult chaperone/school official assigned to oversee the trip should:

- Verify the identity of the driver by requesting to see the driver's license. This will help to confirm that the driver who actually shows up to drive during the trip is one the district checked through the Department of Motor Vehicle's Bus Driver Certification Unit.
- Evaluate the condition of the vehicle making sure it has been properly inspected and appears to be in safe operating condition.
- Evaluate the condition of the driver making sure, for example, that he does not appear fatigued.

The last two steps should be repeated each day of the trip, as well.

On the road during the trip:

The adult chaperone/school official assigned to oversee the trip should:

- Monitor the driver's performance regarding, for example, speed, safe lane changes, proper distance from other vehicles, etc.
- Monitor the driver's physical condition, particularly on long trips, to ensure he or she is not fatigued.
- Take decisive action to eliminate any threats to the safe operation of the bus including, for example, requiring the driver to slow down, pull over at a rest stop or exit, etc.

After the trip:

A detailed written report of any safety concerns that arise during the trip should be sent to the school official responsible for booking charter trips.

D. Forms of Transportation

Boards of education have broad discretion in determining the manner in which they will provide transportation to their students, after balancing the safety and convenience of students with overall economy and efficiency. *Appeal of Del Vecchio*, 39 Ed. Dep't Rep. 258 (1999); *Appeal of Broad*, 35 Ed. Dep't Rep. 248 (1996); *Appeal of Byrne*, 34 Ed. Dep't Rep. (1995).

Pursuant to a board of education's discretion, school districts may:

1. Purchase or lease and maintain a fleet of buses in order to transport students. Educ. Law §§1709(25); 1804(1); 1903(1); 2503(12); 3623.
2. Contract with others for such purpose including, a person, corporation, another school district, a county, municipality, state division for youth, or board of cooperative educational services. Educ. Law §§1709(27); 1804(1); 1903(1); 1950(4)(q); 2503(12); 3625.
3. Participate in regional transportation services jointly with other school districts or boards of cooperative educational services (BOCES), to transport students between home and school. Educ. Law §§1709(25)(g); 1950(4)(q); 3621(8),(9).
4. Use an existing public transportation system to transport students to and from school. According to the commissioner, such use is neither illegal nor unreasonable². *Appeal of Clancy*, 37 Ed. Dep't Rep. 280 (1998).
 - Districts can provide students with bus tickets, a bus pass or railroad tickets. *Appeal of DelVechhio*; *Appeal of Clancy*; *Matter of Tomasso*, 23 Ed. Dep't Rep. 120 (1983); *Matter of Farrell*, 18 Ed. Dep't Rep. 506 (1979).
 - There is no authority allowing a school district to advance cash for this purpose.
5. Use a combination of transportation methods. They may, for example, transport some students through a private carrier, and others through the use of a public transportation system. The mere fact that some students are transported on private buses does not mean that all must be. *Appeal of Clancy*; *Appeal of Tomasso*, 23 Ed. Dep't Rep. 120 (1983). Similarly, they may transport some students in a 66 passenger bus and others in a 15 passenger van. *Appeal of McCarthy and Bacher*, 42 Ed. Dep't Rep. 329 (2003).
6. Contract with parents for transporting their own children. *Matter of Antonette*, 18 Ed. Dep't Rep. 413 (1979). However, such contracts are subject to certain limitations.
 - The cost of the contract may not exceed the reasonable cost of the services provided, and must exclude loss of earnings related to time spent driving the child. *Matter of Antonette*.
 - Such a contract should be entered into only after a district, through competitive bidding, or the request for proposal process, has been unable to secure a regular contractor.
 - The child must reside within the required transportation mileage limits.

² The State Education Department recommends that students being transported on municipal transit buses receive classroom training about the differences in safety procedures between transit buses and school buses (i.e. not to cross road in front of municipal bus). New York State Education Department Pupil Transportation Safety Guidance Manual, 2006 at p. 14.

- Unless an exemption is granted the parent must satisfy the requirements of Article 19-A of the Vehicle and Traffic Law and Part 156 of the commissioner's regulations.
- According to the New York State Department of Transportation, vehicles used by parents to transport their own children to and from school under a reimbursement contract are subject to the Department of Motor Vehicles inspection program. Those same vehicles are subject to additional inspection by the Department of Transportation only if the parents who own the vehicle also use it to transport other children to and from school in addition to their own and receive reimbursement for such transportation.

For further information, contact the Department of Motor Vehicles at (518) 473-9455, or the Department of Motor Vehicles Bus Driver Certification Unit, at NYS Department of Motor Vehicles, Empire State Plaza, Swan Street Building, Room 220C, Core 2, Albany, New York 12228. See also, NYS Education Department, "Transportation Contracts: Preparation and Filing" at: <http://stateaid.nysed.gov/trans/contract.htm>

E. Transportation Fees

There is no statute that specifically authorizes a board of education to charge a fee for transporting students.

- In the absence of such authority, it is unlikely that the commissioner of education or a court would determine that a school district may impose a transportation fee. This is because a board of education has only those powers specifically granted by statute or those necessarily and reasonably implied there from.
- A commissioner's decision that a school district may not charge a fee or require a donation as a condition for a student's participation in interscholastic athletic activities lends additional support for this interpretation. *Appeal of Ambrosio*, 30 Ed. Dep't Rep. 387 (1991).

II. Entitlement to Transportation Special Student Populations

As briefly discussed in Section I of this course book, a school district's general obligation to provide school transportation is limited to resident students who live within specified distance limitations from the school they legally attend.

Although the scope of that duty might seem self-evident, there can be variations that affect the actual provision of transportation services. Following is a discussion of some of those unique circumstances.

Students Attending Public School Outside of Their Attendance Zone

Boards of education can establish attendance zones and assign students to a particular school. Students cannot attend school outside the attendance zone in which they live, unless the board has established exceptions to the attendance zone limitations and they qualify under one of those exceptions. Educ. Law §1709(3),(33); *Appeal of Knoer*, 47 Ed. Dep't Rep. 102 (2007); *Appeal of P.C.*, 45 Ed. Dep't Rep. 476 (2006); *Matter of Addabbo v. Donovan*, 22 A.D.2d 383, *aff'd* 16 N.Y.2d 619, *cert. denied* 382 U.S. 905 (1965).

The question then arises as to whether a student allowed to attend school outside his or her normal attendance zone is still entitled to transportation services. According to the commissioner the answer is yes. Under such circumstances, the school outside the student's attendance zone becomes the school the child legally attends. As such, the student is entitled to transportation services. *Appeal of Nicotri*, 38 Ed. Dep't Rep. 80 (1998).

The parents of a student legally attending school outside his or her attendance zone may, nonetheless, agree to waive transportation benefits. Educ. Law §3635(7).

- The waiver must be voluntary. *Appeal of Jongbloed*, 16 Ed. Dep't Rep. 385 (1977).
- The waiver must be renewed in writing annually. Educ. Law §3635(7).

Students Attending Public School in another School District

There are instances where parents choose to enroll their children in the public schools of a district other than their district of residence.

In such an instance, a school district of residence does not have to transport such a student to the other district, if it offers an instructional program for the student. *Appeal of C.C. and E.C.*, 48 Ed. Dep't Rep. 528 (2009); *Appeal of M.G. and J.G.*, 40 Ed. Dep't Rep. 336 (2000); *Appeal of Ortiz*, 34 Ed. Dep't Rep. 341 (1995); *Appeal of Franzenburg*, 33 Ed. Dep't 284 (1993).

This means, for example, that if a school district offers a middle school program, it does not have to provide transportation to a middle school program in another school district. *Appeal of C.C. and E.C.*

- Even if the parent is dissatisfied with the program offered by the school district of residence. *Appeal of Ortiz*.
- Even if the district of residence could accommodate transportation under existing arrangements with little cost or inconvenience. *Appeal of Franzenburg*.

Nonpublic School Students

The rights of students attending nonpublic school are covered in Section XXII of this course book.

As a preliminary matter, however, it should be noted that:

1. School districts do not have to transport nonpublic school students who are too young to attend public school in their district. *Matter of Wheelwright*, 41 Ed. Dep't Rep. 454 (2002); *Appeal of Smith*, 37 Ed. Dep't Rep. 583 (1998); *Lewitas v. Ossining Union Free School Dist.*, 10 Misc.3d 1059(A) (unpublished) (Westchester Co. November 28, 2005).

This means that children who pursuant to district policy may not attend a district's kindergarten program because they will not turn five years of age by December 31st of that school year would not be eligible for transportation to and from a nonpublic kindergarten program.

2. Transportation to and from school must be provided to nonpublic school students who move into a district after the start of a school year, provided their parents submit a written request for transportation within 30 days of establishing residence within the district.
 - A late request may not be denied if there is a reasonable explanation for the delay.
 - Being unaware of the need to submit a timely request for transportation generally does not constitute a reasonable explanation for a delay. Educ. Law §3635(2); *Appeal of Thomas*, 45 Ed. Dep't Rep. 529 (2006); *Appeal of Mogilski*, 37 Ed. Dep't Rep. 446 (1998).
3. Nonpublic school students who participate in a dual enrollment program for gifted or career education under Section 3602-c of the Education Law are entitled to transportation between their nonpublic school and the public school where the dual enrollment services are provided if the distance between those schools exceeds one quarter (¼) of a mile. Educ. Law §3602-c(4).
4. Nonpublic school students with disabilities participating in dual enrollment programs are entitled to transportation:
 - If the distance between their nonpublic school and the public school where the services are provided is greater than ¼ mile.

- Or as indicated in the student’s individualized education program (IEP). Educ. Law §3602-c(4).

Transportation to and from dual enrollment programs may exceed fifteen (15) miles. NYS Education Department “Handbook on Services to Pupils Attending Non Public Schools” at: <http://www.emsc.nysed.gov/nonpub/handbookonservices/home.html>

Charter School Students

Under New York’s Education Law, a charter school is deemed a nonpublic school for transportation purposes. As a result, school districts must provide transportation to charter school students to the extent authorized by law for transportation to nonpublic schools. Educ. Law §§2853(4)(b); 3635; *Appeal of New Covenant Charter School*, 39 Ed. Dep’t Rep. 610 (2000).

For further discussion on transportation for nonpublic school students, please refer to Section XXII of this course book.

Homeless Students

In general terms, a homeless child is a child or youth who does not have a fixed, regular, and adequate nighttime residence or whose primary nighttime location is in a public or private shelter designed to provide temporary living accommodations, or a place not designed for, or ordinarily used as, regular sleeping accommodation for human beings. 42 USC §11434(a)(2); Educ. Law §3209(1)(a); 8 NYCRR §100.2(x)(1); see also *Appeal of S.B.*, 48 Ed. Dep’t Rep. 38 (2008); *Appeal of P.L.*, 40 Ed. Dep’t Rep. 84 (2000); *Appeal of Gannon*, 37 Ed. Dep’t Rep. 135 (1997). See, NYS Education Department Questions and Answers on Education of the Homeless, available at <http://www.emsc.nysed.gov/nyc/homeless>.

In accordance with applicable provisions of law, homeless students designate the school district in which they will attend school. That can include either of the following:

- The school district of origin, which refers to the district within New York State where the homeless student was attending a public school on a tuition-free basis or was entitled to attend when circumstances causing the student to become homeless arose. Educ. Law §3209(1)(c); 8 NYCRR §100.2 (x)(1)(iii).
- The school district of current location, which refers to the district within New York State where the temporary housing arrangement or the residential program for a homeless or runaway student is located, and which may be different from the school district of origin. Educ. Law §3209(1)(d); 8 NYCRR §100.2 (x)(1)(iv).
- A school district participating in a regional placement plan, which refers to a comprehensive regional approach to the provision of educational placements for homeless students, and which must be approved by the commissioner of education. Educ. Law §3209(1)(e); 8 NYCRR §100.2(x)(1)(v).

The responsibility for providing transportation to homeless students to and from school will vary.

- Social services districts are responsible for providing transportation for homeless students who are eligible for benefits under section 350-j of the Social Services Law and are placed in temporary housing arrangements outside their designated school district of attendance.
- To the extent funds are available, the state Office of Children and Family Services must provide transportation for homeless students in a residential program for runaway and homeless youth located outside the designated district.
- A designated school district must provide transportation for homeless students who are not eligible for transportation from a social services district or the Office of Children and Family Services. Educ. Law §3209(4)(c), (d), (e); 8 NYCRR §100.2(x)(6).

Both a social services district or the Office of Children and Family Services may contract with a school district or board of cooperative educational services (BOCES) to provide such transportation services. Educ. Law §3209(4)(a), (b).

A designated district's responsibility to provide transportation to homeless students to and from school is subject to certain conditions. For example,

- The duty to provide such transportation is triggered when it receives notice of their homeless status. Educ. Law §3209(2)(e)(1), (2); 8 NYCRR §100.2(x)(4)(ii), (iii); *Appeal of D.U.*, 47 Ed. Dep't Rep. 213 (2007). A designated district is not deemed to have received such notice merely because the address section in a district's "Emergency/health information" form is left blank, or a post office box is given as a mailing address. *Appeal of D.U.*

If the designated school district is the school district of origin or a school district participating in a regional placement plan, such transportation may not exceed 50 miles one way, unless the commissioner of education determines it is in the best interest of the student. Educ. Law §3209(4)(c); 8 NYCRR §100.2 (x)(6)(ii).

- If the designated school district is the district of current location, such transportation must be provided on the same basis as a resident student. Educ. Law §3209(4)(c).

School districts may receive state aid to offset expenditures they incur, subject to limitations established by the commissioner of education regarding the total cost for providing the most cost-effective mode of such transportation. Educ. Law §3209(4)(c),(e).

Students with Disabilities

The transportation rights of students with disabilities are covered in Sections XVIII and XIX of this course book.

As a preliminary matter, however, it should be noted students with disabilities:

1. Have a general entitlement to transportation to and from school the same as non-disabled students.
2. May have greater transportation rights than non-disabled children, pursuant to laws designed to ensure their access to a free appropriate public education. For example,
 - Nonpublic school students with disabilities may be transported in excess of 15 miles to and from a dual-enrollment program. NYS Education Department “Handbook on Services to Pupils Attending Non Public Schools” at: <http://www.emsc.nysed.gov/nonpub/handbookonservices/home.html>
 - Students with disabilities may be transported up to a distance of 50 miles to and from a nonpublic school they attend to receive programs or services similar to those recommended by the local committee on special education. Educ. Law §4402(4).

Children of Parents Who Live Apart

The provision of transportation services to students whose parents live apart can be affected by a variety of circumstances. Ultimately, however, it will depend on what is deemed to be the student’s residence.

When a child’s parents live apart, a child can have only one legal residence for the school purposes. *Appeal of Franklin-Boyd*, 45 Ed. Dep’t Rep. 33 (2005); *Appeal of T.K.*, 43 Ed. Dep’t Rep. 103 (2003).

1. In the case of divorce where a court awards custody to one parent, the child’s residence is presumed to be with the custodial parent. *Appeal of Plesko*, 37 Ed. Dep’t Rep. 238 (1997); *Appeal of Juracka*, 31 Ed. Dep’t Rep. 282 (1992); *Appeal of Forde*, 29 Ed. Dep’t Rep. 359 (1990). However, this presumption may be rebutted.
2. A custodial parent may designate a child’s residence to be that of the non-custodial parent. Although preferable, such designation does not require legal modification of the divorce decree.
3. There must be compelling evidence that the custodial parent consents to the child’s legal residence being that of the non custodial parent. *Appeal of Petrie*, 37 Ed. Dep’t Rep. 200 (1997); *Appeal of Barron*, 31 Ed. Dep’t Rep. 1 (1991).

4. Where a child's time is essentially divided between the households of divorced parents, with both parties assuming day to day responsibility for the child, the determination of the child's residence ultimately rests with the family. *Appeal of Franklin-Boyd*; *Appeal of T.K.*; *Appeal of Seger*, 42 Ed. Dep't Rep. 266 (2003).
 - Absent proof that a child's time is essentially divided between two households, the residency of a child of divorced parents will be deemed to be that of the primary custodial parent. *Appeal of Franklin-Boyd*; *Appeal of Williams*, 42 Ed. Dep't Rep. 8 (2002); *Appeal of T.K.*
 - There is no statutory or regulatory requirement that a district transport a student whose parents share joint custody to one parent's home on some days of the week and to the other parent's home on different days of the week. *Appeal of Dickinson*, 39 Ed. Dep't Rep. 41 (1999); *Appeal of VanDerJagt*, 33 Ed. Dep't Rep. 517 (1994).
5. If the parents of a child who attends a nonpublic school live in two different districts and request transportation from both districts for transportation on different days of the week, only one district is obligated to provide transportation since the child can have only one legal residence. *Appeal of Pyskadlo*, 47 Ed. Dep't Rep. 56 (2007).

Summer School

As a general rule, school districts are not obligated to provide transportation to and from any summer school program.

1. No such obligation exists even when a school district of residence agrees to pay for a student's tuition to attend summer school in another district. *Appeal of Stamler*, 38 Ed. Dep't Rep. 292 (1998).
2. Nonetheless, a school district may elect to provide transportation to and from a district-operated summer school program. See, NYS Education Department, Handbook for Summer School Administrators and Principals, last updated June 2009 at: <http://www.emsc.nysed.gov/sss/summerschoolSummerSchoolHandbook2009.pdf>

The general rule does not apply where summer school transportation is required for a student with a disability pursuant to applicable federal and state laws. *Appeal of Stamler*, 38 Ed. Dep't Rep. 292 (1998).

Transportation to and from approved summer school programs operated by a school district is eligible for state aid, subject to a prorated share of a statewide cap of \$5 million. Educ. Law § 3622-a(6).

III. Transportation Distance Mileage Limitations

As set forth in Section I of this course book, a school district's general duty to provide school transportation under Section 3635 of the Education Law does not require that a district provide students with door-to-door transportation.

In addition, a school district does not have to provide transportation to or from a point other than:

- A student's residence,
- A student's child care location if the district provides such transportation, as discussed in Section II of this course book, or
- A pick up point established by school authorities along the route from a student's home to the school the student legally attends. Educ. Law §3635(1)(e); see also *Matter of Wasserman*, 15 Ed. Dep't Rep. 278 (1978).

Nonetheless, a student's eligibility for transportation is determined by the distance between a child's home and the school a child attends, unless otherwise legally authorized as in the case of transportation to and/or from a child care location discussed in Section I of this course book. Educ. Law §3635(1), *Appeal of Boyar*, 21 Ed. Dep't Rep. 286 (1981); *Studley v. Allen*, 24 A.D.2d 678 (3d Dep't 1965); *Appeal of Wenger*, 37 Ed. Dep't Rep. 5 (1997); *Appeal of Neubauer*, 32 Ed. Dep't Rep. 320 (1992). See *Appeal of Berkins*, 39 Ed. Dep't Rep. 620 (2000) regarding determination of eligibility for child care location transportation.

A. Statutory Distance Limitations

A school district's authority to provide school transportation under Education Law §3635 is subject to the following statutory limitations:

Grade Level	Minimum distance must reside from school to receive transportation	Maximum distance for which transportation will be provided
K-8	> 2 miles	15 miles
9-12	> 3 miles	15 miles

A school district may provide transportation for distances outside these statutorily established distance limitations only if the district's voters approve a referendum detailing such change³. *Appeal of Powell*, 46 Ed. Dep't Rep. 565 (2007); *Appeal of Wenger*; *Matter of Zakrzewski*, 22 Ed. Dep't Rep. 381 (1983); *Matter of Silver*, 1 Ed. Dep't Rep. 381 (1959).

³ The cost of transportation to and from the regular school program is an ordinary contingent expense. Therefore, a school district will continue to transport students in accordance with mileage limitations adopted by the voters even when a contingency budget is adopted. Educ. Law §§2023(2), 2503(12), 2601-a(5)(b); see also *Appeal of Wenger*, 37 Ed. Dep't Rep. 5 (1997).

However, districts other than city school districts with more than 125,000 inhabitants (the Big 5) may adopt, without voter approval, child safety zones and provide transportation to students who live from school a lesser distance than the statutory (or other voter approved) minimum, and who must walk along hazardous zones on their way to school. Educ. Law §3635-b; 17 NYCRR §191.1; see also discussion on child safety zones further below in this section of the course book.

B. Transportation Distance Measurements

Distances to determine eligibility for transportation must be measured from home to school by the nearest available (shortest) route from home to school. Educ. Law § 3635(1)(a); *Appeal of Keller*, 47 Ed. Dep't Rep. 114 (2007); *Matter of Kluge*, 31 Ed. Dep't Rep. 107 (1991); *Matter of Now*, 22 Ed. Dep't Rep. 91 (1982).

- School districts are not required to use private roads in measuring the distances between a student's residence and his or her school. See, *Appeal of Roach*, 24 Ed. Dep't Rep. 196 (1984); *Appeal of Clark*, 15 Ed. Dep't Rep. 260 (1976); *Matter of Law*, 12 Ed. Dep't Rep. 224 (1973).
- On the other hand, districts may use a footpath through a publicly owned and maintained park for purposes of determining the shortest distance from a student's home to his or her school. *Arlyn Oaks Civic Ass'n v. Brucia*, 171 Misc. 2d 634 (Sup. Ct. Nassau Co. 1997); *Appeal of Rosen*, 37 Educ. Dep't Rep. 107 (1997); see also *Matter of Haas*, 8 Ed. Dep't Rep. 63 (1968).

Selection of Measuring Points

School districts have broad discretion in selecting the measuring points to be used for making transportation eligibility determinations. *Gundrum v. Ambach*, 55 N.Y.2d 872 (1982), *rev'g* 83 A.D.2d 911 (3rd Dep't 1981); *Merrick UFSD*, 11 Misc.3d 1071(A) (2006) (unpublished); *Appeal of Porzio*, 42 Ed. Dep't Rep. 166 (2002); *Appeal of Mogel*, 41 Ed. Dep't Rep. 127 (2001).

What is required is that districts use the selected measuring points consistently. *Appeal of Welch*, 48 Ed. Dep't Rep. 176 (2008); *Appeal of Fleming*, 43 Ed. Dep't Rep. 391 (2004); *Appeal of Mogel*, 41 Ed. Dep't Rep. 127 (2001); see also *B.D.H. v. Merrick UFSD*, 11 Misc.3d 1071(A) (2006) (unpublished); *Appeal of Porzio*, 42 Ed. Dep't Rep. 166 (2002). The purpose of this requirement is to ensure that all students will be treated fairly and to eliminate the possibility of discrimination or favoritism. *Appeal of Fleming*, 43 Ed. Dep't Rep. 391 (2004); *Appeal of Mogel*.

In addition, there is no requirement that a district make such measurements with the accuracy of a professional survey. *Appeal of Fleming*, 43 Ed. Dep't Rep. 391 (2004); *Appeal of Schlick*, 40 Ed. Dep't Rep. 207 (2000); *Appeal of Stegner*, 35 Ed. Dep't Rep. 502 (1996); *Appeal of Jagoda*, 34 Ed. Dep't Rep. 154 (1994).

According to the commissioner of education, a school district may measure transportation distances from any part of the school including, for example:

- The nearest pedestrian entrance to school property. *Appeal of Welch*, 48 Ed. Dep't Rep. 176 (2008).
- The school's main entrance. *Appeal of Porzio*, 42 Ed. Dep't Rep. 168 (2002).
- The nearest school exit. *Appeal of Mogel*.
- A corner of the school property. *Appeal of Canossa*, 37 Ed. Dep't Rep. 456 (1998).
- The side rather than front entrance of the school. *Appeal of Mermelstein*, 30 Ed. Dep't Rep. 119 (1990).
- The point at which a child first comes in contact with the grounds of the school he or she attends. (*Appeal of Pavony*, 27 Ed. Dep't Rep. 295 (1988).
- A point at the entrance gate to the school grounds. *Appeal of Feldblum*, 4 Ed. Dep't Rep. 165 (1965).
- The mid-point of the school. *Appeal of Silbert*, 1 Ed. Dep't Rep. 283 (1959).

Means Used for Measuring Distances

A school district's measurement of the distance between a student's home and his or her school will be upheld only if the means used to measure that distance was reasonable. *Appeal of Adamitis*, 38 Ed. Dep't Rep. 765 (1999).

School districts, however, are not required to either expend an unreasonable amount of time, effort or money in measuring distances for the purpose of determining a student's eligibility for transportation, nor to make such measurements with the accuracy of a professional survey. *Appeal of Fleming*, 43 Ed. Dep't Rep. 391 (2004); *Appeal of Schlick*, 40 Ed. Dep't Rep. 207 (2000); *Appeal of Stegner*, 35 Ed. Dep't Rep. 502 (1996); *Appeal of Jagoda*, 34 Ed. Dep't Rep. 154 (1994).

Two means for measuring transportation distances that have been upheld by the commissioner of education include the use of:

- An aerial survey. *Appeal of Canossa*, 37 Ed. Dep't Rep. 456 (1998).
- A calibrated automobile odometer *Appeal of Adamitis*; *Appeal of Jagoda*. Proof of calibration is a reasonable response to a bona fide challenge to the accuracy of the odometer as a measuring device (*Appeal of Jagoda*).

C. Child Safety Zones

As set forth above, school district other than the Big 5 can establish child safety zones and transport students who live less than two or three miles (or the voter adopted minimum distance) from school but must walk along hazardous zones. Educ. Law §3635-b; 17 NYCRR §191.1.

Petition Requirement

1. In order for a child safety zone to be established a written petition must be filed with the school district signed by 25 qualified voters or 5% of the number of voters who voted in the previous annual election, whichever is greater.
 - Such a petition must be submitted by the first day of March preceding the school year for which transportation is requested.
 - A parent not residing in the school district March 1st may make such a request within 30 days of establishing residency but no later than July 1 of the school year for which transportation is requested. Educ. Law §3635-b(4).⁴
2. Once a petition is received a board of education may directly investigate or appoint an advisory committee to determine if a hazardous zone exists. Educ. Law §3635-b(5).

Investigation of Hazards Requirement

Applicable regulations identify three safety hazards regarding the highway segments a student would walk on the most direct route to and from school that must be evaluated on a point system:

- Highways without sidewalks or adequate shoulders.
- Highway intersections.
- Highway-railroad grade crossings. 17 NYCRR §191.1; 17 NYCRR §191.4.

Other factors to be evaluated are the traffic volume during a normal school crossing period, posted speed limits, number of lanes of traffic, traffic controls at intersections, and the number of railroad tracks and volume of train traffic at railroad crossings during normal school crossing period. 17 NYCRR §191.4.

Charts detailing the points to be awarded for each individual traffic situation are included in the regulations attached as an Appendix to this course book. Also included in that appendix is a sample analysis sheet for determining a child safety zone that school districts may use in evaluating traffic hazards.

⁴ Samples of a petition for the designation of a child safety zone and application for determining child safety zone are included in the regulations attached hereto in the Appendix.

The investigation also must include an examination of whether other less costly reasonable alternatives to the creation of a child safety zone exist. For example, a student may be able to walk a different route that avoids the alleged hazards found on the most direct walking route. Educ. Law §3635-b(5); 17 NYCRR §191.4.

Investigation of Highways without Sidewalks or Adequate Shoulders

When evaluating a subdivision or neighborhood, the district may use the closest residence to the school for which all students in the neighborhood must pass as the point to begin calculations. If that residence qualifies, all other residences in the neighborhood will qualify.

To determine the point value for this hazard the following information must be known:

- Facility on which the student walks.⁵
- 15 minute volume count on the affected roadway during the normal period when students walk to and from school.
- Speed limit on the affected roadway 17 NYCRR §191.4(a)

Investigation of Highway Intersections

Crossing roadways will not be considered a hazard, if any of the following are present:

- All way stop signs.
- An adult crossing guard.
- A pedestrian bridge or underpass within 500 feet of the crossing that be used instead of crossing the road.

To evaluate an intersection the following must be known:

- Type of traffic control, if any.
- Number of lanes of traffic on the roadway being crossed.
- Volume of traffic.
- Speed limit on the roadway. 17 NYCRR §191.4(b)

If a student must cross multiple intersections the intersection with the highest point value should be used to determine if a hazardous zone exists. If a combination of hazards is to be examined, then the two intersections with the highest point values should be used.

Investigation of Highway-railroad Grade Crossings

The following information must be known to evaluate this hazard:

- Number of tracks in use

⁵ There are four different facilities upon which students walk: (1) sidewalks or a shoulder greater than or equal to five feet wide; (2) shoulders less than five feet wide; (3) roadways with no shoulder; and (4) roadways with a narrow bridge or overpass. 17 NYCRR §191.4.

- Number of trains using the tracks during the morning and afternoon crossing periods 17
NYCRR §191.4(c).

Determining the Existence of a Hazardous Zone

The determination as to whether a school route constitutes a hazardous zone for students to walk to and from school will be based the number of points resulting from the district's hazards investigation. The investigation must produce at least the points indicated in the chart below.

Grade Level	K-8	9-12
1 Hazard	12 Points	15 Points
2 Greatest Hazards	21 Points	27 Points

IV. Bus Routes and Pick-up Points

Under the Education Law, boards of education have broad discretion to determine how they will transport students to and from school. Their districts have an obligation to provide transportation in a reasonable and economical manner. *Appeal of Roach*, 24 Ed. Dep't Rep. 196 (1984).

This discretion and obligation extends to determinations regarding the establishment of bus routes and pick-up points. *Appeal of Reich*, 38 Ed. Dep't Rep. 565 (1999); *Appeal of McBennett*, 17 Ed. Dep't Rep. 404 (1978).

In making those determinations, a board may balance considerations of safety, convenience, efficiency and cost. *Appeal of Reich*; *Appeal of Byrne*, 34 Ed. Dep't Rep. 389 (1995); *Appeal of Eats*, 29 Ed. Dep't Rep. 481 (1990). Furthermore, a board has "both the responsibility and the authority to decide difficult questions involved in balancing the overall efficiency and economy of a transportation system against the convenience of individual pupils." *Appeal of Reich*; *Appeal of McBennett*.

Determinations regarding the establishment of bus routes and pick-up points will be upheld unless they are arbitrary, capricious, or without a rational basis. *Appeal of Reich*; *Appeal of DeVore*, 36 Ed. Dep't Rep. 326 (1997); *Appeal of Byrne*; *Appeal of Polifka*, 31 Ed. Dep't Rep. 61 (1991).

A. Bus Routes

A bus route consists of "a highway or highways over and upon which a school bus regularly travels in accordance with a schedule maintained for the transportation of pupils from their homes to school." Educ. Law §3621(3).

Route Selection

The selection of particular bus routes can affect the efficiency of a school district's delivery of transportation services. Therefore, school districts are charged with planning their bus routes in order to "promote maximum efficiency in the operation of a school bus on such routes". Educ. Law §3622.

Furthermore, whenever practicable, routes should be planned to operate within the boundaries of the school district unless the pupils being transported receive instruction within the boundaries of the school district. *Id.*

When establishing their bus routes, school districts are not required to transport students over privately maintained roads. *Appeal of Roach*, 24 Ed. Dep't Rep. 196 (1984); *Appeal of Cohen*, 21 Ed. Dep't Rep. 280 (1981).

- The reason for this is that such roads are not publicly maintained and may not be safe for use by school vehicles, especially during the winter and spring months. (*Appeal of Clark*, 15 Ed. Dep't Rep. 260 (1976).
- However, school districts may use private roads to transport students if they have the landowner's consent. *Appeal of Taylor*, 26 Ed. Dep't Rep. 255 (1986).
- The decision to use privately maintained roads should take into account the condition and upkeep of the road with regard to the safety of all children riding on a bus using such road. *Id.*

In addition, school districts may refuse to use public roads that present an "unreasonably hazardous condition". *Matter of Clark; Appeal of Gibbons*, 14 Ed. Dep't Rep. 271 (1975).

- That would be the case, for example, where a road is so narrow that a school bus and another vehicle cannot pass each other, does not have safe shoulders, or includes steep grades that are difficult for school buses to negotiate without skidding. *Appeal of Gibbons*. See also, *Appeal of Warner*, 37 Ed. Dep't Rep. 469 (1998).
- School districts may bring in consultants to advise them on whether a particular roadway is safe for use on a bus route. *Appeal of Warner*; see also, *Appeal of Gulla*, 39 Ed. Dep't Rep. 716 (2000).

Railroad Crossings

When establishing bus routes, school districts need to be mindful of the Education Law's restrictions on the crossing of unguarded railroad tracks. Educ. Law §3636.

School buses may not cross unguarded railroad crossings⁶ unless the board of education adopts a resolution, after a public hearing, that the use of a route which would avoid an unguarded railroad crossing by the school buses would be impractical. Educ. Law §3636(1).

- A copy of such resolution must be filed with the New York State Department of Education and Department of Transportation. *Id.*
- The school district must prepare and maintain a map indicating the intersection with any unguarded railroad crossings of each route used by a school bus transporting students to or from school either within or outside the district. Educ. Law §3636(3).

The map must be made available for inspection by any district resident at a place designated by the board of education. *Id.*

⁶ Guarded railroad crossing includes those (1) having automatic electrically operated gates that meet Department of Transportation specifications; (2) where approaching train crew members disembark before the crossing to halt traffic while the train passes in accordance with Department of Transportation procedures; (3) protected by an automatic warning signal in accordance with Department of Transportation specifications; (4) protected by one or more persons serving as a railroad crossing guard. Educ. Law §3636(2).

Travel Time

There are no statutory or regulatory provisions that specify a maximum length of time a student may be required to spend riding on a school bus. *Appeal of McCarthy and Bacher*, 42 Ed. Dep't Rep. 329 (2003); *Appeal of Reich*; *Appeal of DeVore*.

Nonetheless, the time spent "en route" to and from school must be reasonable. According to the New York State Education Department, such reasonableness will depend on factors such as:

- A student's age.
- The distance between a student's home and school.
- Safety.
- Efficiency.
- Cost.
- Availability of buses.
- School opening and closing times.
- The number of schools covered on a particular trip. NYS Education Department, "Maximum Time That a Pupil May Spend on a Bus", updated September 8, 2009 at: <http://www.nysed.gov/schoolbus/Parents/htm/MaximumTimeThataPupilMaySpendonaBus.htm>

Past commissioner of education decisions have upheld school transportation routes that have required students to commute to and from school up to one-and-one-half (1.5) hours, one way. *Appeal of McCarthy and Bacher*; *Appeal of Devore*; *Appeal of Lavin*, 32 Ed. Dep't Rep. 249 (1992); *Appeal of Polifka*; *Matter of Capozza*, 25 Ed. Dep't Rep. 15 (1985).

Similarly, based on considerations of cost, inconvenience, and other factors, the commissioner has declined to issue orders that would require a school district to shorten the time students spend on a school bus by:

- Reversing bus runs on either the morning or afternoon trip. *Appeal of Reich*.
- Adopting a "first on/first off" system that would prevent students who are pick up early in the morning from being the last to be dropped off in the afternoon. *Appeal of Byrne*.

B. Pick-up Points

As set forth in Section I of this course book, school districts are not required to provide students transportation directly to and from their homes. Educ. Law §3635(1)(d); *Ossant v. Millard*, 72 Misc.2d 384 (1972).

Instead, they may designate and require that students walk to and from pick-up and drop-off points and provide transportation to them to and from those points. *Ossant v. Millard*; *Appeal of Petrella*, 48 Ed. Dep't Rep. 45 (2008); *Appeal of Morgan*, 46 Ed. Dep't Rep. 474 (2007); *Appeal of Cowley*, 44 Ed. Dep't Rep. 125 (2004); *Appeal of Raymond*, 39 Ed. Dep't Rep. 774 (2000).

- A board of education must use reasonable care in exercising this authority.
- It must balance considerations of pupil safety and convenience, routing efficiency and costs. *Id.*

Consideration should be given to the distance buses must travel between stops, with the primary concern being the safety of students, as frequent stops can affect the efficiency of the bus route. In addition to lengthening the time of the route, frequent stops can create more traffic hazards, and result in a greater potential for bus fatalities. NYS Department of Education, "Pupil Transportation Economical and Efficient Practices" available online at: <http://www.emsc.nysed.gov/schoolbus/TransDirector/htm/economicalpractices.htm>

Travel To and From Pick-up Points

It is the responsibility of parents, not the school district, to assist their children and see that they travel safely to and from the pick-up point. *Pratt v. Robinson*, 39 N.Y.2d 554 (1976); *Appeal of Petrella*; *Appeal of Morgan*; *Appeal of Cowley*; *Appeal of Raymond*.

- However, districts cannot require that students travel to and from their designated pick-up point a distance greater than the maximum distance set by district policy for students to walk to a pick-up point. *Appeal of Zwickel*, 42 Ed. Dep't Rep. 346 (2003).

Thus, an elementary grade student may not be required to travel 4/10th of a mile to a pick up point when his or her school district has a policy that states students in grades 1-6 will not be required to walk distances in excess of .25 mile to the district designated pick-up point. *Id.*

- Similarly, districts cannot require that students who live on a side road travel to a pick-up point on the main road a distance greater than the maximum set by district policy for such students to walk to a main road pick-up point.

Thus, if a district policy states that the district will pick up at the main road students who live less than .6 miles from it, the district would have to pick up students who live in excess of that mileage limitation at a safe point on the side street that is .6 miles or less

from the student's home. *Appeal of Krauciunas*, 35 Ed. Dep't Rep. 107 (1995). See also, *Appeal of Marsh*, 36 Ed. Dep't Rep. 134 (1996).

Safety Considerations

1. *Hazardous Conditions* – As a general rule, school bus stops should not be located near known hazards.
 - There is no legal definition of what constitutes a hazard. It is up to a school district to identify hazards in accordance with their community standards.
 - Obvious hazards that should be avoided when designating pick-up points include, for example, cliffs, bodies of water, railroad tracks, intersections, drug houses, and high speed highways.
 - There must be adequate visibility as both directions in order for a school bus to correctly execute a bus stop and for traffic to respond appropriately.
 - Other factors such as speed, steep incline, or frequent slippery road conditions should be considered, as well, when planning bus stops. See, "School Bus Stops" excerpt from the report entitled "Safe Routes-Safe Stops"⁷, NYS Governor's Traffic Safety Commission at: http://www.emsc.nysed.gov/schoolbus/Parents/htm/school_bus_stops.htm

Nonetheless, the fact that a pick-up point is located on a heavily traveled road or may require students to wait or travel on unlit narrow roadways with no sidewalks or walkways does not, in and of itself, establish a basis for deeming a pick-up point unsafe. The reason is that those are also characteristics of many rural and suburban areas. *Appeal of DiNapoli*, 38 Ed. Dep't Rep. 269 (1998); *Appeal of Behan*, 34 Ed. Dep't Rep. 368 (1995); *Appeal of Krauciunas*, 35 Ed. Dep't Rep. 107 (1995); *Appeal of Jett*, 33 Ed. Dep't Rep. 446 (1994).

2. *Adequate Space* – New York's Vehicle and Traffic Law §1174 requires that students disembarking a school bus have sufficient room for them to move 15 feet away from the bus and off the road or onto a sidewalk before the bus driver turns off the signal lights and continues on the route.

Since drop off points are also pick-up points, there should be adequate space at a pick-up point for students to wait for the school bus at least 15 feet away from where the bus will stop for the students to board.

3. *Highway Drive-off Places* – To afford the greatest possible protection, school districts may designate drive-off places on public highways where buses can drive off a highway to pick up or drop off students.

⁷ "School Bus Stops" originally appeared as a chapter in the "Safe Routes-Safe Stops" report published by the NYS Governor's Traffic Safety Commissioner in June 1992. The State Education Department advises that the report be viewed as a reference document only because it does not reflect changes to law and regulations adopted since its publication.

The state or local municipality having jurisdiction over the highway is authorized to provide for the construction and maintenance of drive-off places. Educ. Law §3635(5).

4. *Shelters at Pick-up Points* – A school district may establish and maintain shelters for students who take school buses at various points along its bus routes.

It may be ordered to provide additional transportation for children who live off a main route where it is unwilling to provide such children suitable shelter to wait for the bus and provides transportation to all other children at a point near their homes. *Matter of Spicer*, 73 St. Dep't Rep. 167 (1952).

V. Transportation Contracts

School districts may enter into agreements with outside transportation companies to provide student transportation and maintenance, upon obtaining authorization from the district's voters to do so. Educ. Law §§1709(27), 2021(19), 305(14)(a).

A. Some General Rules

1. Contracts for the transportation of students must be approved by district voters. The length of each such contract may not exceed five years. Educ. Law §§305(14)(a); 1604(23); 1709(27).
 - They must be in writing, and approved by the school superintendent.
 - They also must be signed by both the superintendent and the president of the board of education. Educ. Law §3625(1), (2).
2. Transportation contracts also must be approved by the commissioner of education.

Until approval is obtained, the contract is not valid or binding on either the school district or carrier that will be providing the transportation, and no aid will be provided to the district for the contract. Educ. Law §§3625(1), (2), (4); 305(14)(a),(e); 8 NYCRR §156.12(d).
3. Transportation contracts must state that all vehicles operated by the contractor will come to a full stop before crossing the track or tracks of any railroad, and before crossing any state highway. Educ. Law §3625(1).

B. Procedures for Awarding a Transportation Contract

As a general rule, contracts for the transportation of students are awarded using the competitive bidding process.

- Nonetheless, through June 30, 2012, school districts have the option of securing a transportation contract using the request for proposal (RFP) process.
- Different rules can apply depending on the particular process used. Educ. Law §305(14)(a), (e); 8 NYCRR §156.12.

School districts may solicit bids in alternative categories, such as soliciting bids for contracts for individual bus routes, and alternative bids for contracts for all of the school bus routes in the aggregate. Educ. Law §305(14). In such an instance a district may select:

- The lowest responsible bidder in either category. Educ. Law §305(14)(c), or

- The lowest aggregate bidder over all categories. See, *Appeal of Birnie Bus Service, Inc.*, 39 Ed. Dep't Rep. 48 (1999).

Any individual(s) employed by a successful bidder to operate a school bus must pass the criminal history and driver licensing tests required by the New York State Education Law and Vehicle and Traffic Law Articles 19 and 19-a, discussed in more detail in Section VII of this coursework.

Competitive Bidding Process

The competitive bidding process applies to transportation contracts that exceed \$10,000 annually. Educ. Law §305(14)(a). This includes partial-year contracts that separately will cost less than \$10,000 but together exceed that amount. General Municipal Law §103(1); Opn. St. Comp. 91-64. See also, NYS Education Department, "Transportation Contracts: Preparation and Filing" at: <http://stateaid.nysed.gov/trans/contract.htm>, last accessed December 31, 2009/

That process, which is discussed in more detail in Section VII of this course book, requires that a school district solicit bids, and award such a contract to the lowest responsible bidder. Educ. Law §305(14)(a).

- Bid specifications may not include "special requirements relating to buses, drivers, maintenance and service facilities, the exclusive use of buses, or any other matter which tends to restrict competitive bidding." 8 NYCRR §156.1(d).

The rationale for this requirement is that such restrictive language may reduce the number of contractors who submit bids for the district's business, thus resulting in less competition and higher prices for services. SED recommends that the district's attorney review all bid specifications to ensure such language is not contained therein. NYS Department of Education "Pupil Transportation Economical and Efficient Practices" at: http://www.emsc.nysed.gov/schoolbus/TransDirector/htm/economical_practices.htm, last accessed December 21, 2009.

- A board of education determines the lowest responsible bidder.
- However, the commissioner of education has the authority to reject all bids if he or she determines it to be in the best interests of the district.

In such an instance, the commissioner would order the board of education to solicit new bids and begin the process again. Educ. Law §305(14)(a).

The advertisement for bids for contracts for anticipated transportation needs for the following school year must be published not later than June 1. However, the advertisement of bids for contracts for transportation of children with disabilities must be published no later than July 1.

Request for Proposal (RFP) Process

Through June 30, 2012, a school district may choose to use the RFP process instead of competitive bidding to secure transportation contracts, even when such a contract will annually exceed \$10,000. Educ. Law §305(14(a),(e); 8 NYCRR §156.12.

Similar to the advertisement of bids for contracts secured through the competitive bidding process,

- A district using the RFP process must request proposals for contracts for the following school year by June 1.
- Proposals for contracts involving the transportation of students with disabilities must be advertised by July 1.

However, proposals for contracts that could not be anticipated because of an emergency or other unforeseen occurrence or condition affecting transportation services must be requested at least 30 days prior to the proposed beginning date when the transportation service will begin. 8 NYCRR §156.12(e), (g).

In addition, when a school district uses the RFP process it also must specify in its advertisement for proposals all the criteria it will use to evaluate the proposals, and the weighting assigned to each criterion. No single criterion can account for more than 50% of the total weight of all criteria. 8 NYCRR §156.12(c). See also, NYS Education Department “Transportation Contracts Awarded Through An RFP” at: <http://www.emsc.nysed.gov/schoolbus>, last accessed December 21, 2009.

At a minimum that criteria must include:

- The previous experience of the contractor in transporting students.
- The name of each transportation company of which the contractor has been an owner or manager and previous experience.
- A description of any safety programs implemented by the contractor.
- A record of accidents in motor vehicles under the control of the contractor.
- The driving history of the contractors’ employees.
- The inspection records and model year of each of the motor vehicles under the control of the contractor.
- The maintenance schedules of the motor vehicles under the control of the contractor.
- A financial analysis of the contractor.

- Documentation of compliance with motor vehicle insurance requirements.
- The total cost of the proposal. Educ. Law §305(14)(f); 8 NYCRR §156.12(b).

As discussed above, the commissioner of education may reject competitive bids based on the best interests of a school district. Similarly, the commissioner can reject the award of a transportation contract secured through the RFP process, upon a finding that either:

- The contractor is not the most responsive to the request for proposals, or
- It is in the best interests of the district to do so. Educ. Law §305(14)(e).

The SED's Pupil Transportation Services office offers a number of cost-saving tips and strategies for school districts when seeking bids and proposals for transportation services. For example, the Department encourages school districts to cooperate with other school districts when bidding transportation services, as such cooperative bidding can result in cost savings. In addition, multiple year contracts for cooperative transportation services can be considered, as this strategy may encourage competition and result in lower bid prices. Another strategy to reduce costs of transportation includes asking what other districts are paying for transportation – this can help the district know when it is paying too much for contracted transportation services. The Department recommends that districts should foster competition among transportation providers during the RFP process (when competitive bidding is not required) by obtaining a number of different price quotations. Schools can also consider cooperating with neighboring districts in maintaining and repairing school buses, as this option may result in greater cost savings for all involved districts than reconstructing or repairing an existing maintenance facility, especially for smaller school districts. (For additional suggestions visit SED's website and review the article, "Pupil Transportation Services: Economical and Efficient Practices" available on line at: http://www.emsc.nysed.gov/schoolbus/TransDirector/htm/economical_practices.htm).

C. "Exceptions" to the Competitive Bidding and RFP Process

1. An interim contract not to exceed one month can be awarded while the competitive bidding or RFP process is pending when an emergency or other unforeseen occurrence or condition requires immediate action that cannot await responses to a request for proposal. Educ. Law §305(14)(b); 8 NYCRR §§ 156.6; 156.12(f).
2. School districts may extend an existing transportation contract without undergoing either the competitive bidding or RFP process, if the contract extension period will be for five years or less. Educ. Law §305(14)(a).

D. Commissioner's Approval

Transportation contracts must be filed with the State Education Department for approval by the commissioner of education, within 120 days of the commencement of service under such contract.

1. Prior to any such filing, the superintendent of schools must review the contract "with particular reference to the:

- Type of conveyance,
- Type and ability of the driver,
- Routes over which the conveyances shall travel,
- Time schedule, and
- Such other matters

as in the judgment of the superintendent are necessary for the comfort and protection of the children while being transported to and from school." Educ. Law §3525(1).

2. The application for approval must be accompanied by the actual contract. In addition, if the district used the competitive bidding process, the application also must include:

- The instructions provided to the bidders.
- The bid forms and specifications upon which the contract was based.
- A summary of the bids submitted.
- A statement of the actions taken by the district to solicit bids, including copies of the advertisements.

The superintendent must submit, as well, any other information requested by the commissioner. 8 NYCRR §156.1(a)

The State Education Department has a checklist of questions school districts may wish to review prior to filing a transportation contract, in order to minimize the possibility of having the contract rejected by the commissioner. See, NYS Education Department "Contract Checklist" at: <http://www.emsc.nysed.gov/schoolbus>, last accessed January 12, 2010.

E. Contract Modifications

Through January 1, 2011, a board of education and a contractor providing transportation services can amend an approved transportation contract only if the amendment is necessary to:

- Comply with any federal, state or local law, rule or regulation imposed after the execution of the contract, or
- Enhance pupil safety and/or increase savings consistent with maintaining pupil safety, subject to approval by the commissioner of education upon a showing of demonstrable enhancements in pupil safety and/or increased savings consistent with maintaining pupil safety.

Such enhancements may include, for example, the installation of stop arms, two-way radios or other communication devices, video cameras, and perimeter motion detector system.

Any such amendments are subject to approval by the commissioner of education, who may refuse to grant such approval upon a finding that the amendments either:

- Circumvent the competitive bidding requirements,
- Otherwise violates provisions of law, or
- Fail to increase or maintain the safety of pupil transportation. Educ. Law §305(14)(d); 8 NYCRR §156.1(f).

In addition, amendments to an approved transportation contract may not result in additional cost to the state, locality or school district.

F. Contract Extensions

1. A board of education may extend a transportation contract for a period not to exceed five years, subject to rules and regulations prescribed by the commissioner of education. Educ. Law §305(14)(a). The contract being extended has to have been secured either through competitive bidding or the request for proposal (RFP) process.

School districts extending a transportation contract initially awarded through the competitive bidding process instead of through the request for proposal process discussed above, the extension must be done annually on forms prepared by the commissioner of education. 8 NYCRR §§ 156.5(a), (b). For further information on extending contracts, transportation personnel should review the regulations of the commissioner at 8 NYCRR § 156.5(c).

2. School districts do not have to accept offers from current contractors to “extend” a contract at a price lower than the bids the district has received pursuant to competitive bidding. Such an extension would be invalid under the Education Law as it would:

- Destroy the very purpose of competitive bidding and give existing contractors a virtual monopoly on future business.
 - Permit previous contractors to assess competitor's bids and compel contract renewal by submitting a lower price. *Appeal of National School Bus Service*, 31 Ed. Dep't Rep. 416 (1992).
3. As a general rule, any increases to the amount paid the contractor in each year of the extension may not exceed the regional consumer price index (CPI) increase for the N.Y., N.Y.-Northeastern N.J. area, based upon the index for all urban consumers (CIP-U), during the preceding 12 months.
- The contractor must satisfactorily establish there has been at least an equivalent increase in the amount of his or her cost of operation, during the period of the contract. *Id.*
 - Any increase that exceeds the maximum increase allowed by use of the CPI must be less than the sum of certain costs specified by statute, and must be approved by the commissioner of education upon documentation provided by the school district and contractor, as required by the commissioner. Educ. Law §305(14)(c).
 - A school district may withhold payment on a transportation contract to recoup prior payment of a cost increase if a contractor fails to make a satisfactory showing of an equivalent increase in the cost of its operation.

The commissioner of education upheld a school district's undertaking of such action in a case where a transportation contract with a 6.9% increase was assigned to another contractor that failed to respond to the district's request for information supporting the increase. When the district did not receive the requested information, it made deductions from its contract payments to recoup the 6.9% cost increase. According to the commissioner, the district's actions were neither arbitrary nor capricious because the contractor had a legal obligation to provide information justifying the increase and it did not. *Appeal of Pupil Transportation Systems*, 25 Ed. Dep't Rep. 291 (1986).

4. The same as with an initial contract, the commissioner can reject any extension of a transportation contract:
- Upon a finding that the amount to be paid by the district to the contractor in any year of the extension fails to reflect any decrease in the regional CPI based upon the CPI-U index during the preceding 12 month period.
 - After ten years from the date when transportation service commenced if, in his or her opinion, doing so would promote the best interests of the district. *Id.*

G. Transportation Contracts with Other School Districts

As mentioned earlier in this course book, school districts may contract with another district, a county, municipality or the state division for youth to provide transportation for children, as long as the contract is “appropriate”. Educ. Law §§1709(25)(h); 1804(1); 1903(1); 1950(4)(q); 2503(12); 3625.

They may also participate in regional transportation services with other school districts and boards of cooperative educational services. Educ. Law 1709(25)(g).

Any contract entered into pursuant to such authority is subject to the “appropriate cost” test established in regulations of the commissioner of education. 8 NYCRR §156.11.

- The transportation service provider must show that the contract reflects the true costs that a prudent person would incur in a competitive transportation business by calculating the contract cost based on the appropriate unit cost in accordance with the formula established in the regulations. 8 NYCRR §156.11(a).
- Pursuant to that formula, an appropriate unit cost is determined by dividing the grand total of transportation expenditure for the preceding school year of all regular transportation services provided to students of the district by the service provider school district by the number of vehicles, passengers, miles traveled or other appropriate transportation service units represented by all such transportation services.
- The proposed contract cost will be deemed appropriate if they are equal to the product of such resulting, appropriate unit cost and the number of comparable service units to be provided under the contract. 8 NYCRR §156.11(b).

Additional requirements regarding the calculation and retention of supporting documentation of appropriate costs is detailed within the regulation.

H. Regional Transportation Services

As also mentioned earlier in this course book, school districts may choose to participate in regional transportation services jointly with other school districts or boards of cooperative educational services (BOCES) to transport students to and from school. Educ. Law §§1709(25)(g); 1950(4)(q); 3621(8), (9).

- Expenses incurred in the provision of regional transportation services are to be prorated according to the provisions of a transportation contract between the school districts and BOCES that participate in such regional or joint transportation. 8 NYCRR §156.8(a).
- For purposes of state aid, the approval expenditures of a district that provides such services to one or more additional districts may not exceed gross expenditures less all

sums received from such other district(s) for the provision of such services. 8 NYCRR §156.8(c).

School districts may enter into similar arrangements for the maintenance of school buses. 8 NYCRR §156.8 (b),(c).

I. Helpful Recommendation

School districts and boards of cooperative educational services (BOCES) that contract for transportation services may consider including in such contract specific safety requirements for the contractor including, but not limited to:

- Mandatory safety meetings with school district personnel.
- Additional driver training for the contractor's drivers.

They also may wish to consider assigning school personnel to monitor the contractor and ensure compliance with these safety requirements. NYS Education Department, "2006 Pupil Transportation Safety Guidance Manual" available at:

http://www.ptsi.org/downloads/2006_NYSED_DSR_final.pdf

VI. School Buses – In General

A. Applicable Laws

The purchase, lease, maintenance and operation of school buses used to transport students to and from the school they legally attend are subject to a myriad of both federal and state laws and regulations including:

- The regulations of the Federal Motor Vehicle Safety Commission.
- The New York Vehicle and Traffic Law.
- The New York Transportation Law.
- The New York Education Law.
- Regulations develop by the respective commissioners of the state departments of motor vehicles, transportation and education.

The Education Law specifically directs that the commissioner of transportation work with the commissioner of education to “adopt, promulgate and enforce rules, standards and specifications regulating and controlling the efficiency and equipment of school buses used to transport pupils, with particular regard to the safety and convenience of such pupils and the suitability and adaptability of such school buses to the requirements of the school district.” Educ. Law §3623(1)(a).

B. Some Basic Rules

1. No school bus manufactured or assembled on or before April 1, 1977 may be used to transport students and/or school personnel. Transportation Law §140(5).
2. No school district may purchase or use a bus for the transportation of students unless it has been approved by the commissioner of transportation as complying with the “rules, standards and specifications” relating to school bus safety and operation. Educ. Law §3623(1)(a).
3. All school buses used to transport student, whether owned, leased or contracted for, must be approved and inspected by the State Department of Transportation. 17 NYCRR §721.0.
4. New vans, whether sold or leased to a school district with a seating capacity of 10 or more that will be used to transport students, must meet all federal and state safety regulations that apply to school buses.

5. All school buses with a seating capacity of more than seven passengers must be painted “national school bus chrome” regardless of who owns the bus. Vehicle and Traffic Law §375(21).
6. All school buses purchased, leased or acquired by a school district on or after September 1, 1997 must have the district’s telephone number, including area code, printed in 3 inch bold type on the rear of the bus. Vehicle and Traffic Law §1223-a.

Buses used to transport students that are not owned or leased by a school district must show the telephone number and area codes of the owner/operator. 17 NYCRR §720.3(a)(2).

C. Definition of School Bus

The term “school bus” is defined separately in New York’s Vehicle and Traffic Law, and the regulations of both the Department of Transportation and the Commissioner of Education.

Vehicle and Traffic Law

A school bus is “any motor vehicle

- owned by a public or governmental agency or private school and operated for the transportation of pupils, children of pupils, teachers, and other persons acting in a supervisory capacity, to or from school or school activities,
- or privately owned and operated for compensation for the transportation of pupils, children of pupils, teachers, and other persons acting in a supervisory capacity to or from school or school activities.” Vehicle and Traffic Law §142.

Department of Transportation Regulations

A vehicle is a school bus if it is “a bus...used to transport children to or from school or school activities.” 17 NYCRR §720.1(k).

Commissioner of Education Regulations

A school bus is “every vehicle owned, leased or contracted for by a public school, board of cooperative educational services or a nonpublic school and operated for the transportation of pupils, children of pupils, teachers and other persons acting in a supervisory capacity to or from school or school activities.” 8 NYCRR §156.3(2).

D. Authorized Uses of School Buses

The primary use of school buses is to transport students to and from school, as well as extracurricular activities, sporting events, field trips, and other school-sponsored activities.

The law limits the uses of school buses for purposes other than transporting students to the following specific situations.:

1. Transportation for students and teachers to school-related events such as field trips and athletic events. *Cook v. Griffin*, 47 A.D.2d 23 (4th Dep't 1975); *Matter of O'Donnell*, 18 Educ. Dep't Rep. 259 (1978); Educ. Law §2023(1).
2. Lease to another school district or Native American tribe for certain recreation projects or youth service projects. Educ. Law §1709(25)(c).
3. Lease to another school district, to a BOCES, to a county vocational education and extension board or to a Native American tribe for educational purposes. Educ. Law §1709(25)(b).
4. Rent or lease to any senior citizens' center that is recognized and funded by the office for the aging. Educ. Law §1501-b(1)(a).
5. Rent or lease to any nonprofit incorporated organization serving senior citizens. Educ. Law §1501-b(1)(b).
6. Rent or lease to any nonprofit incorporated organization serving the physically or mentally disabled. Educ. Law §1501-b(1)(c).
7. Rent or lease to any nonprofit organization that provides recreation youth services or runs neighborhood playgrounds or recreation centers. Educ. Law §§1501-b(1)(d), 1604(21).
8. Rent or lease to any municipal corporation as defined in the General Construction Law. Educ. Law §1501-b(1)(e).
9. Rent or lease to any nonprofit organization providing transportation in rural counties for children participating in the agricultural child care program authorized by the agriculture and markets law. Educ. Law §1501-b(1)(f); Transportation Law §73-c.
10. Rent or lease to an operator of a coordinated public transportation service as defined in Transportation Law § 73-c for the purposes authorized by Transportation Law article 2-F. Educ. Law §1501-b(1)(g).
11. Rent or lease to a nonprofit, community organization or educational or employment and training agency that provides education or employment training for youths and adults in a rural county, as defined by Transportation Law § 73-c. Educ. Law §1501-b(1)(h).
12. Rent or lease to a fire company as defined in the Volunteer Firefighters' Benefit Law, or an ambulance company as defined in the Volunteer Ambulance Workers' Benefit Law. Educ. Law §1501-b(1)(i).

13. Transportation of certain infants or toddlers of students enrolled in the school district or BOCES. This transportation would be eligible for state aid. Educ. Law §3635(1)(f).
14. For districts located wholly or partially in rural areas, transportation to district residents enrolled in education, job-training or other programs; children under age five traveling between home and day-care or pre-school programs; and employees of school districts or other educational institutions. Educ. Law §1502(1).

School buses cannot be loaned or leased to another person or organization except as specifically authorized by law, even when they are not in use for school-related purposes.

- Unauthorized school bus uses can result in a violation of not only the Education Law, but also the State Constitution's prohibition against gifts or loans of public money in aid of private individuals or businesses. N.Y. Const. Art. VIII §1.
- When in doubt, consult with the district's attorney before agreeing to loan a school bus or vehicle to any person or organization, even if they appear to fall within the authorized situations set forth above.

VII. Purchase and Lease of School Buses

As discussed in Section V of this course book, school districts may enter into transportation contracts for the transportation of students to and from school. However, school districts may choose to maintain their own fleet of school buses.

In deciding whether to contract for transportation services or maintain its own fleet of buses, districts should take into account any studies conducted on their behalf comparing the cost-efficiency and effectiveness of both options and any advantages of one over the other. NYS Education Department, "Pupil Transportation Economical and Efficient Practices" available at: http://www.emsc.nysed.gov/schoolbus/TransDirector/htm/economical_practices.htm, accessed last on December 21, 2009.

Those that elect to maintain their own fleet may purchase their buses on their own, or by participating in cooperative purchasing agreements or entering into installment purchase contracts. Or, they may lease buses.

Except as otherwise provided by law, both the purchase and lease of school buses that exceeds \$10,000 is subject to competitive bidding. General Municipal Law §103(1); Educ. Law §1725.

A. Purchase of School Buses

1. The purchase and maintenance of school buses must be authorized by a vote of the district's qualified voters. Educ. Law §1709(25).
2. Such purchase also must be approved by the commissioner of education.
 - The commissioner's approval is necessary for a school district to obtain transportation aid for the purchase of school buses. Without such approval, a district will not receive transportation aid for the school bus purchase.
 - Districts must file the necessary forms to obtain the commissioner's approval no later than one year from the date of purchase. Educ. Law §3623(1)(a); 8 NYCRR §156.4.

The approval application forms are available at: http://stateaid.nyse.gov/trans/sa16_fi.pdf.

3. In comparison, a school district may replace a district owned school bus because of damage to or the loss of such vehicle without voter approval. In addition to any available insurance proceeds, a district may, for this purpose:
 - Use unencumbered funds in the general fund for this purpose, or
 - Issue budget notes in accordance with section 29.00 of the Local Finance Law. *Id.*

This authority does not allow a school district to replace a school bus simply because the bus fails to meet inspection requirements. See, NYS Education Department “Chapter 818 - Purchase of Replacement Bus Due to Loss” at: http://www.emsc.nysed.gov/schoolbus/TransDirector/htm/chapter_818.htm, last accessed December 31, 2009.

In addition, school districts purchasing replacement buses must submit to the State Education Department an “SA-16 School Bus Purchase Form” along with a copy of the board of education’s resolution authorizing the purchase, the reason for the purchase, the method of financing, and the bus number of the bus being replaced. *Id.*

4. When purchasing school buses, school districts may opt to “standardize” their fleet through the purchase of certain makes, types or brands of buses for reasons of efficiency or economy such as making it easier to interchange parts. See, General Municipal Law §103(5). See also NYS Education Department “Purchasing Handbook, Chapter IV” at: <http://www.emsc.nysed.gov/mgtserv/purchasing/handbook3.html>, last accessed January 19, 2010.
 - Such action requires the adoption of a board of education resolution by at least three-fifths vote.
 - The resolution must state that there is a need for standardization for reasons of efficiency and economy.
 - The resolution also must contain a full explanation of the reasons for its adoption. General Municipal Law §103(5).
 - Competitive bidding is required if the purchase or contract price exceeds \$10,000. *Id.*
5. School bus purchases in excess of \$10,000 are subject to competitive bidding, including the purchase of standardized equipment. General Municipal Law §103(1),(5). See also “Competitive Budding under General Municipal Law Section 103”, *Opn. St. Comp.*, 1982, Research Paper, pp. 3017, 3034.
6. Every school bus purchase agreement must include a clause stating “specifications subject to approval of the Education Department”. 8 NYCRR §156.4.
7. The cost purchasing school buses may be included in the school budget presented to district voters for their approval. 8 NYCRR §170.8(d). Or it may be financed through the use of a bond or note with voter approval. Local Finance Law §10.00. See also, *Appeal of Hubbard*, 45 Ed. Dep’t Rep. ___ Dec. No. 15,392 (2006)

B. Purchase of School Buses Through State Contracts

One way school districts maintaining their own fleet of school buses can obtain considerable savings is to purchase their school buses and other related items through state contracts. General Municipal Law §109-a. See also, General Municipal Law §103(6).

At a minimum, state contracts would allow school districts to cut the costs associated with developing competitive bidding specifications, advertising for bids, and ensuring quality control, which are borne instead by the State. See, NYS Education Department, "Purchasing Handbook, Chapter V" at: <http://www.emsc.nysed.gov/mgtserv/purchasing/handbook3.htm>, last accessed January 19, 2010.

In addition to school bus vehicles, school districts can purchase through state contracts other related items such as tires, spark plugs, gasoline, and motor oil. Additional information can be obtained from the Procurement Services Group at the NYS Office of General Services at: <http://www.ogs.state.ny.us/BU/PC/PSG.asp> or mail Office of General Services, Procurement Services Group, Room 3711, Corning Tower Building, Empire State Plaza, Albany, New York 12242.

C. Purchase of School Buses Through Installment Purchase Agreements

School districts may enter into installment purchase contracts for the purchase of school buses. General Municipal Law §109-b. Such contracts enable districts to finance their purchase of school buses through periodic payments over the life of the agreement. General Municipal Law §109-b(1)(b).

The use of installment purchase contracts, however, is subject to certain specified restrictions. For example:

1. School districts may not enter into installment purchase contracts except as authorized by Section 109-b of the General Municipal Law or the Education Law. General Municipal Law §109-b(7).
2. The board of education must adopt a resolution authorizing the installment purchase contract. General Municipal Law §109-b(2)(b).
3. The term of the contract may not exceed the period of probable usefulness prescribed by Section 11.00 of the Local Finance Law, which in the case of a school bus is five years. General Municipal Law §109-b(2)(c); Local Finance Law §11.00(29).
4. The contract must state separately the principal and interests component of the periodic payments to be made under the contract, and the total of all periodic payments must be substantially level or falling. General Municipal Law §109-b(2)(e).

In addition, the contract must contain certain language expressly set forth in statute, which indicates, for example, that an installment purchase contract does not constitute a general obligation and that neither the school district's full faith and credit nor its taxing power is pledged to the payment of the contract. See, General Municipal Law §109-b(2)(f).

5. Installment purchase contracts may not be financed by the issuance of bonds or notes. General Municipal Law §109-b(2)(g).
6. Installment purchase contracts are subject to the competitive bidding process, discussed further below in this section of the course book, if the cost of the school buses, exclusive of the cost of financing, exceeds \$10,000. General Municipal Law §109-b(3)(a).

D. Leasing of School Buses

School districts may lease school buses for the transportation of students to and from school rather than purchasing them outright.

Districts may lease a school bus from a board of cooperative educational services (BOCES), county vocational education and extension board, or others subject to certain specified legal requirements. For example:

1. As a general rule, such leases may not extend beyond a period of one school year. However, with voter approval they may extend up to a maximum of five years. Educ. Law §§1604(21-a); 1709(25)(i); 2503(12-a).

No voter approval is required in the Big Five school districts (New York City, Buffalo, Rochester, Syracuse and Yonkers). Educ. Law §2554(19-a).

2. School districts may not renew a lease of one year or less for the same or an equivalent replacement vehicle without voter approval. *Id.*
3. A school may lease a school bus for up to 90 days under emergency conditions including:
 - Strikes.
 - A delay in the delivery of purchased vehicles.
 - Theft.
 - Vandalism.
 - Fire.
 - Accident. Educ. Law §1709(25)(e); 8 NYCRR §156.6

Emergency leases are not subject to competitive bidding requirements. See, General Municipal Law §103(4).

However, a school district must file with the commissioner of education for approval a statement explaining the emergency and its estimated duration. The statement must be filed within 10 days of the date when the emergency occurs. If the emergency continues, the commissioner may extend the prior approval. 8 NYCRR §156.6

E. School Bus Maintenance Requirements

School districts are responsible for ensuring that all district owned or leased school bus vehicles meet necessary inspections and safety specifications, and for maintaining such vehicles in lawful working order.

1. To discharge this responsibility districts may:

- Hire in-house personnel to perform this function, or
- Contract with private vendors for maintenance services and the garaging of school buses that are district owned, subject to the same process and requirements applicable to contracts for the transportation of students discussed in Section V of this course book. Educ. Law §§305(14)(a); 1709(27).

2. Pursuant to regulations of the Department of Transportation, school districts that own or lease school buses must:

- Have in place an effective preventative maintenance program in place.
- Examine and service their buses at regular intervals as established by the board of education. 17 NYCRR §721.1(A).

3. Vehicle examinations must include, but are not limited to checking:

- The break system.
- The steering mechanism.
- The tires.
- The lights.
- All emergency exits.

Such examinations must be consistent with the type of vehicle in operation.

4. Defects discovered during inspections must be recorded on a maintenance form, and repaired before the vehicle is returned to service. 17 NYCRR §721.1(B).
5. All repairs must be made in accordance with the manufacturer's recommended procedures or industry-accepted techniques. 17 NYCRR §721.1(C).
6. School districts must certify in writing to the Department of Transportation, the time or mileage intervals when examinations and preventative maintenance will be performed.

The interval between examinations must be based on sound preventative maintenance principles that consider:

- Current operating conditions.
- Previous experience.
- Final vehicle manufacturer's recommendations. 17 NYCRR §721.2(A).

F. Leasing of Transportation Facilities

School districts with insufficient space to maintain their school buses may lease such space, subject to the provisions of Section 403-b of the Education Law, which governs the ability of school districts to enter into leases for needed space.

Subject to those provisions, the lease may not include an option to purchase the leased property. Educ. Law §403-b(1)(f). In addition:

- The duration of the lease may not exceed five years, unless otherwise approved by district voters prior to execution of the lease. Educ. Law §403-b(1)(a). It also may not exceed the period of probable usefulness of the facility under the Local Finance Law. Educ. Law §403-b(1)(a). See also, Local Finance Law §11.00.
- Voter approval is also required for any renewal of the initial lease. Educ. Law §403-b(1)(d).
- Capital projects on the leased facility require prior approval from both district voters and the commissioner of education. Educ. Law §403-b(1)(b).
- A lease will not become effective until the commissioner approves the same. Educ. Law §403-b(1)(c).

G. Competitive Bidding

When school districts are planning to purchase or lease school buses, a primary consideration will be whether such purchase or lease will be subject to competitive bidding in accordance with the requirements of both the New York State Education Law and General Municipal Law.

General Rule

School bus purchase or lease expenditures in excess of \$10,000 require the use of competitive bidding to secure any such contract. General Municipal Law §103(1); Educ. Law §1725.

- If competitive bidding is required, school districts must advertise for sealed bids, and award the contract to the lowest responsible bidder.
- If competitive bidding is not required, school districts are still obligated to ensure that public moneys are used in a “prudent and economical way.” General Municipal Law §104-b(1).

Using smaller multiple contracts for the same or similar items, as a way to avoid competitive bidding requirements, is not permitted when it is expected that the aggregate amount of the contracts will exceed \$10,000 in that fiscal year. Opn. St. Comp. 91-64 (1964).

In addition, although school districts and boards of cooperative educational services (BOCES) can make cooperative purchases of transportation equipment or services to secure the best possible price, competitive bidding must still be used when the total price of the purchases will exceed \$10,000. General Municipal Law §119-o(1).

Requests for Proposals

Boards of education are required to adopt policies and procedures that provide for the use of alternative proposals or quotations secured by written requests for proposals (RFPs), written or verbal quotations, or other appropriate methods of procurement to ensure the best use of public money in instances where the law does not require that formal competitive bidding be used. General Municipal Law §104-b(1),(2).

These policies and procedures provide guidelines that help school officials to, for example, determine if competitive bidding is required, and if not, how to document the basis for that determination. They also include dollar limits for securing verbal versus written quotations.

Basics of the Competitive Bidding Process

Following is a summary of the basic requirements of the competitive bidding summary. For additional information see NYS Education Department, “Purchasing Handbook, Chapter

IV”, at: <http://www.emsc.nysed.gov/mgtserv/purchasing/handbook3.html>, last accessed January 15, 2010.

1. School districts must advertise for bids in the district’s official newspaper(s), or in a newspaper designed for that purpose.
 - The advertisement must state when and where all bids received by the district will be publicly opened and read. General Municipal Law §103(2). If no one from the public is present when the bids are opened and read, the State Education Department recommends that another person from the district’s administrative or business office(s) be present to witness the process. NYS Education Department, “Purchasing Handbook, Chapter IV”, at: <http://www.emsc.nysed.gov/mgtserv/purchasing/handbook3.html>, last accessed January 15, 2010.
 - At least five days must elapse between the first publication of the advertisement and the date selected for the opening and reading of bids. General Municipal Law §103(2); Educ. Law §305(14)(a).
2. Any officer or employee of the school district may open and read the bids, provided this person has been designated by the board of education for that purpose.
 - Unless the bids are opened during a board meeting, this individual will present to the board a record of the bids at the board’s next regular or special meeting. General Municipal Law §103(2).
 - All bids that do not substantially conform to the advertised bid specifications must be rejected. However, bids with minor deviations that do not afford the bidder an unfair advantage over others may be accepted. See, *Appeal of Eastman Kodak Co.*, 32 Ed. Dep’t Rep. 575 (1993).
3. If the bids are opened during a school board meeting, the lowest responsible bidder may be awarded the contract on the spot. However, boards of education usually take a reasonable amount of time to examine the bids in detail before making an award. See, NYS Education Department, “Purchasing Handbook, Chapter V” available online at: <http://www.emsc.nysed.gov/mgtserv/purchasing/handbook3.html>.
4. Bidders may withdraw a bid that has been submitted when there was a mistake in the bid and the mistake was made prior to the award of the contract or within three days of the bid opening, whichever is shorter.

Bidders may withdraw a bid, as well, when:

- The price was based on an error of such magnitude that enforcement of the bid would be unconscionable.

- The bid was submitted in good faith and the bidder submits evidence the mistake was a clerical error.
- The error in the bid, substantiated by original work papers, documents or materials used in preparing the bid, evidences an unintentional substantial math error and/or omission of a substantial quality of work, material or service.
- The school district is no better or worse off than it was prior to the bid. General Municipal Law §103(11).

Exceptions to Competitive Bidding Relevant to School Transportation

Both the Education Law and the General Municipal permit a school district or BOCES to bypass the competitive bidding process under three circumstances. These include when:

1. There is a public emergency requiring immediate action that cannot await competitive bidding. Educ. Law §305(14)(b).
2. The purchase is for surplus or secondhand supplies, material or equipment from the federal or state government and others specified in the General Municipal Law. General Municipal Law §103(6).
3. The contract involves the extension for periods of up to five years of prior contracts for student transportation and school bus maintenance. This exception to competitive bidding is still subject to certain limitations on annual cost increases and the approval of the commissioner of education discussed in other sections of this course book. Educ. Law §305(14)(a).

VIII. School Buses – Safety Equipment

The regulations of the Federal Motor Vehicle Safety Administration, the New York State Vehicle and Traffic Law, Transportation Law, and Education Law and their implementing regulations contain numerous specifications regarding the type of equipment that must be present on any school bus.

School buses must have in good working order normal equipment such as adequate breaks and steering mechanisms in good working order, a suitable and adequate horn or other device to serve as a danger warning, suitable wipers, flashing signal lamps, well-positioned rear view mirrors, stop arms, and the like. 49 CFR Part 571; Vehicle and Traffic Law §375(1),(2),(20),(21),(21-c).

However, school buses also may be required to have certain special safety equipment.

Following is a sampling of those special equipment requirements.

A. Seat Belts and Car Seats

Applicability of Seat Belt Requirement

1. School buses must have passenger seat belts installed in them if they:
 - Were manufactured after July 1, 1987. Such buses also must include increased seat padding on the passenger seats.
 - Weigh 10,000 pounds or less and are used to transport students, regardless of the date of first use. 49 CFR § 571.213; Vehicle and Traffic Law §383(5)(a); 15 NYCRR §49.6.
2. In addition, driver seat belts are required on all school bus vehicles owned or leased by a school district. Vehicle and Traffic Law §383(4-a).
3. School buses scheduled for retrofitting also must include seat belts and meet particular specifications for padding on all passenger seats. Vehicle and Traffic Law §383(5)(b).

Mandated Use of Seat Belts

Although school buses that meet the above conditions must be equipped with seat belts, the circumstances in which students must wear those seat belts are limited.

1. New York's Vehicle and Traffic Law, in compliance with federal regulations requires the use of seat belts on school buses that are exempt from applicable federal school bus safety standards.

School buses exempt from applicable federal school bus safety standards include vehicles with a seating capacity of less than 10 occupants that are not required to have, for example, high backed padded seats, compartmentalized passenger areas, and higher structural standards for crash worthiness. Vehicle and Traffic Law §1229-c(13). See also 49 CFR §571.213.

2. A board of education may require the use of seat belts on all school buses pursuant to a resolution adopted following a public hearing. Educ. Law §3635-a

In such an instance, however, a school district may become subject to liability that, as discussed below, would not be possible otherwise.

Training on the Use of Seat Belts

School districts must ensure that students transported to and from school on buses equipped with seat belts receive instruction on the use of seat belts at least three times per year. 8 NYCRR § 156.3(g).

This rule applies to both public and nonpublic school students riding on buses equipped with seat belts, whether the bus is owned, leased, or contracted for by the district or board of cooperative educational services (BOCES). *Id.*

The instruction on the use of seat belts must include, but not be limited to:

- Proper fastening and release of seat belts.
- Acceptable placement of seat belts on students.
- Times when seat belts should be fastened and released.
- Acceptable placement of seat belts when not in use. *Id.*

Car Seat Requirement

All children under the age of four who are passengers on a school bus must be restrained in a federally-approved child restraint system that is appropriate for their height and weight and approved by the commissioner of motor vehicles. Vehicle and Traffic Law §1229-c(11).

Similarly, students age four to seven who are transported in a vehicle that is exempt from applicable federal school bus safety standards, discussed above, must be restrained in an appropriate car seat or passenger seat. Vehicle and Traffic Law §1229-c(13).

Liability for Non-use of Seatbelts and Car Seats

Under the Vehicle and Traffic Law, violations of provisions mandating the use of seat belts or car seats discussed above are punishable by a civil fine of up to \$100. Vehicle and Traffic Law §1229-c(13). See also, Vehicle and Traffic Law §1229-c(5).

However, under the Education Law, no liability may be imposed upon a school district or an operator of a school bus (including a driver, matron, or teacher serving as a chaperone) solely because the injured party was not wearing a seat belt. Educ. Law §3813(4); *O'Connor v. Mahopac CSD*, 259 A.D.2d 530 (2nd Dep't 1999).

B. Emergency Exits

In general, school buses must meet the applicable emergency exit requirements of the Federal Department of Transportation that were in effect at the time they were manufactured. 17 NYCRR §720.5(b)(1)(i). See also, 49 CFR §571.217.

School districts also need to be mindful of applicable provisions contained in the regulations of the New York State Department of Transportation. Those provisions:

1. Include a chart that lists the number of exits a vehicle must have.

Vehicles carrying 10-22 passengers, for example, must have one each rear emergency door, left side emergency door and rear emergency window exits. 17 NYCRR §720.5(b)(1)(iii).

2. Require that emergency doors and windows meet certain specifications including, for instance, that emergency doors must:
 - Be at least 45 inches vertical and at least 24 inches horizontal.
 - Have a two inch ruby or red light mounted on the inside of the bus, above the door and connected to a headlight or marker light circuit. 17 NYCRR §720.5(2)(i),(ii).
 - Open outward at least 90 degrees. 17 NYCRR §720.5(2)(vi).
3. Require that school buses be equipped with audible warning devices that alert the driver if an emergency exit is locked, and that function while the engine is running or the ignition is in the "on" position. 17 NYCRR §720.5(b)(1)(ii).

C. "School Bus" Signs

School Bus Designation Sign

Pursuant to regulations from both the New York State Department of Transportation, and Department of Motor Vehicles, all school buses having a capacity of eight or more passengers must display a sign on the exterior front and back sides of the bus a sign bearing the inscription "SCHOOL BUS". 17 NYCRR §720.3(B)(1); 15 NYCRR §46.1.

The regulations of the Department of Transportation offer an exemption from this general rule for school buses that do not discharge passengers along a public highway, upon submission to that department of a written certification to that effect. 17 NYCRR §720.3(C). Before seeking such an exemption, school districts should weigh the loss of flexibility that would result and affect their ability to reassign such buses to routes that would discharge students on a public highway.

The signs must meet the specifications set out in the applicable regulations. Pursuant to those specifications, the signs must be, for example:

- Printed with uniform capital block letters that are black, not less than eight inches high and at least once inch wide.
- Visible and readable from a distance of at least 200 feet.
- Mounted securely in a manner that does not obstruct the bus driver's view. The bottom of the front sign must be no lower than the top of the windshield. The bottom of the rear sign may not obstruct any rear window.
- Illuminated and be visible from at least 500 feet away when the vehicle is used between one-half hour after sunset and one-half hour before sunrise.

Signs made of reflective material may not be used to satisfy the sign illumination requirement.

For vehicles with a seating capacity of 15 passengers or less, the "SCHOOL BUS" signs may consist of one two-faced sign, facing both front and rear, mounted on the top of the vehicle, in approximately the center of the vehicle's roof.

In addition, the required "SCHOOL BUS" signs may be painted on the vehicle, provided they comply with all the lettering requirements, and are not wider than 60 inches. 17 NYCRR §720.3(B)(1)(a)-(n); 15 NYCRR §46.1.

D. Fire Suppression Systems

All school buses must have at least one all-purpose fire extinguisher mounted in the driver's compartment. 17 NYCRR §720.7(B)(a).

In addition, school buses used to transport students who use wheel chairs or other assistive mobility devices must be equipped with an engine fire suppression system that conforms to standards established by the commissioner of transportation, if they were manufactured for use in New York State:

- After January 1, 1990 and are fueled with a substance other than diesel fuel.
- On or after September 1, 2007 and are fueled with diesel fuel. Educ. Law §3621(15); Vehicle and Traffic Law §375(21-i).

State aid is available for the purchase of such a system. Educ. Law §3623-a(1)(c).

E. Other Safety Equipment

First Aid Kit

All school buses must be equipped with a first aid kit constructed of durable material.

The bus operator, including a school district, may determine the appropriate contents for the first aid kit depending on the particular needs of the students riding on the bus, and supply the kit appropriately. 17 NYCRR §720.7(B)(b).

Convex Mirror

School buses with a seating capacity greater than 12 and the engine located ahead of the driver must be equipped with a convex mirror at least eight inches in diameter mounted on the front of the bus at hood, windshield or fender-top height, on either the left or right side of the bus.

The mirror helps seated bus drivers observe the road directly in front of the bus and thus serves to protect students passing in front of the bus after they leave the bus. Vehicle and Traffic Law §375(20-e).

Handicapped Symbol

Every school bus equipped with a wheelchair lift that transports children with disabilities must conspicuously display on its exterior the universal handicapped symbol, blue against a white background illustrating a person seated on a wheelchair. The sign must meet size and other specifications set out in law and regulation. Vehicle and Traffic Law §375; 17 NYCRR §§720.3(a)(7); 720.8(b)(6).

Two-Way Radios

Although not a required safety equipment, two-way radios may be installed and used on school buses only if the school district or contractor operating the buses has applied for and received a license from the Federal Communications Commission. 15 NYCRR §46.6.

IX. School Buses – Rules of the Road

A. Speed Limits

Maximum Travel Speeds

Although the Vehicle and Traffic Law specifies a maximum speed limit of 55 miles per hour, and 65 miles per hour on certain stretches of specified state highways located in rural areas, the Education Law and regulations of the commissioner of education specify that the maximum speed at which school vehicles engaged in the transportation of students may travel is 55 miles per hour. Educ. Law §3624; 8 NYCRR §156.3(e)(6). See, Vehicle and Traffic Law §1180(b).

- School buses must travel at lesser speeds in areas with speed limits less than 55 miles per hour.
- Bus drivers may not drive “at a greater speed than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing.” Vehicle and Traffic Law §1180(a).

Speed Reduction

To ensure that the bus will be able to stop within the distance of clear vision abruptly and safely if necessary, school bus drivers should reduce their speed:

- At curves.
- At blind crossings.
- At the crest of hills.
- In fog.
- When approaching and passing an emergency situation involving an authorized emergency vehicle.
- Wherever a driver’s view is curtailed. Vehicle and Traffic Law §1180(e).

Road Restrictions

Regardless of speed limitations, no school bus may be driven on state roadways identified as a “parkway”. 17 NYCRR §182.31(h).

B. Passing a Stopped School Bus

Loading and unloading students on a bus route can be dangerous due to oncoming vehicles and vehicles traveling behind a school bus. Between 2002 and 2004, 69 students were killed by motorists who disobeyed the law. Operation Safe Stop Report available at: <http://www.safeny.com/opsafstp.htm>, and last accessed December 23, 2009.

Due to these dangers, motorists on public highways and roads and private roads are required to stop when a school bus is flashing its red lights and the stop arm is extended. Notably, motorists must stop when a school bus is loading or unloading passengers even when the bus is on a divided highway. Vehicle and Traffic Law §1174(a).

Nonetheless, as recently as October of 2009, in Bayport, New York, an 18 year old female was stopped and arrested by a school resource officer after she passed a school bus flashing its red lights. She was also driving under the influence of alcohol and registered a .11 blood alcohol content percentage. See, "Passing Stopped School Bus Leads to DWI Charges for 18 Year Old" at: <http://www.madisoncountycourier.com/morrisville-new-york-news/passing-stopped-school-bus-leads-to-dwi-charges-for-18-year-od-6255/>, last accessed December 23, 2009.

Still, individuals who violate the laws regarding passing stopped school buses are subject to an escalating scale of penalties that range from fines, to fines plus jail time and revocation of one's driver's license. Vehicle and Traffic Law §1174(c).

Penalties for Passing a Stopped School Bus:⁸

By Conviction	Minimum Fine	Maximum Fine	Possible Imprisonment
First Conviction	\$250.00	\$400.00	Up to 30 days
Second Conviction (within 3 years)	\$600.00	\$750.00	Up to 180 days
Third or Subsequent Convictions (within 3 years)	\$750.00	\$1,000.00	Up to 180 days

⁸ Operation Safe Stop, <http://www.safeny.com/opsafstp.htm>, last accessed 12/31/09.

C. Receiving and Discharging Passengers

In General

When a school bus will be stopping to receive or discharge passengers, amber colored “pre-warning” flashers must be used to warn motorists that the bus will soon be stopping. Vehicle and Traffic Law §375.20(a).

- The NYS Education Department suggests using these lights approximately 300 feet before the bus actually stops in residential areas, or sooner as conditions warrant. NYS Education Department, “District Safety Review-Pupil Transportation”, July 2006.
- When a school bus stops, be it on school grounds or on private or public roads, the “stop arm” must be employed together with red signal lights to warn motorists that passengers will be boarding or exiting the bus. 17 NYCRR §721.4.

Passenger Discharge

1. The New York State Education Department suggests that buses stop to discharge passengers 18 inches from the side of the road while remaining in the driver’s lane. NYS Education Department, “District Safety Review-Pupil Transportation”, July 2006.
2. When passengers disembarking a school bus must cross a public highway, street or private road, bus drivers must instruct them to cross the highway at a distance of 10 feet in front of the bus so as to be in the vision of the driver. 8 NYCRR §156.3(d)(4). See also, Vehicle and Traffic Law §1174(b).
 - The passengers should make eye contact with the driver before crossing the road.
 - They should wait for the driver to indicate that it is clear for them to cross.
 - Students should be taught the “safe cross signal” and know to wait for the signal to be given by the driver before attempting to cross. NYS Education Department, “District Safety Review-Pupil Transportation”, July 2006.

The bus driver also must keep the bus stopped with red signal lights flashing until the passengers are at least 15 feet from the bus and either off the highway, street or private road, or on a sidewalk. 8 NYCRR §156.3(d)(4). See also, Vehicle and Traffic Law §1174(b).

Liability for Non-compliance with Discharging Rules

Regarding the requirements applicable to when passengers disembarking a school bus must cross a highway, the Court of Appeals, the state’s highest level appeals court, has noted, “[t]he explicit purpose of [these safety provisions] was to see to it that children would cross the highway under the careful supervision of the driver who would not only watch them cross the

street in front of him but would flash his red lights to warn oncoming traffic to stop.” *Van Gaasbeck v. Webatuck Cent. Sch. Dist. No. 1*, 21 N.Y.2d 239 (1967).

1. In the *Van Gaasbeck* case, a 14 year old student was killed by an oncoming motorist after disembarking from his school bus, walking alongside the highway, and attempting to cross the highway after the bus had departed. His school bus driver admitted that she failed to instruct him to cross the highway in front of the school bus even though she knew the student’s home was across the highway. She also failed to display her red signal lights. The court held that both the school district and the driver could be held liable under the Vehicle and Traffic Law for failure to comply with that law’s requirements. According to the court, the student’s misjudgment in whether the road was safe for him to cross could not be cited as a contributing factor in the accident to relieve the district and the driver of guilt.
2. A similar situation occurred in *Chainani v. Board of Educ. Of City of New York*, 201 A.D.2d 693 (2nd Dep’t 1994) where a middle level state appellate court ruled that a contractor bus company could be liable for injuries sustained by a student who crossed the street without instruction from the bus driver or the use of signal lights. The contractor bus driver had failed to inform himself as to which students had to cross the street, and as a result hit a student as she attempted to cross.

D. Standees

General Rule

The general rule is that standing passengers are not permitted on a school bus owned or contracted to a school district while it is used exclusively to transport students under the age of 21, and teachers and other persons acting in a supervisory capacity to and from school or school activities. Educ. Law §3635-c.

Exceptions to the General Rule

Notwithstanding the general rule, standing passengers are permitted on a school bus under certain specified circumstances:

1. The number of standees does not exceed the limit established for applicable time periods in a schedule set forth in statute. Educ. Law §3635-c(1).
2. Without limitation to the number of standees:
 - During the first 10 days of session in each school year, and
 - In the event a bus breaks down, has an accident or there is another unforeseen occurrence that necessitates the transportation of standing passengers. Educ. Law §3635-c(2).

Standee Sign Requirement

In accordance with regulations of the New York State Department of Transportation, vehicles where passengers may stand must have a conspicuous sign displayed on their interior that clearly states passengers are not permitted to stand forward of that marking while the vehicle is moving. 17 NYCRR §721.4(b)(2).

E. Railroad Crossings

Stop Before Crossing Requirement

The New York State Vehicle and Traffic Law requires that publicly and privately owned school buses must stop at all railroad crossings. This is true regardless of whether students are in the vehicle.

- The bus may proceed only when the driver can do so safely.
- While the bus is crossing the railroad tracks, the driver may not shift gears. Vehicle and Traffic Law §1171(a).

Regulations of the commissioner of education permit a school bus to cross railroad tracks without making a full stop where a police officer or a traffic control signal or sign directs traffic to proceed. 8 NYCRR §156.3(e)(2).

The NYS Education Department suggests that drivers should open the passenger door of the bus to check for trains before crossing the tracks, and silence all noise-producing equipment. NYS Education Department “District Safety Review – Pupil Transportation”, July 2006.

Restrictions on Crossing Unguarded Railroad Crossings

As discussed in another section of this course book, the Education Law prohibits the use of an unguarded railroad crossing when transporting students to and from school or other places, unless a public hearing has been held and the board of education has adopted a resolution indicating that the use of another route would be impractical. Educ. Law § 3636(2)(a)-(d).

Applicability of Rules to Transportation Service Contractors

As also previously discussed, the Education Law further requires that student transportation contracts include a provision stating that all vehicles operated by the contractor will come to a full stop before crossing the track(s) of any railroad, and before crossing any state highway. Educ. Law §3625(1).

F. Idling

Prohibition against Idling

Through June 30, 2013, every school district must ensure that each bus driver of a school bus or other vehicle owned, leased or contracted for by the district turns off the engine while:

- Waiting for passengers to load or off load on school grounds.
- Parked or standing on school grounds.
- In front of or adjacent to any school. Educ. Law §3637(1); 8 NYCRR §156.3(h)(1)(i).

School districts may adopt policies that provide for the prompt loading and unloading of individual school buses, rather than waiting for all buses to arrive before loading or unloading. 8 NYCRR §156.3(h)(1)(ii).

Exceptions to Prohibition

Unless required otherwise by State or local law, the only exceptions to this rule apply when idling is necessary:

- To maintain an appropriate temperature for passenger comfort.
- For mechanical work.
- In emergency situations. Educ. Law §3637(2); 8 NYCRR §156.3(h)(1)(ii).

Notice to Staff Requirement

School districts must provide school personnel notice of the requirements for minimizing bus idling annually, no later than five days after the start of school. Educ. Law §3637(3); 8 NYCRR §156.3(h)(4).

Instead of providing a copy of those requirements, school districts may inform their staff that the materials have been posted on all employee bulletin boards and the district's website. NYS Education Department Memorandum from Marion Edick, State Director of Pupil Transportation Services, dated August 2008, available at: [http://www.emsc.nysed.gov/schoolbus/anti-idling/htm/letter to school districts.htm](http://www.emsc.nysed.gov/schoolbus/anti-idling/htm/letter%20to%20school%20districts.htm) and last accessed November 4, 2009.

Bus Driver Responsibilities

1. School bus drivers must instruct students on the necessity of boarding the bus promptly to reduce loading time.

2. They also must park the buses diagonally in loading areas to minimize the amount of exhaust from adjacent buses that may enter the school bus and buildings.
3. Drivers transporting students and staff to school events or athletic contests must turn off the bus or vehicle while waiting for the event to be completed. 8 NYCRR §156.3(h)(3).

Monitoring and Reporting Requirement

1. At least semi-annually, school districts must monitor school bus driver compliance with the bus idling requirements, including drivers of vehicles owned, leased or contracted for by the district.
 - Districts must prepare a written report of this review, including actions taken to ensure compliance and the “degree of adherence found”.
 - Copies of the report must be retained for six years, and made available upon request.
2. The commissioner of education may require additional information. 8 NYCRR §156.3(h)(5)

Applicability of Idling Rules to Transportation Service Contractors

All contracts for student transportation services entered into on or after August 21, 2008 must include a provision requiring the vendor to comply with these requirements. 8 NYCRR §156.3(h)(6).

Additional Information Sources

To assist school districts in ensuring compliance with these requirements, the NYS Education Department has created numerous materials, including a Power Point presentation available for use by districts at: <http://www.emsc.nysed.gov/schoolbus/anti-idling/home.html>.

For information regarding the effects of idling on individuals’ health and the environment, see NYS Education Department Memorandum from Marion Edick, State Director of Pupil Transportation Services, dated August 2008, referenced above.

As a point of interest, the NYS Energy Research and Development Agency (NYSERDA) offers grants to school districts to assist them with retrofitting school buses with emission-reducing technology. For further information on this topic, contact NYSERDA at 1-866-NYSERDA, or send an e-mail to info@nyserda.org.

G. Accidents

Unfortunately, school buses may be involved in an accident. How to report such accident, and to whom such report must be made is governed by law and regulation, as well as internal school district policy and procedure.

Department of Transportation Requirements

Regulations of the New York State Department of Transportation require that any motor vehicle, including a school bus that is involved in an accident must immediately report such accident to that Department by “telephone or telegraph”. 17 NYCRR §722.1(a).

1. More specifically those regulations require that:

“(a) Any accident in any way involving a motor vehicle subject to department inspection, which results in the loss of life or injury of any passenger, employee or other person, or which was caused by mechanical failure (regardless of whether or not injuries were incurred), shall be immediately reported to the department by telephone or telegraph.

(b) In addition to an incident commonly known as an accident, the following are reportable accidents within the purview of this Part:

(1) Any mechanical failure;

(2) Evidence of intrusion into the body of the vehicle of carbon monoxide, exhaust fumes emitted from such vehicle or other noxious gasses or smoke;

(3) Smoke (other than normal exhaust) emanating from the engine or any other part of the vehicle, whether internal or external; and

(4) Presence of or emission, whether internal or external, of sparks, flame or fire.” 17 NYCRR §§722.1(a),(b).

2. A written report of an accident must be submitted to the Department of Transportation within 48 hours of the accident if the accident:

➤ Results in loss of life or serious injury, or an injury requiring first aid or hospitalization at the time of the accident.

➤ Was due to mechanical failure, whether or not personal injury occurred. 17 NYCRR §722.2(a).

3. When an accident occurs in New York State while the school bus (whether owned or contracted for by a district) is transporting one or more students, children of students, teachers or supervisory personnel to or from school or a school activity and death, personal injury or damage over \$1,000 to the property of any one person occurs, the accident must be reported on Form MV-104F entitled “Accident Report for School Vehicle Transporting Pupils/Teachers/Supervisors”.

4. Written accident reports must be submitted to the following address:

Department of Transportation
Carrier Inspection Section
State Campus
1220 Washington Avenue
Albany, New York 12232

Department of Motor Vehicles Requirements

Similarly, the New York State Vehicle and Traffic Law sets out its own requirements regarding the exchange of information when accidents occur. Those requirements vary depending on whether the accident involves injury to a person, or damage to personal property or real property. Vehicle and Traffic Law §600(1),(2).

- Failure to comply with those reporting requirements constitutes a crime.
- Penalties range in severity from a class A misdemeanor to a class E felony.

In addition, the Vehicle and Traffic Law imposes reporting requirements that apply if a school bus strikes and injures a horse, dog, cat or animal classified as cattle. Vehicle and Traffic Law §601.

NYS Education Department Procedures

In addition, the NYS Education Department has established protocols for its own response to accidents that involve the death of a child or other person riding on a school bus. NYS Education Department “Office for Educational Management Services, New York State Education Department: Policy for NYSED’s Response to a Pupil Transportation Fatality” available at: http://www.emsc.nysed.gov/schoolbus/TransDirector/htm/Pupil_Fatality.htm, last accessed December 18, 2009.

1. In such an event, the Department’s State Director of Pupil Transportation Services and a consultant “will seek assistance and coordination from the public school district...to collect and obtain information about the accident.
2. Thereafter, the Department’s Accident Investigation sub-committee will review the gathered information and make recommendations to the Department for enhancement of its School Bus Driver Safety Training Program.
3. The Department, however, will not issue opinions in any report as to the cause of the accident. *Id.*

When collecting information about a fatal school bus accident, the State Education Department may ask a school district to provide data regarding the following:

- Basic facts about the accident, including its location.
- Vehicle action before and after the accident and possible contributing factors.
- Vehicle damage and other physical damage.
- Environmental factors at the time of the accident.
- Significant physical evidence at the scene of the accident.
- Form MV-104, police reports and news reports.
- Meetings with witnesses, including the driver and district or contractor staff, as applicable.
- The driver's licensure, hiring, training, testing and medical records.
- Information about passengers on the vehicle.
- School vehicle or private carrier information, as applicable.
- Route information.
- Emergency response protocols and procedures.
- Investigators' opinions as to event probability.
- Recommendations for future training.

Local Board of Education Policy

A school district's board of education policies may impose requirements similar and/or additional to those described above regarding how accidents should be handled and reporting, who notifies parents if students are involved, and the like. School staff should be familiar with those procedures to protect the safety of the passengers, the driver and monitors/attendants involved.

1. The district's transportation supervisor should be immediately notified when even the smallest accidents happen.
2. The district's insurance company also needs to be notified as soon as possible following an accident.

Districts and boards of cooperative educational services (BOCES) that contract for student transportation should have in place a reporting and communication system for accidents involving students and/or staff.

X. School Buses – Other Safety Precautions

A. School Bus Drills For Students

Basic Requirement

School districts must conduct drills on school bus safety at least three times each school year. Educ. Law §3623(1)(c),(2); 8 NYCRR §156.3(f).

- No drills may be conducted while buses are en route. 8 NYCRR §156.3(f)(3).
- School district authorities must certify on the annual report to the NYS Education Department that their district has complied with the school bus drill requirements. 8 NYCRR §156.3(f)(4).
- Drills must be conducted by a member(s) of the teaching or pupil transportation staff. 8 NYCRR §156.3(f)(1).
- Students attending both public and nonpublic schools who do not participate in the drills must be provided drills or, as an alternative, classroom instruction covering the content of the drills. Educ. Law §3623(2); 8 NYCRR §156.3(f)(1).

Drill Schedule

Pursuant to the Education Law and regulations of the commissioner of education, school districts must conduct the required school bus drills at least three times each school year, in accordance with the following schedule:

- The first drill must occur during the first seven days of school.
- The second must take place between November 1 and December 31.
- The third one must occur between March 1 and April 30. Educ. Law §3623(1)(c); 8 NYCRR §156.3(f)(2).

Drill Content

1. The drills on school buses must include practice and instruction in the location, use and operation of the emergency door, fire extinguisher, first-aid equipment and windows as a means of case of fire or accident. 8 NYCRR §156.3(f)(1).
2. In addition, drills must include instruction for students in how to safely board and exit a school bus, with specific emphasis on when and how to approach, board, disembark, and move away from the bus after disembarking. Educ. Law §3623(1)(c); 8 NYCRR §156.3(f)(1).

In this context, students must be instructed, as well, that they must advance at least 10 feet in front of the bus before crossing the highway after disembarking. 8 NYCRR §156.3(f)(1). See also, Vehicle and Traffic Law §1174(b).

3. Other topics that must be covered in school bus drills include:

- Specific hazards encountered by children during snow, ice, rain and other inclement weather, including but not necessarily limited to poor driver visibility, reduced vehicular control and reduced hearing.
- The importance of orderly conduct by all school bus passengers with specific emphasis given to the district's student discipline rules and regulations. Educ. Law §3623(1)(c); 8 NYCRR §1565.3(f)(1).

B. Bus Driver Pre-Service and In-Service Precautions

Regulations of the New York State Department of Transportation set out certain safety precautions that school bus drivers must follow to ensure the safety of their passengers. Those precautions include, but are not limited to:

- Identifying potential safety defects prior to a trip and ensuring the vehicle is road-worthy.
- Reporting safety defects to the operator or the operator's representative. The vehicle may not go on the road until detected defects are corrected.
- Ensuring all doors, rear tailgates and rear windows are and remain closed securely while the vehicle is in motion.
- Ensuring no window glass is broken or fractured or otherwise distorting visibility.
- Never leaving the vehicle unattended while in service until the emergency brake is securely set and all other reasonable precautions have been taken to prevent movement of the vehicle.
- Never pushing or towing any other vehicle, and never allowing a vehicle carrying passengers to be pushed or towed.
- Not refueling the vehicle while the engine is running, and not allowing smoking or flames in or about the vehicle during fueling operations until all fumes have dissipated.
- Not carrying combustible materials in passenger compartments.
- Not engaging in any unnecessary conversation or other activities that could distract his or her attention from the operation of the vehicle.

- Ensuring that passengers do not stand in any location that obstructs his or her vision to the front and sides while the vehicle is in motion.
- Keeping the passenger section in a clean, sanitary condition and with aisles that are unobstructed while the vehicle is in service.
- Keeping baggage or other property out of the aisle or from interfering with passenger safety, seating space or comfort. 17 NYCRR §721.4(a).

C. In-Service and Post-Service Student Safety Precautions

Regulations of the commissioner of education impose on school bus drivers, monitors and attendants certain responsibilities designed to ensure the safety of students in their charge. Pursuant to those responsibilities, bus drivers, monitors and attendants:

- May not allow students to enter or leave the bus while it is in motion.
- Are held responsible for reasonable behavior of students in transit.
- May not allow students to thrust their heads or arms out of open windows. 8 NYCRR §156.3(d).
- May not leave the school bus when children are inside except in case of emergency, provided that before leaving the bus the driver must stop the motor, remove the ignition key, and set the parking brake.

Monitors and attendants, however, may leave the bus to assist children embark or disembark the vehicle and to safely cross the street.

- Must check the vehicle to ensure that no child is left behind on the bus unattended at the conclusion of the bus route. 8 NYCRR §156.3(e)(4)
- May not smoke at anytime while within a school bus. 8 NYCRR §156.3(e)(5); See also, Public Health Law §1399-o.
- May not eat or drink any liquid, or perform any act or conduct themselves in any manner that may impair the safe operation of a school bus while the vehicle is transporting students. 8 NYCRR §156.3(e)(5).

Those same regulations prohibit the fueling of tanks while students are on the bus. 8 NYCRR §156.3(d)(5).

In addition, the New York State Education Department recommends that school buses used to transport students, whether on regular routes or field trips, have a passenger roster with

emergency phone number to be left with appropriate school officials. Such list can be used to quickly ascertain student safety and contact parents in the event of an accident or emergency. NYS Education Department, "District Safety Review – Pupil Transportation", July 2006.

D. Terrorism Preparedness

The New York State Education Department has issued guidelines to help school districts evaluate the emergency management plan and daily operating procedures of their district and community.

A list included in those guidelines is "intended to raise the level of awareness among transportation professionals of the real threat that exists for school buses to be targets of terrorism". NYS Education Department, "Terrorism Preparedness Guidelines" at: http://www.emsc.nysed.gov/schoolbus/School_Bus_Terrorism/htm/terrorism_preparedness_guidelines/htm, last accessed December 29, 2009.

However, the list, which is by no means an exhaustive resource, does not supplant any preparedness or emergency plans already in place in school districts.

Still, it includes suggestions for increasing transportation safety including, but not limited to, the following:

- Ensure bus garages and bus storage facilities have keypad access, adequate lighting, alarms and cameras.
- Use patrols and/or guards in and near buses in the storage area or bus yard.
- Ensure drivers report any unusual activity in or near the bus storage areas.
- Ensure drivers check breaks, tires, steering and outside compartments for unknown objects.
- If there are any strange vehicles at bus stops, drivers should try and record the license plate number and description of the vehicle to be reported to supervisors and/or the police.
- Do not let any adults on the school bus, including parents.
- Do not deviate from designated routes or make unauthorized stops.
- Report suspicious vehicles and/or persons lingering on school property, and do not let students disembark from the bus if the situation appears dangerous or unusual.
- Develop a standard radio transmission code that is used to communicate trouble on the bus, without alerting potential suspects of the driver's or monitors' awareness of trouble.

- Provide bus lists with number and routes to the local police and ensure they are updated as necessary.

Transportation personnel may wish to review the entire list of suggestions, which can be used to ensure their district's safety management plan is as updated as possible, and/or to enhance that plan if necessary.

E. Miscellaneous Rules and Considerations

In addition to those discussed above and in other sections of this course book, there are other school bus operation rules and safety considerations all school district transportation staff should be aware of. Among those are the following:

- Drivers must be familiar with the Vehicle and Traffic Law, regulations of the commissioner of motor vehicles, and regulations of the commissioner of education. 8 NYCRR §156.3(e)(1).
- School buses transporting students may not turn right for any purpose if the bus is facing a steady red signal (light). Vehicle and Traffic Law §11(d)(5).
- Drivers must give warning before making a left hand or right hand turn. 8 NYCRR §156.3(e)(3).
- All sets on a school bus must face forward. 17 NYCRR §720.4(p)(1)(a).
- The speedometer must be illuminated. 17 NYCRR §720.4(q).
- School buses that are electric powered, or hybrid-electric powered are subject to special provisions that govern the operation and equipment of those vehicles. 17 NYCRR §720.9 *et. seq.*
- Consistent with suggestions from the New York State Department of Education, school bus drivers should report any suspicious or potential highway security concerns they observe, even if they have not received any formal training through either the "School Bus Watch" or "Eyes on the Road" security training programs. Drivers wishing to make such a report may contact the security call center at 1-800-217-2502. NYS Education Department, "Reporting Suspicious Activity" which is available online at: http://www.emsc.nysed.gov/schoolbus/Drivers/htm/watch_program.htm,
- Also consistent with Department of Education recommendations, students should not be permitted to bring items on a school bus that do not fit on their lap or in a seat. School district policy can establish rules for keeping aisles and exits clear. Those rules should be distributed to students and parents prior to the beginning of the school year. NYS Department of Education, "District Safety Review – Pupil Transportation, July 2006.

If not already in place, boards of education may wish to consider adopting policies and/or procedures for parents, students and others to notify school officials of any school bus operation and safety concerns. All school district transportation personnel should be familiar with those policies and procedures to ensure any concerns are properly investigated and, if necessary, addressed.

XI. Transportation Aid

In New York State, school districts receive funding from three main sources: federal grants and aid, state aid, and local revenue derived from local property taxes.

State aid is determined annually by the Legislature as part of the state budget process. The governor submits proposed school aid appropriations to the Legislature, which reviews the proposal and enacts appropriations to be given to school districts.

- The amount of state aid funds awarded to each school district varies widely.
- State aid is paid to districts on a schedule set for in the Education Law, with payments beginning in the fall of each year and continuing through June.⁹ Educ. Law §3609-a

There are three basic categories of state aid annually enacted into law: foundation aid, reimbursable aid (also referred to as “expense-based aid”), and grants-in-aid. Transportation aid is a form of reimbursable aid that requires a district to incur expenses in advance of subsequent reimbursement by the state in the following year(s).

Two documents issued by the New York State Education Department offer help in better understanding how both state aid and transportation aid work.

- The first, entitled “State Aid to Schools: A Primer” was prepared by the Department’s Fiscal Analysis and Research Unit and is available at <http://www.oms.nysed.gov>, last accessed December 30, 2009.
- The second is a list of the ten most common mistakes made regarding transportation aid at:
<http://www.emsc.nysed.gov/schoolbus/Contracts/htm/10MostCommonMistakesforContractsExtensions.html>.

Transportation Aid Basics

1. Transportation aid is paid to school districts for general operations relating to student transportation and for bus purchases based on a district’s approved transportation expenses. NYS Education Department, “Transportation Aid Calculation” at: <http://stateaid.nysed.gov/trans/calculated/htm>, last accessed December 31, 2009. See, Educ. Law §§3602(7); 3622-a; 3623-a.
 - School districts are entitled to transportation aid at a rate of at least 6.5% and no more than 90% of their approved transportation expenses. Educ. Law §3602(7)(a).
 - Approved transportation expenses are “generally those made in transporting pupils to and from school once daily, between school and a board of cooperative educational services,

⁹ A school district’s fiscal year begins July 1 and ends June 30 of each year. Educ. Law §2515.

to approved shared programs at other school districts or to occupational education programs within a district.” NYS Education Department, “Transportation Aid Calculation” at: <http://stateaid.nysed.gov/trans/calculated/htm>, last accessed December 31, 2009. See, Educ. Law §§3602(7); 3622-a; 3623-a.

2. Transportation aid is separated into capital expenses and non-capital expenses.

- Capital expenses include bus purchases.
- Non-capital expenses include salaries, operating and maintenance expenses, contractual expenses, equipment, uniforms, health and life insurance, retirement benefits, and other costs of operation. Educ. Law §§3602(7)(b); 3623-a(e).

In school districts, other than New York City, students enrolled in nonpublic schools may count in the calculation of the district’s transportation aid. Educ. Law §3602(7)(a).

3. “Aidable regular transportation” includes the following, provided the district has voted to provide such transportation, or the commissioner of education has directed that it be furnished, and further provided that such transportation is adequate and approved by the commissioner:

- Transportation to and from school once daily.
- Transportation to another district for students in districts without a high school.
- Subject to approval by the commissioner, out-of-district transportation designed to relieve temporary overcrowding.
- Out-of-district transportation to nonpublic elementary or high schools.
- Transportation during the school day to and from programs at a board of cooperative educational services (BOCES), or to or from other shared program at other school districts that may lead to a diploma or a high school equivalency diploma.
- Transportation to or from in-district career education programs.
- Transportation to and from approved district-operated summer school program, subject to certain expense limitations specified in law.
- Child safety zones transportation. Educ. Law §3622-a.

Transportation aid for districts transporting students to another district because they do not have a high school is to the same rules that apply to other transportation. Educ. Law §3622-a(2). So is transportation aid for the transportation of nonpublic school students. Educ. Law §3622-a(4).

4. Transportation aid is available for student transportation approved by district voters beyond the state-mandated distance mileage limitations discussed in Section III of this course book. Educ. Law §§3621(2)(a); 3635(1)(a); 8 NYCRR §156.2(a).
5. Transportation aid is available, as well, for the transportation of students with disabilities to and from a private residential facility that provides special education services or programs but is located more than 50 miles from the student's home, if the commissioner of education certifies that no appropriate non-residential special services or program is available within 50 miles.

In such an instance, the commissioner has authority to limit the maximum number of trips that can be made between the student's home and the private residential school. Educ. Law §§4401(4), 4402(4)(d).

Role of the Commissioner of Education

Pursuant to the Education Law, the commissioner of education has authority that can limit what transportation expenses are eligible for transportation aid. Educ. Law §§ 3602(7); 3622-a; 3623-a.

1. A list of approved and non-approved transportation available expenses is available electronically from the New York State Education Department at: https://stateaid.nysed.gov/trans/aidable_nonaidable_list.htm, last accessed December 31, 2009.
 - Approved reimbursable expenses include, for example, the purchase of antifreeze, automated external defibrillators (AEDs), bus inspections, bus lettering, chains, cameras, file cabinets, garage door repairs, and office supplies.
 - Not approved are expenses for items such as bottled water, crossing guards, garage door replacement, and lounge furniture.
2. The amount of state aid payable to a school district for the purchase of a school bus is limited to the actual cost of the bus, or the state contract price for a similar bus, whichever is less. If no similar bus is available under a state contract, the amount of aid is limited to the statewide median cost of similar buses.

However, aid on bus purchases may be reduced based on amortization calculations approved by the commissioner of education. Educ. Law §3602(7)(c),(e).

3. Prior written approval from the commissioner is required before certain expenditures may be made and reimbursed through transportation aid. These items include:
 - Computerized bus routing services and fleet maintenance programs that cost in excess of \$10,000. Annual program licensing or service fees, however, do not require prior approval.

Requests for approval must be submitted in a form prescribed by the State Education Department available at: <http://www.nysed.gov>.

- Computer equipment purchases, modifications and updates, where the aggregate amount exceeds \$5,000.
- Two-way radios installed on school buses or locally installed on new buses, where the aggregate cost exceeds \$10,000.
- Radio base stations, antennas and repeaters, where the aggregate cost exceeds \$5,000. NYS Education Department, "Department Approval Required for Certain Purchases or Services" at: http://www.emsc.nysed.gov/schoolbus/TransDirector/htm/department_approval.htm, last accessed December 21, 2009.

Consultant Work Aid

Some school districts contract with individual or corporate consultants for technical assistance in the provision of transportation services.

Districts that wish to claim this type of expense as reimbursable for transportation aid purposes must submit:

1. A description of the services provided and documentation to show that the consultant services resulted in:
 - A more efficient, economical or safe transportation program, and
 - In district staff being better able to manage the transportation program.
2. A copy of the agreement with the consultant which shows the agreed-upon price for the consultant's services.
3. A copy of any efficiency or economy study reports prepared by the consultant.

The requisite documentation and information must be sent to:

The State Education Department
Room 876 EBA
89 Washington Avenue
Albany, New York 12234

NYS Education Department, "Consultants – Approval for Transportation Aid" at: <http://www.emsc.nysed.gov/schoolbus/TransDirector/htm>, last accessed December 31, 2009.

In addition, districts need to remember that when entering into a transportation consultant agreement with a cost in excess of \$10,000 they must comply with applicable competitive bidding/request for proposal requirements.

XII. School Bus Drivers In General

A. Definitions

A school bus driver is any person who drives a school bus owned, leased, or contracted for by a public school district, board of cooperative educational services (BOCES), or nonpublic school for the purpose of transporting students.

The definition excludes the following:

- A driver of a passenger or suburban type of vehicle is not considered a school bus driver if he or she is a school district employee who does not ordinarily transport students and is operating that vehicle to transport one or more students to a hospital or other medical facility, a physician's office, or home for medical treatment or because of illness.
- A driver of a suburban inter-city coach or transit bus who transports students on trips other than between home and school, such as field trips and athletic trips.
- A parent who transports only his or her own children.
- A volunteer driver for a nonpublic school who transports students on other than a regularly established route on an occasional basis. 8 NYCRR §156.3(a)(1)(iv).

The employment of all school bus drivers must be approved in writing by the superintendent of schools. Educ. Law §3624.

B. Qualifications for Employment as a Bus Driver

The qualifications of school bus drivers are primarily determined by the vehicle and traffic law and regulations of the commissioners of education and motor vehicles. Educ. Law §3624; 8 NYCRR §156.3(b); 15 NYCRR Part 6.

Education Law Requirements

For an individual to be qualified as a school bus driver under the provisions of the education law and commissioner of education regulations, he or she must:

- Be at least 21 years of age 8 NYCRR §156.3(b)(2).
- Have a currently valid driver's license or permit that is valid for the operation of a bus in New York State 8 NYCRR §156.3(b)(4).
- Pass a physical examination established by the commissioners of education and motor vehicles. 8 NYCRR §156.3(b)(3).

- Pass a physical performance test established by the commissioner of education. 8 NYCRR §156.3(b)(3)(iii)(a).
- Furnish to the superintendent at least three statements from three different persons not related to the applicant assessing his or her moral character and reliability. 8 NYCRR §156.3(b)(6).

Vehicle and Traffic Law Requirements

As an employer of school bus drivers it is the responsibility of the school district to ensure that it follows the procedures in the Vehicle and Traffic Law for hiring an applicant and later for reviewing their continued employment.¹⁰ For more information with respect to ongoing employer responsibilities under the Vehicle and Traffic Law, see Section XIII of this course book.

Before employing a new bus driver the school district must:

- Require each applicant to submit to and pass the physical examination to drive a bus according to the regulations, discussed in more detail below. Vehicle and Traffic Law §§509-b(3), 509-d(1)(i), 509-g; 15 NYCRR §§6.3(c)(3); 6.10.
- Obtain an abstract of a conditional driver's driving record from the appropriate agency in every state in which the person has resided, worked or held a driver's license or learner's permit during the preceding three years. Any fee established by other agencies for these documents shall be paid by the school district. A copy of all such documents for states outside New York shall be forwarded to the Department of Motor Vehicle's Bus Driver Certification Unit (BDCU) within 10 days of their receipt by the school district. Vehicle and Traffic Law §509-d(1)(ii), (4); 15 NYCRR §6.2(c)(8), (9).
- Investigate the driver's employment record during the preceding three years¹¹. Vehicle and Traffic Law § 509-d(1)(iii); 15 NYCRR §6.3(c)(2); see also 49 CFR §§391.21(a)(11), 391.23(d).
- Require each applicant to be at least 21 years of age. 15 NYCRR §6.3(c)(4).
- Require each applicant to have a valid driver's license or learner's permit in the class appropriate for operation of school buses and review the applicant's license document for

¹⁰ Relevant sections of the vehicle and traffic law and regulations may be accessed at:

<http://www.nydmv.state.ny.us/forms/ds700.pdf>

¹¹ NYS Department of Transportation regulations incorporate by reference certain federal regulations. 17 NYCRR §721.3(F). For school bus drivers with passenger endorsement limited to intrastate travel initially licensed after July 18, 1999, employers must receive a list of an applicant's previous employers during the preceding 10 years. The employer is only required to investigate the employment record for the preceding 3 years, however. 49 CFR §391.23(d).

driving restrictions and endorsements. Vehicle and Traffic Law §509-b(2); 15 NYCRR §§6.3(c)(5),(6).

- Determine that each applicant has not been disqualified to drive a bus pursuant to any provisions of the Vehicle and Traffic Law or Department of Motor Vehicle regulations, discussed in more detail in Section XV of this course book. Vehicle and Traffic Law §§509-b(4), 509-cc; 15 NYCRR §6.28.

Once a school district has carried out the above actions it may designate the new driver as a “conditional” bus driver for a period of 90 days from the date of hiring unless granted an extension in writing from the Bus Driver Certification Unit (BDCU). During that time period the BDCU will conduct:

- A driver qualification review and
- A criminal history clearance, discussed in more detail below. Vehicle and Traffic Law §509-cc(5); 15 NYCRR §§6.3(c)(1), 6.4(c)

The school district must supply BDCU with an acceptable Article 19-A Driver Application (Form DS-870) for the conditional driver within 10 days of the hiring date. Vehicle and Traffic Law §509-d(4); 15 NYCRR §6.2(c)(10).

Federal Requirements

The New York State Department of Transportation (DOT) regulations state that drivers of vehicles that carry more than fifteen passengers shall comply with certain regulations of the Federal Motor Carrier Safety Administration. 17 NYCRR §721.3(F). With respect to qualifications for a commercial driver, the DOT makes 49 CFR §391.41 applicable to drivers who received their initial commercial driver’s license after July 18, 1999 with a passenger endorsement to operate a bus on an intrastate basis only. Those regulations state that a person is qualified to drive a commercial vehicle if that person has no:

- Loss of a foot, leg, hand, or arm
- Impairment of a hand or finger which interferes with prehension or power grasping, or
- Impairment of an arm, foot or leg or any other significant limb impairment which interferes with the ability to perform normal tasks associated with operating a motor vehicle. 49 CFR §391.41(b)(1),(2).

Persons with such impairments may qualify to drive a commercial vehicle if they have been granted a skill performance evaluation certificate (such certification is granted if the applicant can prove ability to operate knobs and switches, holding and maneuvering a steering wheel, etc.). 49 CFR §391.41(b), see also 49 CFR §391.49 (alternative physical qualification standards for the loss or impairment of limbs).

C. Licensure Requirement

Licensure requirements for all school bus drivers currently are covered by article 19-A of the Vehicle and Traffic Law (§§501, 501-a(1); 509-a to 509-o), Part 6 of the rules and regulations of the commissioner of motor vehicles and Part 156 of the regulations of the commissioner of education.

Federal and state laws require all commercial drivers, including school bus drivers, to be issued a commercial driver's license (CDL). Vehicle and Traffic Law §§ 501-a(1), 509-b; 49 USC § 31308; 49 CFR §383.23. The commissioner's regulations also require each driver of a motor vehicle conveying school children to have the appropriate operator's or commercial driver's license. 8 NYCRR §156.3(b)(4).

The Education Law allows schools to receive transportation aid for certain approved costs associated with the licensing regulations such as the training of drivers for the CDL and the expenses incurred in fingerprinting drivers for background checks. Educ. Law §§3602(7)(b), 3623-a(1)(e)(6).

D. Background Check

The Vehicle and Traffic Law and Department of Motor Vehicles regulations require all school bus drivers to be fingerprinted so a school district may obtain any criminal record from state and federal authorities. Vehicle and Traffic Law §§ 509-d(2); 509-cc(5); 15 NYCRR § 6.4(b).

- Pending criminal history clearance, the school district must classify each driver as "conditional" for a period not to exceed 90 days unless such period is extended in writing by the Bus Driver Certification Unit (BDCU). 15 NYCRR §6.4(c).
- The BDCU will advise the driver and school district of any criminal conviction which would disqualify the driver from employment and the school district may not permit the person to operate a school bus. 15 NYCRR §6.4(d)(1).
- If there is a pending criminal charge which would disqualify the driver, the BDCU must notify the driver and the school district of the possible disqualification but will not specify the offense. The school district must require the driver to provide documentation to BDCU upon disposition of the offense. The documentation must be an original document with the seal of the court and signature of the presiding justice or court clerk. 15 NYCRR §6.4(d)(2).

If a driver is disqualified he or she shall receive information as to the right to appeal such disqualification. An appeal of disqualification based upon a conviction may be made to state supreme court pursuant to Article 78 of the Civil Practice Law and Rules.

Disqualification arising out of a matter which is not a conviction may be appealed to the Department of Motor Vehicles Appeals Board within 60 days of the date of disqualification. 15 NYCRR §6.4(e).

Districts can obtain reimbursement for most costs associated with fingerprinting school bus drivers. Educ. Law §§ 3602(7), 3623-a(1)(e)(6).

For further information on the types of criminal convictions which disqualify a driver see Section XV of this course book.

E. Physical Examinations and Performance Tests

Physical Examinations

Each school bus driver must have the physical and mental ability to operate safely a vehicle transporting school children and to satisfactorily perform the other responsibilities of a school bus driver. 8 NYCRR §156.3(b)(3)(i).

School bus drivers are required to have a physical exam annually within two weeks prior to beginning service in each school year and in no case may the interval between exams exceed 13 months. Educ. Law §3624; 8 NYCRR §156.3(b)(3)(ii). Upon initial employment each driver must be examined within 4 weeks of beginning service. 8 NYCRR §156.3(b)(3)(ii).

The superintendent must consider a physician's or nurse practitioner's written report in determining the driver's fitness to operate or continue to operate any transportation vehicle used by students. Educ. Law §3624; 15 NYCRR §6.10.

The commissioner of education requires school bus drivers to meet the physical requirements as stated in the regulations of the Commissioner of Motor Vehicles.¹² The vision standards prescribed in motor vehicle regulations may not be waived for school bus drivers. 8 NYCRR §156.3(b)(3)(i). Under the physical requirements of the Department of Motor Vehicles a person is physically qualified to drive a school bus if he or she:

- Has no established medical history or clinical diagnosis of diabetes mellitus or if he or she has an established medical or clinical diagnosis of diabetes mellitus which has been stabilized by insulin therapy to the degree that her or his personal physician can certify that such person has not had an incident of hyperglycemic or hypoglycemic shock for a period of two years, or since the last physical examination given pursuant to the regulations, whichever is longer. However, the employee must remain under adequate medical supervision and follow-up. The follow-up shall consist of written certification every six months by the employee's personal physician that his or her condition has

¹² The Education Department regulations refer to 15 NYCRR §6.11 but the physical qualifications are actually located in 15 NYCRR §6.10.

remained stabilized and an incident of hyperglycemic or hypoglycemic shock has not occurred since the last certification. 15 NYCRR §6.10(b)(2).

- Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure. 15 NYCRR §6.10(b)(3).
- Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with the ability to control and drive a bus safely 15 NYCRR §6.10(b)(4)
- Has no current clinical diagnosis of high blood pressure likely to interfere with the ability to control and safely operate a bus 15 NYCRR §6.10(b)(5).
- Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease which interferes with the ability to control and safely operate a bus. 15 NYCRR §6.10(b)(6).
- Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control and safely operate a bus. 15 NYCRR §6.10(b)(7).
- Has no mental, nervous, organic, or functional disease of psychiatric disorder likely to interfere with the ability to control and safely operate a bus. 15 NYCRR §6.10(b)(8) .
- Has distant visual acuity of at least 20/40 (Snellen) in each eye with or without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 degrees in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green and amber.¹³ 15 NYCRR §6.10(b)(9).
- First perceives a forced whispered voice in the better ear at not less than five feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5--1951. 15 NYCRR §6.10(b)(10).
- Does not use an amphetamine, narcotic, or any habit-forming drug 15 NYCRR §6.10(b)(11).

¹³ Restricting a colorblind person from driving a school bus does not constitute disability discrimination under the American with Disabilities Act. Moreover, such a person would not be entitled to an accommodation under that act that would not otherwise enable him to perform the essential function of distinguishing traffic signals. See *Shannon v. New York City Transit Auth.*, 332 F.3d 95 (2d Cir. 2003).

- Has no current clinical diagnosis of alcoholism. 15 NYCRR §6.10(b)(12)..

The performance of the medical exam shall be carried out by the following licensed medical professionals:

- Doctor of medicine or osteopathy. 15 NYCRR §6.10(c).
- Nurse practitioner. 15 NYCRR §6.10(c).
- Physician's assistant or advanced practice nurse in accordance with a written practice agreement, provided the supervising or collaborating physician or nurse practitioner approves the findings and signs the report. 15 NYCRR §6.10(c).
- An optometrist or ophthalmologist may perform the portions of the exam relating to visual acuity, field of vision and color recognition. 15 NYCRR §6.10(d).

The medical professional may not be acting as the driver's personal physician during the course of the examination. 15 NYCRR §6.10(c).

Results of the exam must be recorded on form DS-874, Examination to Determine Physical Condition of Driver, and be signed and dated by the examining or collaborating physician or nurse practitioner. If any portion of the form is left blank it will be returned to the medical professional for completion. 15 NYCRR §6.10(e).

Additionally, the federal regulations provide an employer may require a driver to inform the employer of any therapeutic drug use. 49 CFR §382.213(c). The annual physical presents one such opportunity for the employer to acquire this information.

Disputing the Medical Exam Findings

In the absence of any contractual agreement, a driver who submits a medical report that conflicts with the findings of an annual physical conducted pursuant to 15 NYCRR §6.10 is entitled to be re-examined by a third qualified medical professional agreed upon by both parties. The cost of such exam is borne by the school district if the driver passes and by the driver if he or she fails the re-examination. 15 NYCRR §6.15(b).

Follow-up Exams and Treatments

The school district is responsible for ensuring that all required medical examinations, re-examinations, treatments and follow-ups as required by the medical professionals are in compliance with the regulations. 15 NYCRR §6.10(g). The BDCU must be notified in writing within ten days when a driver has failed to pass the medical examination and has completed and failed the re-examination procedures as set forth under the regulations. 15 NYCRR §6.10(h).

Physical Performance Test

In addition to meeting the physical health requirements, school bus drivers must pass a physical performance test approved by the commissioner of education, at least once every two years. In no case shall the interval between physical performance tests exceed 24 months. The test shall be re-administered to each driver after an absence of 60 days or more. 8 NYCRR §156.3(b)(3)(iii).

The test must be conducted by a certified school bus driver instructor. To pass the test, a bus driver must be able to perform the following functions:

- Repeatedly open and close a manually operated bus entrance door.
- Climb and descend bus steps.
- Operate hand controls simultaneously and quickly.
- Have quick reaction time from throttle to brake.
- Carry or drag individuals in a bus emergency evacuation.
- Repeatedly depress clutch and/or brake pedals.
- Exit quickly oneself and students from an emergency door.

A bus driver who fails any part of the test may not operate a school bus until he or she passes the test. A re-examination may be requested but may not be administered sooner than three days after the prior test. 8 NYCRR §156.3(b)(3)(iii)(b).

The employer will be responsible for paying for the re-examination if the bus driver passes; the bus driver is responsible for the cost if he or she fails the re-examination. 8 NYCRR §156.3(b)(3)(iii)(b). See also, NYS Education Department, "School Bus Driver Physical Performance Test Form", February 2004 available online at: <http://www.emsc.nysed.gov/schoolbus/Drivers/pdf/PT900.pdf>, or from the Department's Office of Pupil Transportation Services 518-474-6541.

XIII. School Bus Drivers Ongoing Employer Responsibilities

This section will examine ongoing employer responsibilities with respect to training bus drivers, carrying out the ongoing testing of bus drivers as required by the vehicle and traffic law and department of motor vehicle regulations, reporting requirements and records retention. Please note a school district's duty to administer drug and alcohol tests is discussed in a separate chapter of this course book.

A. School Bus Driver Safety Training

The commissioner of education requires school bus drivers to receive mandatory safety training in the form of a pre-service safety course, a basic safety course and annual refresher training. 8 NYCRR §156.3(b)(5); see also Educ. Law §3650-b.

All training must be provided by or under the direct supervision of a school bus driver instructor certified by the commissioner of education, with the exception of pre-service training¹⁴. 8 NYCRR §156.3(b)(5)(v).

Every school district must annually certify to the commissioner that its bus drivers have completed the required safety training. Such certification must also include a report on the implementation and effectiveness of the safety training program. Educ. Law §3650-b(3).

Pre-service Course

1. Each school bus driver initially employed by a school board or transportation contractor after July 1, 1973, must receive at least two hours of instruction on school bus safety practices prior to beginning service.
2. Each driver of a vehicle that transports children with disabilities employed by a school board or transportation contractor after July 1, 1973 must receive an additional hour on instruction concerning the special needs of pupils with disabilities. 8 NYCRR §156.3(b)(5)(i).

Basic Safety Course

During the first year of employment a school bus driver must complete a basic course of instruction in school bus safety practices approved by the commissioner, which includes two hours of instruction concerning the special needs of pupils with disabilities. 8 NYCRR §156.3(b)(5)(ii)(a).

¹⁴ An approved school bus driver instructor's physical presence is not required during training conducted on the initial employment of a school bus driver by the board or transportation contractor, provided such training is conducted under the general supervision of such an instructor. 8 NYCRR §156.3(b)(5)(v)(a).

Refresher Course

All school bus drivers must receive a minimum of two hours of refresher instruction in school bus safety at least two times per year.

- Such trainings must be conducted between July 1st and the first day of school and between December 1st and March 1st of each school year.
- Refresher courses for drivers who exclusively transport students with disabilities will also include instruction relating to those students special needs. 8 NYCRR §156.3(b)(5)(iii).

Training on Needs of Disabled Children

Any bus driver who is or will be transporting students with disabilities must undergo training and instruction related to the understanding of and attention to the special needs of such students, at least once per year. Such instruction may be included with the annual safety training. Educ. Law §3650(2); Vehicle and Traffic Law §1229-d(4).

- Individuals hired by January 1, 2009 had to complete this training by July 1, 2009.
- Those hired after January 1, 2009 must complete the training prior to assuming their duties. Educ. Law §3650(2).

Similar requirements apply to school bus attendants, discussed in Section XVII of this course book. Vehicle and Traffic Law §1229-d(4).

B. Other workplace training

Hazardous Substances

1. Districts must comply with the federal Occupational and Safety Health Administration (OSHA) Hazard Communication Standard (29 CFR § 1910.1200), adopted by the Public Employees' Safety and Health (PEOSH) Bureau, concerning hazardous substances, and New York State's Right-to-Know Law concerning toxic substances. Labor Law §§ 875-883; Pub. Health Law §§ 4800-4808; 9 NYCRR Part 1174.

- Both laws require school districts to develop and maintain a written hazard-communication program that includes information and training about materials that pose potential health and/or safety hazards.
- Employees must participate in a "right to know" program that provides information concerning hazardous chemicals that may be present in the workplace. Labor Law §§ 876, 878; 12 NYCRR §§820.3, 820.4.

2. A school district's hazard-communication program must ensure containers that hold hazardous materials are properly labeled to identify their contents and warn of any hazards that may be related to their use. It also must:
 - Provide for the maintenance of material safety data sheets at the work site, as well as employee training at the work site.
 - Make available for inspection a list of all hazardous chemicals to which employees might be exposed and document employee training in hazardous-materials management and protection, as well as any incident that involves an employee's exposure to hazardous materials. (29 CFR § 1910.1200(e)(1).
3. PESH also has adopted federal Occupational Safety and Health Administration (OSHA) standards for workers' protection from blood-borne pathogens such as HIV and hepatitis B. See 29 CFR §1910.1030. These require public employers, including school districts, to develop, implement, and evaluate exposure-control plans to eliminate or minimize employees' exposure to blood-borne diseases, and to use various methods of compliance to protect workers.

Child Protective Training

Each school district is required to train employees regarding the mandatory reporting of child abuse and neglect, the reporting procedures for those required to report such abuse and neglect and other matters related thereto. The training should be given to all current and new employees. Educ. Law §3209-a.

Other Employee Training

School bus drivers must receive all other training that all school employees are mandated to receive either by law or district policy.

C. Examinations and Tests

In addition to the physical exams and physical performance tests which must be administered to a school bus driver under the education law, a school district must perform other tests and reviews mandated by the vehicle and traffic law.

Review of Driving Record

At least once every twelve months, a school district must review the driving record of each driver to determine whether that driver meets minimum requirements for safe driving and is qualified to drive a bus. Such review must encompass the driver's *accident record* and violations of vehicle and traffic law including:

- Speeding,
- Reckless driving
- Operating a motor vehicle under the influence. Vehicle and Traffic Law § 509-e; 15 NYCRR §6.8(a).

A personal interview must also be conducted as part of the review of the driving record in order to ascertain the accuracy of the information the school district has on file. Additionally at the interview, the school district must inform drivers of the regulations which pertain to disqualification based upon the accumulation of three accidents within an 18 month period as laid out in 15 NYCRR §6.15. See 15 NYCRR §§6.8(b); 6.15.

Observation of Defensive Driving Techniques

School districts must perform regular observations of a driver's defensive driving performance while operating a bus with passengers. Vehicle and Traffic Law §509-g(3); 15 NYCRR §6.8(c).

Such observations must be performed by an individual certified by the Department of Motor Vehicles to perform such task. 15 NYCRR §6.8(c).

Behind the Wheel Driving Test

Each driver is subject to a biennial behind the wheel driving test conducted by an individual certified by the Department of Motor Vehicles. Vehicle and Traffic Law §509-g(4); 15 NYCRR §6.11(a).

- Such test may be conducted during the driver's regular work day on a vehicle appropriate to the driver's class of license, but may not be conducted on the same day as an observation of a driver's defensive driving performance. 15 NYCRR §6.11(b).
- The test must include the following elements:
 - (1) Pre-trip inspection.
 - (2) Placing the vehicle in operation.
 - (3) Use of the vehicle's controls and emergency equipment.
 - (4) Operating the vehicle in traffic and while passing other vehicles.
 - (5) Turning the vehicle.
 - (6) Braking and slowing the vehicle by means other than braking.
 - (7) Backing and parking the vehicle. Vehicle and Traffic Law §509-g(4).

Oral or Written Exam

Drivers also must be administered a biennial written or oral examination testing the driver's knowledge of:

- The rules of the road,
- Defensive driving practices,
- The law regulating driving a bus in New York. Vehicle and Traffic Law §509-g(5); 15 NYCRR §6.12.

If a driver fails to pass either the biennial behind the wheel test or the oral/written exam he or she may retake such test upon request to the school district. Such retest shall not be given less than two days nor more than ten days from the date of the first examination excluding weekends and holidays. A school district can require a period of retraining before administering the retest. 15 NYCRR §6.15(a).

Accident Re-examinations

If a driver has had three accidents as defined in Vehicle and Traffic law §509-a¹⁵ within an 18 month period he or she will be subject to re-examination including a road test. Vehicle and Traffic Law §509-bb(1).

- Accidents for which the driver was completely without fault shall not be considered in determining whether re-examination is required¹⁶.
- Additionally, one such accident shall not be counted if the driver completes a motor vehicle accident prevention course approved by the commissioner but a driver may take only one such course during an 18 month period. Vehicle and Traffic Law §509-bb(3); 15 NYCRR §6.15(d)(2).
- If the driver is subject to a period of disqualification then the re-examination must not be given more than 45 days prior to the end of the disqualification period. Vehicle and Traffic Law §509-bb(1).

Failure to complete re-examination successfully may result in revocation, suspension or restrictions being placed on the driver's license. Vehicle and Traffic Law §509-bb(4); 15 NYCRR §6.15(d)(4).

Upon successful completion of the re-examination the driver will be issued an 18 month probationary license. Vehicle and Traffic Law §509-bb(5).

¹⁵ Accident shall include any accident with another vehicle, object or person, which occurs in this state or elsewhere, in which any person is killed or injured, or in which damage to the property of any one person, including the operator, in excess of \$1500 is sustained, or in which damage in excess of \$2500 is sustained to any bus ; provided however that accidents occurring outside the state shall not be recorded on the driver's license record. Vehicle and Traffic Law §509-a(7); 15 NYCRR §6.2(u).

¹⁶ See 15 NYCRR §6.15(d)(1) for a list of situations when a driver involved in an accident will be considered without fault.

Employer Responsibility to Notify DMV of Failed Tests

The school district must notify the Department of Motor Vehicles within ten days whenever a driver fails either the behind the wheel driving test or the oral or written exam and has completed and failed the re-examination procedures as well. 15 NYCRR §6.12(c).

Notifications from Bus Drivers

A school district must require at least once every twelve months that every bus driver it employs prepare and furnish the district with a list of:

- Every conviction the driver has received for all violations of motor vehicle traffic laws,
- All accidents as defined in Vehicle and Traffic law §509-a

in which the driver was involved during the preceding twelve months both within and without New York State. Vehicle and Traffic Law §§509-f, 509-i; 15 NYCRR §6.21.

D. Reports to DMV

Annual Certification

School districts are required to affirm their compliance with Article 19-a by July 1 each year. As part of this affidavit a school district must:

- Review its listing of drivers, ascertain their qualifications and
- Update names and addresses as necessary. Vehicle and Traffic Law §509-j(c); 15 NYCRR §6.9.

Reports about Drivers

1. A school district must notify the Department of Motor Vehicles within ten days whenever a bus driver commences, leaves or is disqualified from employment. Vehicle and Traffic Law §509-d(4). Such notification shall include any information the school district has relative to a bus driver's disqualification including any information regarding pending criminal charges. Vehicle and Traffic Law §509-d(4).
2. A school district is also responsible for preparing a report setting forth:
 - The number of miles travelled by buses operated by such motor carrier in the preceding twelve months;
 - The number of convictions and accidents involving any driver employed by such motor carrier during the preceding twelve months,

- The number of convictions and accidents per ten thousand miles travelled.

Such report shall be filed with the department as an attachment to the affidavit of compliance required by Vehicle and Traffic Law §509-j(c). See also 15 NYCRR §§6.8(c), 6.9. A copy of such report shall be made available by the carrier to any person upon request. Vehicle and Traffic. Law §509-d(7).

E. Records Retention

In addition to other records school districts are required to create and maintain, each school district must keep all records with respect to original employment of a bus driver in the employee's file.

- All records must be kept for a minimum period of three years exclusive of the current year.
- The following items must be kept in each employee's file:
 - (1) A copy of the application for the position of bus driver, the Article 19-A Driver Application form (DS-870) (i.e., for all drivers hired after July 1, 1985).
 - (2) The original annual review of employee's driving record form (DS-872), plus an abstract from this state and, if applicable, copies of abstracts from all other states and statements of personal interview.
 - (3) The original annual observation of defensive driving performance form (DS-873). See Vehicle and Traffic Law §509-g.
 - (4) The original initial qualifying medical examination form, annual physical examination form, and all appropriate medical reexamination or medical follow-up reports.
 - (5) The original biennial oral and/or written examination (DS-875X) and Score Sheet (DS-875Y).
 - (6) The original biennial behind-the-wheel examination form (DS-875). See Vehicle and Traffic Law §509-g.
 - (7) All communications from the Department of Motor Vehicles regarding driver's qualifications, disqualifications, re-qualifications, criminal history clearance for school bus drivers; and any subsequent correspondence regarding a driver's compliance under Article 19-A including any add/drop notice form DS-885 on each driver. Vehicle and Traffic Law §509-d(3); 15 NYCRR §6.19.

A certificate in the form set forth in Appendix B-17 of the Department of Transportation regulations may be used instead of a driver's daily log for school bus drivers operating exclusively within a 100 air-mile radius of the garage to which they report, when such bus drivers are not otherwise employed driving a motor vehicle. Such certification must be kept at the school district and not on the vehicle. 17 NYCRR §723.10(f).

XIV. School Bus Drivers

Notable Ongoing School Bus Driver Responsibilities

A. Daily Responsibilities and Activities

Student Crossing Procedures

When discharging students, who must cross a highway the driver must instruct the students to cross the highway 10 feet in front of the vehicle. The driver must also keep the school bus halted with red signal lights flashing until the students have reached the other side of the highway. 8 NYCRR §156.3(d)(4).

Driving Rules and Vehicle Operation

1. A driver cannot operate a bus while his or her ability or alertness is so impaired or so likely to become impaired through illness or fatigue as to make it unsafe for the driver to begin or continue to operate a bus. Vehicle and Traffic Law §509-k.
2. Bus drivers are required to be familiar with the Vehicle and Traffic Law, regulations of both the commissioners of education and motor vehicles pertaining to pupil transportation and regulations of the commissioner of transportation governing motor carriers of passengers. 8 NYCRR §156.3(e)(1); 17 NYCRR 721.3(c).
3. Drivers must make a full stop at all railroad crossings and at state highways before crossing except that no stop needs to be made at any railroad crossing where a police officer or traffic control signal or sign directs traffic to proceed. 8 NYCRR §156.3(e)(2).
4. Drivers must also give warning before making left or right hand turns and may not exceed 55 mph when transporting pupils. 8 NYCRR §156.3(e)(3), (6).
5. As discussed in a previous section of this course book, New York State Department of Transportation regulations require all bus drivers to conduct pre-trip inspections and post trip review reports. As part of the driver pre-trip vehicle inspection the following items must be examined:
 - Service brakes.
 - Parking brake.
 - Steering mechanism.
 - Lighting devices and reflectors.
 - Horn.
 - Windshield wipers.
 - Mirrors.
 - Tires, wheels and rims, and
 - Emergency equipment and exits. 17 NYCRR §721.2(B)(1).

The post trip review must note any mechanical or safety defects of which the driver becomes aware during the tour of duty. For complete details of the required contents of the pre-trip and post trip reviews see 17 NYCRR §721.2(B).

6. Prior to beginning a shift, the driver must also review the last driver inspection report in order to verify that the employer has addressed the potential safety defects noted in the prior report. 17 NYCRR §721.3(D). The vehicle may not be used to transport passengers until each safety defect is corrected. 17 NYCRR §721.4(A)(2).

Bus Driver Conduct on the Bus

As previously discussed in another section of this course book,

1. Drivers shall not leave a school bus when children are inside except in case of emergency. If such emergency arises the bus driver must stop the motor, remove the key and set the parking brake. 8 NYCRR §156.3(e)(3).
2. Drivers must also check the bus to ensure no child is left behind unattended at the end of the school bus route. 8 NYCRR §156.3(e)(3).
3. Drivers may not smoke at any time while on a school bus, may not eat or drink any liquid, engage in any unnecessary conversation or perform any act or conduct themselves in any manner which may impair the safe operation of the bus while such vehicle is transporting pupils. 8 NYCRR §156.3(e)(5); 17 NYCRR 721.4(A)(9).
4. School bus drivers, monitors and attendants are all responsible for reasonable behavior of students in transit. 8 NYCRR §156.3(d). However, drivers have no authority to suspend students for disorderly conduct. They should report those students who violate established rules to the school principal who should take appropriate action.

B. Events Which Must be Reported to Employer

Report of Convictions

1. A school bus driver who is convicted of a misdemeanor or felony under the Vehicle and Traffic Law, or similar provisions in another jurisdiction or who has his or her driver's license revoked, suspended or withdrawn, must notify his or her employer by the end of the business day following the date when the driver received notice of such action. Vehicle and Traffic Law § 509-i(1); 15 NYCRR §6.21(a).

Failure to provide this notice will subject the driver to a suspension of five working days or a suspension equivalent to the number of working days that the driver was not in compliance with this requirement, whichever is longer. Vehicle and Traffic Law § 509-i(1); 15 NYCRR §6.21(a).

2. A school bus driver convicted of a traffic infraction in any jurisdiction must notify his or her employer within five working days of such a conviction. Vehicle and Traffic Law § 509-i(1-a).

Failure to provide such notice within the required time period will subject the driver to a suspension of five working days. Vehicle and Traffic Law § 509-i(1-a); see *In re Smith v. Bd. of Educ. of Taconic Hills CSD*, 235 A.D.2d 912 (3d Dep't 1997).

3. A school bus driver who is convicted of an offense listed in Vehicle and Traffic Law §509-c that would disqualify such driver from operating a bus must provide notice of such conviction in writing by the following business day.

Any driver who fails to provide such notice may not be permitted to drive a bus. Vehicle and Traffic Law §509-i(2); see also 15 NYCRR §6.28(a)(4), (5).

Accident Reports

A driver who is involved in an accident as defined in section 509-a of the Vehicle and Traffic Law, in any jurisdiction, must notify his or her employer within five working days from the date of the accident.

Failure to so notify within the required time period will subject the driver to a suspension of five working days¹⁷. Vehicle and Traffic Law §§509-d(1-b), 509-i(1-b); 15 NYCRR §6.21(b).

¹⁷ Working day is defined as any day in which a bus driver is scheduled to work, excluding regularly assigned days off. 15 NYCRR §6.21(b).

XV. School Bus Drivers – Disqualification From Employment

A. Convictions of Certain Criminal and Traffic Violations

The vehicle and traffic law provides that persons will be disqualified for employment as a bus driver upon the conviction of certain crimes and traffic violations and failure to meet ongoing employment requirements.

There are two sets of disqualifying rules for convictions set out in §509-cc of the Vehicle and Traffic Law.

- The first set of rules for disqualification applies to individuals employed as a bus driver at any time during **the period from January 1- June 30, 1985**.
- The second set of disqualification rules applying to bus drivers who were **not employed** as drivers **between January 1 and June 30, 1985** (referred to below as “all other bus drivers”).

Individuals Employed as Bus Drivers between January 1 and June 30, 1985

Permanent Disqualification

Such individuals will be **permanently** disqualified from driving if:

1. They have been convicted of, or forfeited bond or collateral which forfeiture has not been vacated, a violation committed prior to September 15, 1985 of Penal Law §§130.30, 130.35, 130.45, 130.50, 130.60 or 130.65, or an offense committed under a former section of Penal Law or any offense committed outside the state of New York which would constitute a violation of the aforesaid sections. Vehicle and Traffic Law §509-cc(1)(a)(i).

This disqualification will not apply to convictions for violations of Penal Law §§130.30, 130.35, 130.45, 130.50, 130.60 or 130.65 occurring prior to September 1, 1974 committed by a person employed as a bus driver on September 1, 1974.

2. They have been convicted of violating §§125.12, 125.20, 125.25, 125.26, 125.27, 130.30, 130.35, 130.45, 130.50, 130.70, 135.25, 150.20 of the penal law or an attempt to commit any of the aforesaid offenses under section 110.00 of the penal law, or any offenses committed under a former section of the penal law which would constitute violations of the aforesaid sections of the penal law, or any offenses committed outside this state which would constitute violations of the aforesaid sections of the penal law, provided such offense was committed on or after September 15, 1985. Vehicle and Traffic Law §509-cc(1)(a)(ii).

3. Have been convicted of violating §§ 100.13, 105.15, 105.17, 115.08, 125.10, 125.15, 130.40, 130.60, 130.65, 135.20, 160.15, 220.18, 220.21, 220.39, 220.41, 220.43, 260.00, 263.05, 263.10, 263.15, 265.04 of the penal law or an attempt to commit any of the aforesaid offenses under section 110.00 of the penal law, or any offenses committed under a former section of the penal law which would constitute violations of the aforesaid sections of the penal law, or any offenses committed outside this state which would constitute violations of the aforesaid sections of the penal law that was committed on or after September 15, 1985. Vehicle and Traffic Law §509-cc(1)(a)(iii)

All of the above grounds for disqualification may be waived provided five years have expired since the applicant was discharged or released from a sentence of imprisonment and is granted a certificate of relief from disabilities pursuant to Corrections Law §701.

Such certificate must contain a statement that the authority granting the certificate considered the bearing of the criminal offense for which the person was convicted on the applicant's fitness to transport school children. Provided however, at the discretion of the commissioner, the certificate of relief from disabilities may remove disqualification at any time. Vehicle and Traffic Law §509-cc(1)(a).

Five-Year Disqualification

Bus drivers employed between January 1 and June 30, 1985 will be disqualified for a period of **five** years from the date of last conviction specified herein, if they:

1. Have been convicted within the preceding five years of an offense listed in Penal Law §§ 100.10, 105.13, 115.05, 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 125.13, 125.14, 125.40, 125.45, 130.20, 130.25, 130.55, 135.10, 135.55, 140.17, 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06, 220.09, 220.16, 220.31, 220.34, 220.60, 221.30, 221.50, 221.55, 230.00, 230.05, 230.06, 230.20, 230.25, 230.30, 230.32, 235.05, 235.06, 235.07, 235.21, 240.06, 245.00, 260.10, subdivision two of section 260.20 and sections 260.25, 265.02, 265.03, 265.08, 265.09, 265.10, 265.12, 265.35 or an attempt to commit any of the aforesaid offenses under section 110.00 of the penal law, or any similar offenses committed under a former section of the penal law, or any offenses committed under a former section of the penal law which would constitute violations of the aforesaid sections of the penal law, or any offenses committed outside this state which would constitute violations of the aforesaid sections of the penal law, that was committed on or after September 15, 1985.

Such disqualification may be waived provided five years have expired since the applicant was discharged or released from a sentence of imprisonment and is granted a certificate of relief from disabilities pursuant to Corrections Law §701. Such certificate must contain a statement that the authority granting the certificate considered the bearing of the criminal offense for which the person was convicted on the applicant's fitness to transport school children. Vehicle and Traffic Law §509-cc(1)(b)(i).

2. Have been convicted of any violation of Vehicle and Traffic Law §1192¹⁸ or an offense committed outside this state which would constitute a violation of §1192, and the offense was committed while the driver was driving a bus in the employ of a motor carrier or in the furtherance of a commercial enterprise in interstate, intrastate or foreign commerce. Vehicle and Traffic Law §509-cc(1)(b)(ii).
3. Have been twice convicted of a violation of any subdivision of Vehicle and Traffic Law §1192 or offenses committed outside this state which would constitute a violation of §1192, committed within the preceding five year period. Vehicle and Traffic Law §509-cc(1)(b)(iii).
4. Have been twice convicted of a violation of any subdivision of Vehicle and Traffic Law §1192, or an offense committed outside of this state which would constitute a violation of any subdivision of §1192, committed within any ten year period after September 15, 1985. Vehicle and Traffic Law §509-cc(1)(b)(iv).
5. Have been convicted of leaving the scene of an accident which resulted in personal injury or death under Vehicle and Traffic Law §600¹⁹ or an offense committed outside of this state which would constitute a violation of §600. Vehicle and Traffic Law §509-cc(1)(b)(v).
6. Have been convicted of a violation of Vehicle and Traffic Law §511(3)²⁰ on or after September 15, 1985. Vehicle and Traffic Law §509-cc(1)(c).

One-Year Disqualification

Bus drivers employed between January 1 and June 30, 1985 will be disqualified for a period of **one** year if they:

1. Have accumulated nine or more points on his or her driving record for acts that occurred during an eighteen month period on or after September 15, 1985.

The disqualification shall terminate if the person has reduced the points to less than nine through the successful completion of a motor vehicle accident prevention course. Vehicle and Traffic Law §509-cc(1)(d).

2. Were the operator of a motor vehicle involved in two or more accidents of a nature and type set forth in Vehicle and Traffic Law §509-a²¹, where such accidents occurred within an

¹⁸ Vehicle & Traffic Law §1192 encompasses offenses for operating a motor vehicle while under the influence of alcohol or drugs.

¹⁹ Vehicle and Traffic Law §600 is defined as leaving the scene of an incident without reporting.

²⁰ Vehicle and Traffic Law §511(3) is defined as aggravated unlicensed operation of a motor vehicle in the first degree.

²¹ Accident shall include any accident with another vehicle, object or person, which occurs in this state or elsewhere, in which any person is killed or injured, or in which damage to the property of any one person, including the operator, in excess of \$1500 is sustained, or in which damage in excess of \$2500 is sustained to any bus ; provided however that accidents occurring outside the state shall not be recorded on the driver's license record. Veh. & Traf. Law §509-a(7); 15 NYCRR §6.2(u).

eighteen-month period following a reexamination conducted pursuant to Vehicle and Traffic Law §509-bb.

Accidents in which the driver was completely without fault shall not be included in determining whether such disqualification is required.²² Vehicle and Traffic Law §509-cc(1)(e).

3. Fail to pass a road test administered pursuant to Vehicle and Traffic Law §509-bb; provided, however, that such person shall be given the opportunity to complete a motor vehicle accident prevention course approved by the commissioner and to then undergo a second road test administered pursuant to §509-bb, and such disqualification shall cease if such person passes such second road test. Vehicle and Traffic Law §509-cc(1)(f).

Individuals Not Employed Bus Drivers between January 1 and June 30, 1985

This group of individuals, encompassing all other bus drivers not employed between January 1 and June 30, 1985, will be disqualified from operating a bus **permanently** if:

1. They were convicted under sections 100.13, 105.15, 105.17, 115.08, 125.10, 125.12, 125.15, 125.20, 125.25, 125.26, 125.27, 130.30, 130.35, 130.40, 130.45, 130.50, 130.60, 130.65, 130.70, 135.20, 135.25, 150.20, 160.15, 220.18, 220.21, 220.39, 220.41, 220.43, 260.00, 263.05, 263.10, 263.15, 265.04 of the penal law or an attempt to commit any of the aforesaid offenses under section 110.00 of the penal law, or any offenses committed under a former section of the penal law which would constitute violations of the aforesaid sections of the penal law, or any offenses committed outside this state which would constitute violations of the aforesaid sections of the penal law.

Such disqualification may be waived provided five years have expired since the applicant was discharged or released from a sentence of imprisonment and is granted a certificate of relief from disabilities pursuant to Corrections Law §701. The certificate must contain a statement that the authority granting the certificate considered the bearing of the criminal offense for which the person was convicted on the applicant's fitness to transport school children. Vehicle and Traffic Law §509-cc(2)(a),(b).

Five-Year Disqualification

All other bus drivers will be disqualified for **five** years if they:

1. Have been convicted within the preceding five years of an offense listed in Penal Law §§ 100.10, 105.13, 115.05, 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 125.13, 125.14, 125.40, 125.45, 130.20, 130.25, 130.55, 135.10, 135.55, 140.17, 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06, 220.09, 220.16, 220.31, 220.34, 220.60, 221.30, 221.50, 221.55, 230.00, 230.05, 230.06, 230.20, 230.25, 230.30, 230.32, 235.05, 235.06, 235.07, 235.21, 240.06, 245.00, 260.10, 260.20(2) and sections 260.25, 265.02, 265.03, 265.08, 265.09, 265.10, 265.12, 265.35 or an attempt to commit any of the

²² See 15 NYCRR §6.15(d)(1) for a list of examples of accidents where a driver will be deemed without fault.

aforesaid offenses under section 110.00 of the penal law, or any similar offenses committed under a former section of the penal law, or any offenses committed under a former section of the penal law which would constitute violations of the aforesaid sections of the penal law, or any offenses committed outside this state which would constitute violations of the aforesaid sections of the penal law.

However, notwithstanding the provisions of Corrections Law §701(3), such disqualification shall be waived provided that the applicant has been granted a certificate of relief from disabilities as provided for in Correction Law §701. The certificate must contain a statement that the authority granting the certificate considered the bearing of the criminal offense for which the person was convicted on the applicant's fitness to transport school children. Vehicle and Traffic Law §509-cc(2)(c)(i).

2. Have been convicted of a violation of any subdivision of Vehicle and Traffic Law §1192 or an offense committed outside of this state which would constitute a violation of §1192, and the offense was committed while the driver was driving a bus in the employ of a motor carrier or in the furtherance of a commercial enterprise in interstate, intrastate or foreign commerce. Vehicle and Traffic Law §509-cc(2)(c)(ii).
3. Have been twice convicted of a violation of any subdivision of Vehicle and Traffic Law §1192 or an offense committed outside of this state within any ten year period on or after September 15, 1985, which would constitute a violation of §1192. Vehicle and Traffic Law §509-cc(2)(c)(iii).
4. Have been convicted of leaving the scene of an accident which resulted in personal injury or death under Vehicle and Traffic Law §600(2) or an offense committed outside of this state which would constitute a violation of §600(2). Vehicle and Traffic Law §509-cc(2)(c)(iv).
5. Have been convicted of a violation of sections 120.04, 120.04-a, 125.13, 125.14 or 235.07 of the penal law. Vehicle and Traffic Law §509-cc(2)(c)(v).
6. Have been convicted of a violation of Vehicle and Traffic Law §511(3) on or after September 15, 1985. Vehicle and Traffic Law §509-cc(2)(d).

One-Year Disqualification

All other school bus drivers will be disqualified for a period of **one** year if they:

1. Accumulate nine or more points on his or her driving record for acts occurring during an eighteen month period, provided, however, that the disqualification shall terminate if the person has reduced the points to less than nine through the successful completion of a motor vehicle accident prevention course. Vehicle and Traffic Law §509-cc(2)(e).

2. Were the operator of a motor vehicle involved in two or more accidents of a nature and type set forth in Vehicle and Traffic Law §509-a²³, where such accidents occurred within an eighteen-month period following a reexamination conducted pursuant to Vehicle and Traffic Law §509-bb.

Accidents in which the driver was completely without fault²⁴ shall not be included in determining whether such disqualification is required. Vehicle and Traffic Law §509-cc(2)(f).

3. Fail to pass a road test administered pursuant to Vehicle and Traffic Law §509-bb; provided, however, that such person shall be given the opportunity to complete a motor vehicle accident prevention course approved by the commissioner and to then undergo a second road test administered pursuant to §509-bb, and such disqualification shall cease if such person passes such second road test. Vehicle and Traffic Law §509-cc(2)(g).

B. Disqualification for License Suspension

1. All school bus drivers, regardless of when they were employed, will be disqualified from driving a school bus for the period that such person's license is revoked or suspended for violating Vehicle and Traffic Law §1192 or an offense committed outside of this state which would constitute a violation of §1192.

Such disqualification shall be for not less than six months. Vehicle and Traffic Law §§509-cc(1)(g), (2)(h).

2. A bus driver shall be disqualified from operating a school bus, as well, if that person has had any license, permit, or privilege to operate a motor vehicle suspended, revoked, withdrawn or denied and such license, permit or privilege has not been reinstated by the authority which took such action.

This disqualification will not apply to a person whose license, permit or privilege to operate a motor vehicle cannot be reinstated because of non-residency in the state in which the license was suspended, revoked, withdrawn or denied or a person holds a conditional driver's license or a restricted use license issued by the commissioner pursuant to the provisions of article 21 or 21-A of the Vehicle and Traffic Law and is not disqualified under any other provision of that law. Vehicle and Traffic Law §509-cc(3).

C. Disqualification for Failure to Meet Ongoing Qualifications

In addition to disqualification for the aforementioned reasons, a bus driver may be disqualified for failure to meet ongoing employment requirements. See 15 NYCRR §6.28(a).

²³ See footnote 5 for definition of accident.

²⁴ See footnote 6.

Potentially Disqualifying Ongoing Qualifications

Ongoing employment requirements that may lead to disqualification for drivers that fail to comply with them include:

- Failure to pass the physical examination required by Vehicle and Traffic Law §509-g(1) and 15 NYCRR §6.10. 15 NYCRR §6.28(a)(1).
- Failing the biennial behind the wheel driving test required by Vehicle and Traffic Law §509-g(4) and 15 NYCRR §6.11. 15 NYCRR §6.28(a)(2).
- Failing the biennial oral or written examination required by Vehicle and Traffic Law §509-g(5) and 15 NYCRR §6.12. 15 NYCRR §6.28(a)(3).
- Pursuant to 15 NYCRR §6.15 failure to pass a second road test after failing the biennial behind the wheel driving test or fails a road test required to be administered after a driver has been in qualifying accidents on three occasions in an 18 month period; provided, however, that such person shall be given the opportunity to complete a motor vehicle accident prevention course approved by the Commissioner and to then undergo a second road test, and such disqualification shall cease if such person passes such second road test. 15 NYCRR §6.28(a)(7).

Reinstatement after Disqualification

If a person previously disqualified to drive a bus under 15 NYCRR §6.28 wishes to be re-employed as a driver he or she must request a written requalification letter from the Bus Driver Certification Unit (BDCU). Such letter must be kept in the driver's file.

- A school district may not permit a driver to operate a school bus until the BDCU has notified the school district the driver is re-qualified and thus eligible to drive a school bus.
- No other release, waiver or issuance of a conditional or restricted license otherwise obtained by the driver shall cancel a disqualification imposed under these regulations. 15 NYCRR §6.28(b).

XVI. School Bus Drivers Drug and Alcohol Use, Abuse and Testing

A school district must not allow a driver to operate a bus while his or her ability or alertness is so impaired or so likely to become impaired through illness or fatigue as to make it unsafe for the driver to begin or continue to operate a bus. Vehicle and Traffic Law §509-k.

A. Drug and Alcohol Use

In accordance with federal and state law, a school bus driver must not drive a school bus if he or she:

- Uses or is under the influence of alcohol or a controlled substance within six hours or less before duty. Vehicle and Traffic Law §509-1(1)(a); 15 NYCRR §6.24(a)(1); see also 49 CFR §§382.207, 382.213.
- Consumes a drug or alcohol while on duty. Vehicle and Traffic Law §509-1(1)(b); 15 NYCRR §6.24(a)(2); 49 CFR §§382.205, 382.213.
- Possesses alcohol or a controlled substance while on duty. Vehicle and Traffic Law §509-1(1)(c); 15 NYCRR §6.24(a)(3).
- Has an alcohol concentration of 0.02 or higher. 49 CFR §382.307(e)(2)
- tests positive for a controlled substance, or has adulterated or substituted a test specimen for controlled substances. 49 CFR §382.215
- refuses to take a required alcohol or controlled substance test. 49 CFR §382.211

B. Drug and Alcohol Testing

General Rule

School bus drivers who operate a commercial motor vehicle and are required to have commercial driver's licenses (CDLs) under 49 CFR Parts 382, 391 are subject to alcohol and drug testing, according to federal regulations adopted to implement the Omnibus Transportation Employee Testing Act of 1991. See, Code of Federal Regulations, Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40).²⁵

²⁵ 49 CFR Part 40 may be found at :

<http://frwebgate1.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=64501192480+1+2+0&WAIAction=retrieve>

- A school bus driver is subject to this requirement only when driving a vehicle that is designed to transport 16 or more passengers, including the driver. 49 CFR §§ 382.103, 382.107.
- Prior to implementing the testing programs, school districts must provide school bus drivers with information regarding the policy and regulation requirements, as well as information on alcohol and drug treatment programs and resources. 49 CFR §§ 382.113, 382.601.

Policy on Misuse of Alcohol and Use of Controlled Substances

Each employer must provide educational materials explaining the requirements relating to drug and alcohol testing and the employer's policies and procedures with respect to meeting the requirements. 49 CFR §382.601. The materials must include a detailed discussion of the following:

- The identity of the person designated to answer questions about the materials
- The categories of drivers subject to testing
- Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance with the regulations
- Specific information on driver conduct prohibited by the regulations
- Circumstances under which a driver will be tested for alcohol and/ or controlled substances, including post accident testing
- Procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and integrity of the testing procedures, safeguard the validity of the test results, and ensure that results are attributed to the correct driver, including post accident information, procedures and instructions
- Requirement that a driver submit to alcohol and controlled substances testing administered under the testing program
- An explanation of what constitutes a refusal to submit to a test and the attendant consequences
- The consequences for drivers who have failed a test, including immediate removal from duty
- Consequences for drivers found to have a alcohol concentration of 0.02 or greater but less than 0.04

- Information concerning the effect of drug and alcohol use on a person's health, work and personal life; signs and symptoms of an alcohol or drug problem; and available methods of intervening when an alcohol or drug problem is suspected including confrontation, referral to employee assistance programs and or referral to management. 49 CFR 382.601(b).

The policy may also include information on additional employer policies with respect to the use of alcohol or controlled substances including any consequences for a driver found to have a specified alcohol or controlled substances level based on employer's authority independent of the federal regulations²⁶. 49 CFR §382.601(c).

The employer must ensure each driver signs a statement certifying he or she has received a copy of the policy and maintain the original signed copy in its records. The driver may be given a copy of the signed certificate for his or her records. 49 CFR §382.601(d).

Pre-employment Testing

Controlled Substances

Prior to the first time a driver performs safety sensitive functions for a school district he or she must undergo testing for controlled substances. 49 CFR §382.301(a).

An employer is not required to administer such controlled substance test if the driver participated in a controlled substance testing program previously and the employer can obtain the information required by the regulations. See 49 CFR §382.301(b),(c).

Alcohol

An employer is not required to administer pre-employment alcohol testing. 49 CFR §382.301(d).

If an employer chooses to test for alcohol it must conduct the pre-employment test after making a contingent offer of employment or transfer subject to the employee passing the pre-employment alcohol test administered pursuant to the procedures of 49 CFR part 40. 49 CFR §382.301(d)(3), (4).

Additionally such tests must be conducted before the first performance of safety sensitive functions by every covered employee and the employer must treat all safety-sensitive employees the same for purposes of pre-employment alcohol testing. 49 CFR §382.301(d)(1), (2).

Post-accident Testing

1. As soon as practicable after a bus accident has occurred, drug and alcohol testing will be required if:

²⁶ Such additional policies must clearly state they are based on independent authority. 49 CFR §382.601(c).

- there was a fatality,
 - the driver was cited for a moving violation in connection with the accident and there is an injury treated away from the scene of the accident or a disabled vehicle is towed away from the scene. 49 CFR 382.303(a)(1), (2).
2. Drivers have a duty to remain readily available for post accident testing or may be deemed to have refused to submit to testing; such duty does not prevent a driver from obtaining necessary emergency medical treatment or assistance in responding to the accident. 49 CFR §382.303(e).
- If a post accident alcohol test is not procured within two hours of the accident the employer must prepare and maintain a file stating the reasons the test was not promptly administered.
 - If the employer cannot administer an alcohol test within eight hours or a controlled substances test within 32 hours of the accident the employer will cease attempts to administer such test and prepare and maintain a file stating the reason the test was not promptly administered. 49 CFR §382.301(d)(1), (2).
3. Employers may use the results of a breath or blood test for alcohol or a urine test for controlled substances administered after the accident by federal, state or local officials with independent authority to administer such tests which meet the federal, state or local testing requirements. 49 CFR §382.303(g).

Random Testing

Every employer, including school districts, must engage in a program of random alcohol and drug testing. 49 CFR §382.305(a).

- A minimum percentage of a district's average number of bus drivers per year must be tested (10 percent for alcohol and 50 percent for drugs)²⁷. 49 CFR 382.305(b)(1),(2).
- The selection of drivers for random alcohol and drug tests must be pursuant to a scientifically valid method such that each driver will have an equal chance of being selected each time selections are made. 49 CFR §382.305(i).
- The school district must ensure all random tests are unannounced and the dates for such tests are spread reasonably throughout the year.
- A driver may only be directed to submit to random alcohol testing during, just before, or immediately after performing safety sensitive functions. 49 CFR §382.305(m).

²⁷ The percentages may be raised by the Federal Motor Carrier Safety Administration based upon the reported violation rates of the entire industry. 49 CFR §382.305(c), (f).

Reasonable Suspicion Testing

Employers can require drivers to undergo alcohol and drug tests when the employer²⁸ has reasonable suspicion to believe the driver has violated the prohibitions on drug and alcohol use.

1. Such reasonable suspicion must be based on specific contemporaneous, articulable observations concerning the driver's:
 - Appearance,
 - Behavior,
 - Speech, or
 - Body odors. 49 CFR §382.307(a),(b).

With respect to controlled substances such observations may include indications of chronic and withdrawal effects of controlled substances. 49 CFR §382.307(b).

2. Either before the test results are released or within 24 hours, whichever is earlier, written records of the observations leading to reasonable suspicion tests must be made and signed by the supervisor who made the observations. 49 CFR §382.307(f).
3. The following rules govern when reasonable suspicion alcohol testing may be administered:
 - The observations of the employer are made during, just preceding or just after the period of the work day when the driver must follow regulations regarding alcohol consumption. 49 CFR §382.307(d).
 - The testing must be administered within two hours of the observation generating the suspicion and if the testing is not conducted within eight hours the employer must cease attempts to test the employee. If the testing is not completed in the prescribed time period the employer must prepare and maintain a file stating why. 49 CFR §382.307(e)(1).

Return to Duty Tests

Drivers who have previously tested positive for alcohol and/or controlled substance abuse must submit to a "return to duty" test for before returning to work. 49 CFR §§ 40.305, 382.309.

A driver is not eligible to take a return to duty test until he or she has been evaluated by a substance abuse professional and completed any education and/or treatment process recommended based upon the initial evaluation. 49 CFR §§40.285, 40.305.

²⁸ All persons designated to supervise drivers must receive at least 1 hour of training on both alcohol and controlled substance misuse (for a total of 2 hours of training) in order to make reasonable suspicion determinations. The training must include physical, behavioral, speech and performance indicators of probable alcohol misuse and controlled substance use. 49 CFR §382.603.

To return to work the employee must have a negative drug test and/or an alcohol test with an alcohol concentration of less than 0.02. 49 CFR §40.305(a).

Follow-up Tests

As part of returning to work after a positive alcohol or drug test, an employee is subject to unannounced follow-up tests.

The substance abuse professional who initially evaluated the driver is responsible for establishing a written follow-up testing plan. Such plan must include:

- A minimum of six unannounced follow-up tests in the first twelve months after returning to duty. 49 CFR §40.307(d).
- Testing may continue beyond the first twelve months as determined by the substance abuse professional. 49 CFR §§40.307(d)(1), (2), 40.309, 382.311.

C. Performance of Tests

An employer may hire a service agent or third party administrator to perform the drug and alcohol testing required by the federal regulations. 49 CFR §40.15. In such case the employer would then direct an employee to report to the designated collection sites administered by those parties.

Urine analysis is used for controlled substances testing and breath or saliva testing is used to detect the presence of alcohol.

Controlled Substances Testing

1. Specimen must be collected by a person trained according to 49 CFR §40.33. 49 CFR §40.31(a), (b).
2. The employee's immediate supervisor may not be the collector unless no other collector is available and the supervisor is appropriately trained. 49 CFR §40.31(c).
3. Collection must occur in a collection site meeting the requirements of 49 CFR §40.41 (For example single toilet room with sink located outside for hand washing is preferred method).
4. Laboratory used to analyze the specimen must be certified by the U.S. Department of Health and Human Services. 49 CFR §40.81.
5. Laboratory tests for marijuana, cocaine and opiate metabolites and phencyclidine (PCP). 49 CFR §40.85.

Alcohol Testing

1. Tests must be conducted by persons meeting training requirements of 49 CFR §40.213 which include proficiency in alcohol testing procedures and operating alcohol testing devices. 49 CFR §40.211(a).
2. An employee's immediate supervisor who is a properly trained technician may not administer the test unless no other technician is available. 49 CFR §40.211(c).
3. The alcohol testing site must have sufficient visual and aural privacy to prevent unauthorized persons from seeing or hearing test results, and be properly equipped for collection and analysis of breath and saliva samples. 49 CFR §40.221(c), (d).
4. Reasonable suspicion and post-accident testing may occur at site that partially meets requirements and affords privacy to the greatest extent practicable. 49 CFR §40.221(e).
5. Evidential breath testing devices and alcohol screening devices that are used must be on the National Highway Traffic Safety Administration's conforming products list. 49 CFR §40.229.

D. Consequences of Positive Tests

Removal from Duty

1. A school bus driver will be removed from duty and referred to a substance abuse professional under the following circumstances:
 - If the driver has an alcohol concentration of 0.04 or greater, 49 CFR §40.23(c), or
 - has engaged in prohibited controlled substance use, 49 CFR §§40.23(a), or
 - if tests results are verified as adulterated or substituted, 49 CFR §40.23 (b). See also 49 CFR §§40.285, 40.287, 382.201.
2. Any employee who is tested and found to have an alcohol concentration of at least 0.02, but less than 0.04, will be removed from the position until his or her next regularly scheduled duty period, but not less than 24 hours following the test.²⁹ 49 CFR §§382.307(e)(2), 382.505(a).

²⁹ The federal regulations state the employer shall not take any other action against an employee whose alcohol concentration tests results are less than 0.04. However if an employer has authority independent of the federal drug testing regulations to impose discipline for such a test result, such discipline is not prohibited under federal law. 49 CFR §382.505(b).

3. No driver who has abused controlled substances or alcohol may return to duty unless he or she has successfully passed a required return-to-duty test. 49 CFR §§40.23(d), 382.307(e), 382.309; Vehicle and Traffic Law § 509-1.
4. Operating a school bus while under the influence of alcohol or drugs is a crime under state law, punishable by fines, imprisonment or both, as well as license suspension and/or license revocation.

If a school bus driver is convicted of operating any vehicle while under the influence of alcohol or drugs, his or her license will be suspended or revoked and he or she will also be disqualified as a school bus driver for the period of that revocation or suspension. Such disqualification will be no less than six months. Vehicle and Traffic Law §§ 509-cc(1)(g), 1193(1)(d)(1-a), (4-a), (2)(b)(4-a).

Termination

Applicable federal regulations also do not require the employer to reinstate the employee after a positive drug or alcohol test. 49 CFR §40.289.

In New York State, a school district may terminate a bus driver who fails an alcohol test even if it is an isolated incident because a district has "a special obligation to safeguard the well-being of the students" and a bus driver's alcohol-related conduct "jeopardizes public safety and the safety of school children" in the driver's charge. *Will v. Frontier CSD Bd. of Educ.*, 97 N.Y.2d 690 (2002).

Rehabilitation Treatments

A school district is not required by the federal regulations to bear the cost of any treatment or rehabilitation program, but may be required to do so in accordance with the employer's policy or labor/management contracts. 49 CFR §§40.289, 382.605.

E. Retention of Drug and Alcohol Testing Records

Employers are required to maintain records with respect to drug and alcohol testing in a secure location with controlled access. 49 CFR §§ 40.333(c), 382.401(a).

- All documents must be maintained in their original format for the specified time period unless the records are maintained on microfilm or through the use of computer technology³⁰ in accordance with the provisions of 49 CFR §390.31.
- If records are stored electronically they must be easily accessible, legible, and formatted and stored in an organized manner. 49 CFR §40.333(e).

³⁰ Documents requiring signatures may not be maintained in computer format. Documents maintained in computer format must be capable of producing a printout. 49 CFR §390.31(d).

In addition, records must be available for inspection at the employer's principal place of business two business days after a request has been made by an authorized representative of the Federal Motor Carrier Safety Administration. 49 CFR §§ 40.333(d), 382.401(d).

Records Required To Be Maintained

1. "Documents generated" are documents that may have to be prepared under a requirement of the drug and alcohol testing regulations. If the record is required to be prepared it must be maintained.
2. Records related to the collection process including:
 - Collection logbooks, if used
 - Documents relating to the random selection process
 - Documents generated in connection with decision to administer reasonable suspicion alcohol or controlled substance testing
 - Calibration documentation for evidential breath testing devices
 - Documentation of breath alcohol technician training
 - Documents generated in connection with decisions on post-accident tests
 - Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing; and
 - A copy of each annual calendar year summary as required by 49 CFR §382.403.
3. Records related to a driver's test results, including:
 - The employer's copy of the alcohol test form, including the results of the test;
 - The employer's copy of the controlled substances test chain of custody and control form;
 - Documents sent by the medical review officer (MRO) to the employer, including those required by 49 CFR part 40, subpart G;
 - Documents related to the refusal of any driver to submit to an alcohol or controlled substances test;
 - Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under the regulations;

- Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results that the employer must obtain (a) in connection with the exception contained in 49 CFR §382.301, or (b) as required by 49 CFR §382.413.
4. Records related to other violations of the regulations.
 5. Records related to evaluations including:
 - Records pertaining to a determination by a substance abuse professional concerning a driver's need for assistance
 - Records pertaining to a driver's compliance with the recommendations of the substance abuse professional
 6. Records related to education and training including:
 - Materials on alcohol misuse and controlled substances use awareness, including a copy of the employer's policy on alcohol misuse and controlled substance use;
 - Documentation of compliance with the requirements of 49 CFR §382.601, including the driver's signed receipt of education materials;
 - Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion;
 - Documentation of training for breath alcohol technicians as required by 49 CR §40.213(a); and
 - Certification that any training conducted complies with the requirements for such training.
 7. Administrative records related to alcohol and controlled substances testing including:
 - Agreements with collection site facilities, laboratories, breath alcohol technicians, screening test technicians, medical review officers, consortia, and third party service providers;
 - Names and positions of officials and their role in the employer's alcohol and controlled substances testing program(s);
 - Semi-annual laboratory statistical summaries of urinalysis required by 49 CFR §40.111(a) and
 - The employer's alcohol and controlled substances testing policy and procedures. 49 CFR §382.401(c).

Record Retention Period

Different time periods apply regarding how long a school district must maintain required records.

Five-Year Retention Period

The following records must be maintained for a minimum of five years:

- Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater
- Records of driver verified positive controlled substances test results
- Documentation of refusals to take required alcohol and/or controlled substances tests
- Driver evaluation and referrals
- Calibration documentation
- Records related to the administration of the alcohol and controlled substances testing programs,
- A copy of each annual calendar year summary required by 49 CFR §382.403.
- Substance abuse professional's reports
- All follow-up tests and schedules for follow-up tests. 49 CFR §§ 40.333(a)(1), 382.401(b)(1).

Three-Year Retention Period

Records obtained from previous employers under 49 CFR §40.25 concerning drug and alcohol test results must be kept for three years. 49 CFR §40.333(a)(2).

Two-Year Retention Period

Records related to the alcohol and controlled substances collection process, and inspection, maintenance and calibration of evidential breath testing devices shall be maintained for two years. 49 CFR §§ 40.333(a)(3), 382.401(b)(2).

One-Year Retention Period

The following records shall be maintained for one year pursuant to 49 CFR §382.401(b)(3):

- Records of negative and cancelled controlled substances test results
- Alcohol test results with a concentration of less than 0.02.

Other

Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and drivers shall be maintained by the employer while the individual performs the functions which require the training and for two years after ceasing to perform those functions. 49 CFR §382.401(b)(4).

F. Confidentiality of Drug and Alcohol Testing Records

The general rule is that alcohol and drug testing records are confidential and may not be revealed to anyone other than the employer and the driver without the driver's consent. 49 CFR §§ 40.321, 382.405(a), (b); see also FOIL Advisory Opinion No. 12554, NYS Dep't of State Committee on Open Government dated February 29, 2001.

However, such records may be revealed under the following situations:

1. Employers must make these records available to an authorized representative of the U.S. Department of Transportation, when requested, or any local or state official with regulatory authority over the employer or drivers. 49 CFR §382.405(c).
2. Post-accident records may also be disclosed to the National Transportation Safety Board in the course of an accident investigation, or as required by state law. 49 CFR §382.405(e).
3. Employers may disclose these records in criminal or civil actions in accordance with 49 CFR §40.323(a)(2). 49 CFR §382.405(g).
4. Employers may disclose the test results in proceedings related to benefits sought by the employee, such as worker's compensation or unemployment insurance compensation. 49 CFR §382.405(g).
5. Employers may release information regarding a driver's records or make records available upon written request from a driver authorizing such access to a subsequent employer or a specified individual. 49 CFR §382.405(f), (h).

G. Reporting Results to Governmental Entities

An employer shall prepare and maintain a summary of the results of its alcohol and controlled substances testing during the previous calendar year when requested by the Secretary of Transportation, any Department of Transportation agency, or any State or local officials with regulatory authority over the employer or any of its drivers. 49 CFR §382.403(a).

When the Federal Motor Carrier Safety Administration (FMSCA) requests such a report in the month of January, an employer must provide the report to FMSCA by March 15 at the location specified in request and in the format specified by FMSCA. 49 CFR §382.403(b).

XVII. School Bus Monitors and Attendants

The rules governing the qualifications and employment responsibilities of school bus monitors and attendants are largely derived from the regulations of the commissioner of education.

However, school bus monitors and attendants employed by a school district or board of cooperative educational services (BOCES) are civil service employees whose employment is also subject to the rules and regulations of the New York State Civil Service Law and the Civil Service Commission.

A. Definitions

School Bus Monitor

The regulations of the commissioner of education define a school bus monitor as:

“any person employed for the purpose of assisting children to safely embark and disembark from a school bus which is owned, leased or contracted for by a public school district or board of cooperative educational services, and for the purpose of assisting the school bus driver with maintaining proper student behavior on such school bus.” 8 NYCRR § 156.3(a)(3).

School Bus Attendant

The regulations of the commissioner of education define a school bus attendant as:

“any person who is employed for the purpose of serving pupils with a disabling condition on a school bus which is owned, leased, or contracted for by a public school district or board of cooperative educational services.” 8 NYCRR § 156.3(a)(4),

B. Duties and Responsibilities

Civil Service Rule

As civil service employees, the specific tasks school bus monitors and attendants may be asked to perform generally will be based on the duties set forth in the job specifications for the position. Civil Service Law §61.

However, they also may be asked to perform tasks that are related to or a reasonable outgrowth of their in-title work and, as such, within the basic scope of their position. Civil Service Law §§61(1),(2). See also, *Scarsdale Ass'n of Educational Secretaries v. Board of Educ. of the Scarsdale Union Free Sch. Dist.*, 53 A.D.3d 572 (2d Dep't 2008).

Primary Role of School Bus Monitors

Consistent with the definition of school bus monitor in the regulations of the commissioner of education, such individuals have two primary roles to fill:

- To help students with loading and unloading from the bus in a safe and efficient manner.
- To help ensure that the students' behavior does not interfere with the school bus driver's ability to operate the bus.

Primary Role of School Bus Attendants

Based on the definition of school bus attendant in the regulations of the commissioner of education, such individuals have one primary responsibility – riding a school bus with a student with a disability and assisting that student.

However, consistent with additional responsibilities set out in the regulations of the commissioner of education, and discussed in more detail in Section X of this course book, school bus attendants also have a duty to assist the bus driver and others present on the vehicle to ensure all passengers arrive safely at their destinations. See, 8 NYCRR §§156.3(d)(1)-(3), (e)(4),(5).

Other Duties and Responsibilities

As mentioned above, the regulations of the commissioner of education impose on school bus monitors and attendants additional responsibilities designed for the safety of students riding the bus.

Listed in Section X of this course book, those responsibilities require, for example, that school bus monitors, attendants and bus drivers perform bus checks at the end of runs to ensure no students have been left on the bus. They also specify that monitors and attendants may leave a school bus while children are inside only to help them enter or exit the bus or to safely cross the street. Otherwise, when children are inside the bus, monitors and attendants must remain with them unless there is an emergency. 8 NYCRR § 156.3(e)(4).

Another of those additional responsibilities holds monitors and attendants, along with bus drivers, responsible for reasonable behavior of students in transit. Therefore, monitors and attendants should know and understand their school district's or BOCES' code of conduct and the rules therein that govern student, staff and visitor behavior while such individuals are on school property or attending school functions, including on a school bus.

- Without such knowledge, the rules of the district or BOCES cannot be consistently enforced while students are in transit.
- Familiarity with the school district's or BOCES' disciplinary procedures allow monitors and attendants to know also what needs to be done in the event a student needs to be referred to a building principal or other school official for disciplinary purposes.

For further information on student discipline on school buses, including for students with disabilities, refer to Sections XVIII and XX of this course book.

Consequences of Failure to Discharge Duties and Responsibilities

In addition to potential employer discipline, school bus monitors and attendants can face criminal liabilities as a result of their failure to carry out their duties and responsibilities. For example:

- In *People v. Afia*, 17 Misc.3d 734 (Crim. Ct. Kings, 2007), a school bus attendant was convicted with endangering the welfare of a child after she failed to locate and awaken a seven year old student with disabilities when he fell asleep on the bus and was left in a bus parking garage for several hours.

The attendant, who was riding a school mini-bus with 12 children with special needs, was responsible for taking a head count when the children boarded the bus and “sweeping” the bus at the end of the run specifically to make sure no sleeping children remained on the bus. In addition, she had received appropriate training in how to check the bus, and the student had been riding with her every day since the start of the school year. Furthermore, she had been advised she could face criminal liability if she failed to awaken and remove a sleeping child. The court held that under these circumstances, the attendant had “knowingly act[ed] in a manner likely to be injurious to the welfare of that child left asleep on the bus. While a mistake may sometimes just be a mistake...this is not one of those times.”

- A school bus monitor who witnessed a 14 year old student being attacked by a group of students on the school bus and failed to intervene or act in a way to protect the victim was criminally charged with endangering the welfare of a child, a misdemeanor. See, “School Bus Monitor Charged After Assault”, Utica Observer-Dispatch, December 18, 2008 at: <http://www.uticaod.com>, last accessed January 6, 2010.
- A bus driver and monitor were terminated by a school district after a first grade student fell asleep on the school bus and neither of them checked the bus before parking it at the bus garage at the end of the run. District policy required them to check each seat before leaving the bus, so their actions violated that policy in addition to the regulations of the commissioner of education discussed above and in Section X of this course book.

The student was found by another bus driver at the end of the school day when the driver boarded the bus and checked it prior to leaving the garage. Although the weather was 23 degrees that day, the boy was apparently unhurt. “M-W fires 2 for leaving 1st grader on bus”, Times Herald-Record, January 14, 2010 at: <http://www.recordonline.com>, last accessed January 14, 2010.

C. Monitor and Attendant Qualifications

The Vehicle and Traffic Law grants school districts the authority to review the qualifications of any person applying to work as a school bus attendant with a company with whom the district has contracted for transportation services. Vehicle and Traffic Law §1229-d(2)(a).

Regulations of the commissioner of education establish the employment qualifications that apply to school bus monitors and attendants. 8 NYCRR §156.3(c).

Age Requirement

All school bus monitors and attendants must be at least 19 years old. 8 NYCRR § 156.3(c)(2).

Physical and Mental Fitness

School bus monitors and attendants also must have the “physical and mental ability to satisfactorily perform his or her duties.” 8 NYCRR § 156.3(c)(3).

1. To help make this determination, school districts have the authority to order a school bus monitor or attendant to be examined by a duly licensed physician within two weeks prior to the start of the monitor’s or attendant’s service in each school year.
 - The physician’s written report shall be considered by the superintendent of schools or district superintendent in determining whether the monitor or attendant is fit to carry out his/her functions.
 - The physician conducting the examination must require the monitor or attendant to undergo any diagnostic tests that are necessary to determine the physical and mental ability of that employee to perform his/her duties. 8 NYCRR § 156.3(c)(ii).
2. According to the New York State Education Department, while monitors and attendants are not required to take medical examinations prior to being hired, boards of education may adopt policies that include this as a prerequisite to employment. NYS Education Department, “Monitors and Attendants Qualifications and Training Requirements” at: http://www.emsc.nysed.gov/schoolbus/TransDirector/htm/qualifications_monitors.htm, last accessed December 1, 2009.

Satisfactory Completion of Physical Performance Tests

1. Each bus monitor and attendant of a bus owned, leased or contracted for by a school district or BOCES must pass a physical performance test that is approved by the commissioner of education before assuming their duties and at least once every two years.

- The test must also be administered to any monitor or attendant who is absent 60 or more consecutive days from his or her scheduled work duties.
- The interval between physical performance tests cannot exceed 24 months. 8 NYCRR § 156.3(c)(3)(iii).
- The physical performance test must be administered by a certified school bus driver instructor. 8 NYCRR § 156.3(c)(3)(iii)(a).

If there are insufficient certified school bus driver instructors (SBDI) on staff to administer the test in a timely manner, a school district, BOCES, or private carrier providing transportation services may apply to the commissioner for a waiver to have Department of Motor Vehicles' certified examiners administer the test. The physical presence of a certified school bus driver instructor employed by the district, BOCES or transportation contractor during administration of the actual test is not required as long as he or she provides general supervision, instructs the Department of Motor Vehicles' examiner in the proper administration of the test, and reviews and approves the test results. 8 NYCRR § 156.3(c)(3)(iii)(b).

2. The purpose of the physical performance test is to assess a monitor's or attendant's ability to perform his or her duties including, but not limited to:
 - Climbing the bus steps;
 - Descending the bus steps;
 - Carrying or dragging students in a bus emergency evacuation, and
 - Exiting quickly from an emergency door. *Id.*
3. Although the New York State Education Department anticipates adding more in the near future, currently there are three standards that bus monitors and attendants must meet during the physical performance test. Those three standards require that monitors and attendants:
 - Climb and descend the bus steps three times within 30 seconds;
 - Starting in a seated position, quickly exit from an emergency door in 20 seconds; and
4. Carry or drag a 125-pound bag 30 feet in 30 seconds. NYS Education Department, "Monitors and Attendants Qualifications and Training Requirements" at: http://www.emsc.nysed.gov/schoolbus/TransDirector/htm/qualifications_monitors.htm, last accessed December 1, 2009.
5. The failure to complete any portion of the physical performance test means the bus monitor or attendant is not qualified to perform the duties of the position. The monitor or attendant may request a re-test. The cost of the reexamination must be borne by the employer if the

monitor or attendant passes the re-examination or by the monitor or attendant if he or she fails the examination again. 8 NYCRR § 156.3(c)(3)(iii)(c).

CPR and First Aid Certification

1. School bus attendants who will work with students with a disabling condition must be trained, and maintain certification, in cardiopulmonary resuscitation (CPR), when the student's individualized education plan (IEP) requires same.
 - If the attendant was hired on or before January 1, 2004, the attendant must have completed CPR training by July 1, 2004.
 - Attendants hired on or after January 1, 2004 must complete such training prior to working with a disabled student whose IEP calls for such skills. 8 NYCRR § 156.3(c)(4). They must obtain the required CPR certification before they assist in transporting such a child. NYS Education Department, "Monitors and Attendants Qualifications and Training Requirements" available electronically at: http://www.emsc.nysed.gov/schoolbus/TransDirector/htm/qualifications_monitors.htm, last accessed December 1, 2009.
2. School districts, BOCES and contractors may choose to also require that all attendants and monitors maintain certification in first aid. 8 NYCRR § 156.3(c)(4). See also, Vehicle and Traffic Law § 1229-d(3).

Safety Training

1. All school bus monitors and attendants must receive at least three hours of pre-service instruction, as prescribed by the commissioner of education upon recommendation of the commissioner's school bus driver instructor advisory committee, that includes but is not limited to:
 - School bus safety practices
 - Child management techniques, and
 - The proper techniques for assisting children to safely enter and exit a school bus. 8 NYCRR § 156.3(c)(5)(i).
2. Additionally, any school bus monitors or attendants who will be working with students with disabilities must receive instruction as prescribed by the commissioner of education, relating to special needs transportation prior to beginning their duties, including learning how to properly assist disabled students in entering and exiting a school bus. *Id.* During this pre-service instruction conducted upon initial employment, the physical presence of a certified school bus driver instructor is not required, as long as the training is conducted under such person's general supervision. 8 NYCRR § 156.3(c)(5)(ii).

In accordance with Vehicle and Traffic Law requirements, school bus attendants working with one or more disabled students also must receive training and instruction at least once per year, which training must relate to the understanding of and attention to the special needs of such children. Vehicle and Traffic Law § 1229-d.

Specialized Training

During their first year of employment, school bus monitors and attendants also must a basic course of instruction consisting of 10 hours of instruction on topics prescribed by the commissioner of education upon recommendation of his or her school bus driver instructor advisory committee. 8 NYCRR § 156.3(c)(5)(iii).

- Unlike the three hour pre-service instruction discussed above, the “Basic Course of Instruction for Monitors and Attendants” must be provided by an approved contractor who uses a curriculum approved by the State Education Department.
- Individual schools may develop an internal curriculum for use in that school, but it must still receive SED approval prior to its use. NYS Education Department, “Monitors and Attendants Qualifications and Training Requirements” available electronically at: http://www.emsc.nysed.gov/schoolbus/TransDirector/htm/qualifications_monitors.htm, last accessed December 1, 2009.

Refresher Training

Following the first year of employment, “refresher” training sessions, lasting at least two hours, must be provided to all monitors and attendants at some point between July 1 and the first day of school, and between December 1 and March 1 during the school year. 8 NYCRR § 156.3(c)(5)(iv).

Drug and Alcohol Testing

There are no legal requirements to mandate that school bus monitors and attendants be subject to drug and alcohol testing, unlike in the case of bus drivers discussed in Section XVI of this course book. Nonetheless, it is possible for a school district to institute such a requirement subject to collective bargaining negotiations under the Taylor Law, in order to further ensure the safety of students and staff with whom school bus monitors and attendants interact in the discharge of their duties.

D. Background Checks

The Education Law requires that school bus monitors and attendants be fingerprinted and cleared in a background check if such prospective employee has not been cleared using the Vehicle and Traffic Law fingerprint and criminal history check procedures. Educ. Law §1709(39); 8 NYCRR § 87.2(k)(3)(i).

Under the Vehicle and Traffic Law school districts may require that applicants for a position as a school bus attendant submit fingerprints and be subjected to a criminal history check. A school district also may choose to send the fingerprints to the Federal Bureau of Investigation (FBI) for a national criminal history record check. Vehicle and Traffic Law § 1229-d(2)(a).

The Vehicle and Traffic Law further allows school districts to rely on the same provisions that authorize the disqualification of school bus drivers for criminal convictions to disqualify bus attendants from employment for similar reasons. Vehicle and Traffic Law § 1229-d(2)(b). See also Section XV of this course book for a detailed discussion on the disqualification of school bus drivers.

However, the same as in the case of disqualifications based on the results of a criminal background check under the Education Law, disqualifications based on similar reasons under the Vehicle and Traffic Law are subject to the requirements of the New York State Corrections Law and Executive Law. Vehicle and Traffic Law §1229-d(2)(c). See also, Corrections Law §§752,753; Executive Law §§296(15),(16); 8 NYCRR §87.5(a)(4)(i),(iii).

Under both the Corrections Law and the Executive Law, applicants for employment may not be denied employment on the basis of possessing a criminal history unless: (1) there is a direct relationship between the prior criminal offense(s) and the specific employment position sought or held by the individual; or (2) hiring or continuing to employ the individual would involve an unreasonable risk to property or the safety or welfare of specific individuals or the general public. *Id.* See also, Educ. Law §3035(3).

XVIII. Transportation of Students with Special Needs In General

A. Relevant Laws and Regulations

There may be times when transportation personnel are asked to assist in some way with meeting the transportation requirements of students with special needs. Such students may have one or more physical, mental and/or emotional conditions, which can be short term or long term, and as a result require special transportation and/or attention in order to attend school.

Several laws and regulations govern the education of children with special needs:

- The Individuals with Disabilities Education Act (“IDEA”). This federal law guarantees all children with disabilities the right to a free and appropriate public education (“FAPE”) in the least restrictive environment (“LRE”).
- Section 504 of the Rehabilitation Act of 1973 (“Section 504”), which prohibits discrimination on the basis of disability.
- Title II of the Americans with Disabilities Act of 1994 (“ADA”), which prohibits discrimination on the basis of disability.
- Article 89 of the NYS Education Law (“Article 89”), and Part 200 of the regulations of the commissioner of education, which implement the IDEA in New York.
- New York State Human Rights Law §§ 290 *et seq.*, and its implementing regulations at 9 NYCRR § 466, which prohibits discrimination on the basis of disability.

B. General Information About Students with Special Needs

Most students with special needs receive needed services in accordance with the provisions of the IDEA and Article 89 of the New York State Education Law which serves to implement the federal requirements set out in the IDEA.

Some students with special needs, however, are not eligible to receive services under either of those statutes. Nonetheless, they may be entitled to services under Section 504 and/or the ADA.

Special Education Students

To qualify for “special education”, a student must meet one or more of the classifications of disability in the IDEA, Article 89, and the regulations of the commissioner of education, such as mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), emotional disturbance, orthopedic

impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities. 20 USC § 1401(3)(A); 8 NYCRR § 200.1(zz); Educ. Law § 4401(1).

School districts are obligated to provide special education, related services, and/or accommodations that will enable a student with a disability to receive a FAPE in the LRE. 20 USC §§ 1401(3), 1412; 34 CFR § 300.101-02; *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982). To ensure students receive a FAPE, schools must provide them with special education and/or related services, as specified on their individualized education program (“IEP”). 20 USC § 1401(9); 34 CFR § 300.17.

- “Special education” means specially designed instruction, or special services or programs, provided free and designed to meet the unique needs of the student.

It may be provided in a variety of locations, such as in the public school; in the home, the hospital or other special setting, if necessary; by using resource rooms and/or consultant teacher services; and through the use of “related services” and special transportation. 20 USC § 1401(29); Educ. Law § 4401(2).

Because a student may receive special education in a variety of physical locations, such as at the schools located within his or her district of residence, at a board of cooperative educational services (“BOCES”), at another public school, at a nonpublic school, at a residential program, or in a combination of these locations, additional transportation services may be necessary to ensure the student receives a FAPE.

- Related services may include special transportation and other supportive services, such as speech-language pathology, physical and occupational therapy, and social work and counseling. 20 USC § 1401(26); Educ. Law § 4401(2)(k); 8 NYCRR §§ 200.1(qq), 200.1(ss).

The student’s IEP sets forth the specialized instruction and services that the student will receive, and it must be created by the Committee on Special Education (“CSE”), or in the case of preschool students, the Committee on Preschool Education (“CPSE”).

- A CSE is composed of individuals specified by law (such as the student’s regular and special education teachers, a school psychologist, the parent/guardian, etc.) who meet to identify and evaluate the student, discuss the student’s needs and develop a program that will fit those needs. 20 USC § 1414(d)(1)(B); Educ. Law § 4402(1)(b)(1)(a); 8 NYCRR § 200.3(a)(1).
- The IEP essentially provides the plan for educating a disabled student.³¹ By reading a student’s IEP, school personnel who will be working with the student (including, where

³¹ It must include certain statutorily-specified information, including but not limited to the classification of the child’s disability, his/her present levels of academic achievement and functional performance, and the individual needs of the student in the areas of academic achievement, functional performance, learning characteristics, social and physical development, and management needs. 20 USC §§ 1401(14), 1414(d)(1)(A); 8 NYCRR §§ 200.1(y), 200.4(d)(2).

applicable, transportation personnel) can understand the nature of the student's disability and how the school will help him/her achieve success.

Section 504/ADA Students

Some students with special needs do not fall within one of the classifications in the IDEA. However, they may still be entitled to special education and/or related services pursuant to Section 504, and/or the ADA, because both Section 504 and the ADA contain broader definitions as to who may be deemed an individual with a disability. *See Appeal of a Child with a Handicapping Condition*, 32 Ed. Dep't Rep. 56 (1992); *Application of a Child Suspected of Having a Handicapping Condition*, SRO Dec. 92-12 (1992).

Under Section 504, a person with a disability is someone who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment. 29 USC § 705; 42 USC § 12102(1).

- Like the IDEA, the federal regulations implementing Section 504 require that school districts provide a FAPE in the LRE. School districts may do so by developing and implementing a plan similar to an IEP. 34 CFR §§ 104.33(b)(1), (2), 104.34(a), (b).
- The school must convene a team of individuals, often called a Section 504 Team or by a similar name, to develop a plan of services and/or accommodations ("the Section 504 Plan") to ensure the student receives a FAPE. 34 CFR § 104.33.

A student may receive special education and/or related services under the ADA if he or she is one "who, with or without reasonable modifications to rules, policies or practices, the removal of architectural, communication or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 USC § 12131(2).

- There may be students, for example, who suffer from a physical impairment that makes it difficult to attend school without the assistance of a wheelchair, and thus may need a special bus, and/or the help of adults to embark and disembark.
- Some students require a transportation accommodation for the duration of their school careers, while others may experience temporary or short term disabilities which necessitate special transportation on a more limited basis.

C. Duty to Provide Transportation For Students with Special Needs

Scope of Duty

1. Students with disabilities are entitled to "suitable" transportation, and whatever special accommodations or modifications are necessary to help them receive a FAPE. To summarize a school district's obligations in this regard,

“The IDEA specifically identifies transportation, including any modifications or accommodations necessary in order to assist a student to benefit from his or her special education, in its definition of related services. Transportation includes transport to and from school, between schools, as well as travel in and around schools. It includes specialized equipment (e.g. special or adapted buses, lifts and ramps) if required to provide specialized transportation. Specialized transportation must be included on a child’s IEP if required to assist the child to benefit from special education. When making determinations about a student’s transportation needs, CSEs are encouraged to include input from transportation personnel and persons with expertise in that area. The nature of the specialized transportation required for a particular child depends on the child’s unique needs, and it must be provided in the [least restrictive environment]. Safety procedures for transporting students are primarily determined by state law and local policy.” *Application of the New York City Board of Education, SRO*³² Dec. 06-002 (internal citations and quotations omitted).

2. Many disabled students’ transportation needs will be no different than for any other district student.
3. The student’s CSE or Section 504 Team must determine whether a student’s IEP or Section 504 Plan will include special provisions for transporting the student, whether that means assistance in boarding the bus, assistance riding the bus, or special equipment such as adapted buses, lifts and ramps.
 - The CSE/Section 504 Team must consider whether the student’s disability prevents him or her from using the same transportation provided to other students, or getting to school in the same manner as other students.
 - The CSE/Section 504 Team may consider the student’s mobility, behavior, communication skills and/or disabilities, his/her physical needs, and his/her health needs in making recommendations for special transportation supports and/or services.

For additional information, see NYS Education Department, “Special Transportation for Students with Disabilities” Memorandum from Dr. Rebecca H. Cort, March 2005 at: <http://www.vesid.nysed.gov/specialed/publications/policy/specialtrans.htm>, last accessed November 18, 2009.

Role of Transportation Personnel

1. Transportation personnel will be notified of students’ special needs by being given access to students’ IEP and/or Section 504 Plan, and for students with medical needs, a student’s

³² “SRO” is an abbreviation for “State Review Officer.” This individual reviews decisions of impartial hearing officers concerning the identification, evaluation, program or placement of children who have, or are suspected of having, an educational disability. Either a child’s parent or a school district may appeal to the State Review Officer requesting a review of an impartial hearing officer’s decision.

individualized health plan. Educ. Law § 4402(7)(a). There may be portions of a student's IEP/Section 504 Plan that school bus attendants must implement, such as ensuring the student receives one-on-one attention for the duration of the trip.

- Where the student has particular transportation needs, the IEP/Section 504 Plan must address each need. For example, the IEP/Section 504 Plan may state that the student requires special equipment such as adapted buses and ramps, because the student is wheelchair-bound, or requires additional supervision such as a one-to-one bus attendant due to the student's behavior problems. The IEP/Section 504 Plan must specifically state these special transportation needs, and the school district is obligated to implement them in order to ensure the student has access to a FAPE.
 - An IEP or Section 504 Plan might also alert drivers, monitors and attendants that a student will be participating in travel training while on the school bus. 34 CFR §§ 300.39(b)(4), (a)(2)(ii). Travel training is instruction that enables students with disabilities to become aware of the environment where they live, and learn skills necessary to move effectively and safely from place to place within that environment, such as how to safely ask for directions, how to interact with other travelers and the bus driver, how to determine which bus is the proper one to reach a certain destination, and the like. 34 CFR § 300.39(b)(4). Travel training may be provided by another adult from the school district, or an individual from the county or the SED. Some travel training may be provided while the student travels to and from school and/or other locations where the student's special education is provided. See, U.S. Department of Education, "Questions and Answers on Serving Children with Disabilities Eligible for Transportation" November 2009, at: <http://www.ed.gov>, last accessed January 12, 2009.
2. School bus drivers, monitors, and attendants may even be called by the CSE/Section 504 Team or manifestation team (discussed below) to contribute information concerning how the student is faring on bus trips, if specialized equipment on the vehicle is working properly on a regular basis, whether the IEP is being implemented, if the student's IEP or behavioral intervention plan (discussed below) should be adjusted to ensure a safe ride to school for all passengers, and the like. When this occurs, transportation personnel are encouraged to ask questions of supervisors, and the CSE Chairperson or Section 504 Team Chairperson, if necessary, to ensure that the student's needs are fully understood and that all aspects of the IEP/Section 504 Plan, as it relates to transportation, will be implemented. Additionally, based on the student's transportation needs, the CSE/Section 504 Team may wish to speak with transportation personnel to discuss details for how best to implement the IEP/Section 504 Plan. See, NYS Education Department, "Special Transportation for Students with Disabilities" Memorandum from Dr. Rebecca H. Cort, March 2005 at: <http://www.vesid.nysed.gov/specialed/publications/policy/specialtrans.htm>, last accessed November 18, 2009.

D. Duty to Maintain Confidentiality of Student Information

Individuals who will not be working with the student and/or implementing the IEP/Section 504 Plan are not entitled to review the document, as it is considered a confidential

education record under federal and state laws. 20 USC §§ 1412 *et seq* (Family Educational Rights and Privacy Act); Educ. Law § 4402(7)(b); 8 NYCRR § 200.2(b)(6); Part 99 of title 34 of the Code of Federal Regulations.

The Code of Federal Regulations (CFR) implementing the IDEA requires that anyone, including transportation personnel, who collect or use personally identifiable information about a child with a disability (such as the child's IEP or Section 504 Plan) must receive training about the state's policies and procedures for protecting the confidentiality of that information. 34 CFR § 300.123; 34 CFR part 99 (FERPA). Indeed, the US Department of Education has stated that

“Transportation providers play an integral role in the school lives of many children, including children with disabilities. Effective communication between schools and transportation providers is essential, including communication about transportation needs and potential problems of students with disabilities. To the extent appropriate, school personnel in [local districts] should ensure that school bus drivers or other transportation providers are well informed about protecting confidentiality of student information related to (1) the special needs of individual children with disabilities who ride on school buses with their general education peers, and (2) possible strategies and assistance that may be available to drivers (including the use of aides on buses).” U.S. Department of Education, “Questions and Answers on Serving Children with Disabilities Eligible for Transportation”, November 2009 at: <http://www.ed.gov>, last accessed January 12, 2009.

E. Transportation of Students Placed Out-of-District

Out-of-District Placement by the CSE

Students with disabilities who are placed by a CSE in a program located outside the school district also must receive suitable transportation, as specified in the IEP, to and from special classes and programs up to a distance of 50 miles from the student's home. Educ. Law § 4402(d)(4)(a), (d). Neither federal nor state law provides specific limitations on the duration (in terms of hours) of the trip.

- When a student is placed by the CSE in a residential program, the district must provide transportation, albeit in a more limited basis. The district is obligated to provide at least three round trips (between home and the residential school) for students attending a 10 month program, and four round trips for students attending a 12 month program. These trips are in addition to the first trip to bring the student to the school, and the last trip to bring the student home again. 8 NYCRR §200.12(a).
- Transportation for students with disabilities is considered an ordinary contingent expense. The district can receive transportation aid for trips up to 50 miles only when the student was placed in the residential setting by the school district (as opposed to a unilateral placement by the parent). 8 NYCRR §200.12(a).

- In addition, if the student's IEP requires an escort on the trips to and from a residential program, expenditures for the costs of the escort's travel, lodging and meals are aidable. The volunteer must also be hired pursuant to a transportation contract between the escort and the school district, "subject to a test of reasonable cost by the commissioner." 8 NCYRR §200.12(b).

Out-of-District Placement by Parents

Where a student with a disability is placed by his or parent in a nonpublic school with a program that is similar to the one the CSE recommended for the student (as opposed to the student attending the school because of a placement by the CSE), the student is entitled to transportation up to the 50 mile limit. Educ. Law § 4402(4)(d); see *Appeal of a Student with a Disability*, 48 Ed. Dep't Rep. 223 (2008). Pursuant to Education Law § 4401(4), the cost of such transportation is eligible for state aid.

Out-of-District Placement by State or Local Agencies

Several state and local agencies, such as the Department of Social Services (DSS), Department of Mental Hygiene (DMH), Office of Mental Health (OMH) and Office of Mental Retardation and Developmental Disabilities (OMR/DD), can be involved in the placement of students outside their parents'/guardians' homes and in family homes, intermediate care facilities, and the like.

Any questions regarding a school district's responsibility for providing transportation services to such students should be addressed to the Office of Education Management Services at the New York State Education Department at (518) 474 6541.

F. Student Behavioral Issues

School district transportation personnel must be cognizant of the fact that special laws and rules apply when students with disabilities, or students suspected of having a disability for discipline purposes³³ act out on a school bus or otherwise violate the district's code of conduct while receiving transportation from the district.

They also need to be cognizant of the fact that, in some instances, students with special needs may present behavioral issues on a school bus not out of disregard for code of conduct requirements, but because the nature of their disability makes it difficult for them to ride on the school bus without incident.

³³ A student suspected of having a disability for discipline purposes is a student entitled to the same disciplinary protections under the IDEA and New York State Education Law and regulations as students with disabilities. The distinction between the two is that the student suspected of having a disability has not yet been formally classified as having a disability.

The Basics of Disciplining Students with Special Needs

1. Under the IDEA, New York's Education Law and regulations of the commissioner of education, a student with a disability or a student suspected of having a disability for discipline purposes may not be suspended or removed from school if the suspension or removal would result in a "disciplinary change of placement." 20 USC § 1415(k)(1)(B), (C); 8 NYCRR § 201.7(d), (e), § 208.

A disciplinary change in placement occurs when a student with a disability is suspended for more than 10 consecutive school days, or for shorter periods of time throughout the course of the school year and the discipline constitutes a pattern (such as similar past behavior, and frequency of suspension). 34 CFR § 300.536(a); 8 NYCRR § 201.2(e).

2. A student with a disability may only be suspended for more than 10 days (cumulatively or consecutively) if the student's "manifestation team" determines that the student's behavior was not a manifestation of his or her disability.³⁴
 - The manifestation team's task is to determine whether the student's conduct was caused by, or had a direct and substantial relationship to the student's disability, or if the conduct was the direct result of the school's failure to implement the IEP. 20 USC § 1415(k)(1)(E)(ii); 8 NYCRR §§ 201.4(b), (c).
 - By law, the team is composed of school personnel who know the student, and can interpret information about his or her behavior. The student's parent(s) and other CSE members are also part of the team. 20 USC § 1415(k)(1)(E)(ii); 8 NYCRR § 201.4(b).
 - The manifestation team reviews pertinent information in the student's file to make this determination, such as the IEP, teacher observations, and any relevant information provided by the student's parents. There are time limits imposed upon the manifestation team to make this determination as quickly as possible. 20 USC § 1415(k)(1)(E); 34 CFR § 300.530(e)(i); 8 NYCRR § 201.4(a).³⁵
3. If the behavior is a manifestation of the student's disability, the CSE must conduct a special evaluation, called a functional behavioral assessment (FBA), and implement a behavior intervention plan (BIP) for the student. No further disciplinary action may be taken against the student, unless the parent and school district agree to a change in the student's special education placement as part of a modification to a student's IEP or a BIP that is already in place. 20 USC § 1415(k)(1)(F); 8 NYCRR §§ 201.3, 201.4(d), 201.8(f).

³⁴ A disabled student may also be suspended for more than 10 days and placed in an interim alternative educational setting for inflicting serious bodily injury upon someone else, for behavior related to weapons, for behavior relating to illegal drugs or controlled substances, or for conduct that poses a risk of harm to the student or others. 20 USC § 1415(k)(1)(C); 34 CFR § 300.53(c); 8 NYCRR §§ 201.7(d), (e), 201.8.

³⁵ The determination must be made immediately, if possible, but no later than 10 school days after a school official makes a decision to take disciplinary measures against the student that involve a change of placement. 20 USC § 1415(k)(1)(E); 34 CFR § 300.530(e)(1); 8 NYCRR § 201.4(a).

4. If the manifestation team finds that no manifestation of the student's disability led to the student engaging in the conduct at issue, the student can be disciplined in the same way as a student without a disability. *Appeal of a Student with a Disability*, 35 Ed. Dep't Rep. 17 (1995). See also, NYS Education Department Policy #99-04, December 1999 at: <http://www.vesid.nysed.gov/specialed/publications/policy/ch311final.html>

Behavioral Issues in Transportation

1. As noted earlier, some students with disabilities require special transportation in order to receive a FAPE. As a matter of practice, some IEPs may note that a student has behavioral problems associated with his or her disability that make it difficult for the student to ride a bus without incident.

When this is the case, the CSE must make appropriate recommendations to ensure the student can be transported to school without presenting a danger to him- or herself or others. This may involve, for example, assigning the student a one-on-one aide for the duration of all bus trips, or transporting the student in a separate vehicle.

2. The protections discussed above regarding the discipline of students with disabilities would prevent a suspension from transportation against any such student if their IEP includes transportation as a required service and their actions in violation of the district's code of conduct or similar to those that would expose non-disabled students to discipline is a manifestation of their disability.

- The one exception would be if the school district is able to provide alternative transportation that meets the requirements of the IEP.
- This is true no matter if the suspension from transportation constitutes 10 or more consecutive school days, or if the transportation suspensions cumulatively reach 10 days in one school year and the suspensions form a pattern.

The reason is that a suspension from transportation as discipline for engaging in behavior that violates the code of conduct may actually deny the student the opportunity to receive a FAPE as guaranteed by federal and state law. OCR Response to Inquiry, 20 IDELR 864 (1995). See also, U.S. Department of Education, "Questions and Answers on Serving Children with Disabilities Eligible for Transportation" November 2009, at: <http://www.ed.gov>, last accessed January 12, 2009.

3. If transportation personnel believe that a student cannot receive transportation without presenting a significant interference to the safety of others, transportation supervisors should be alerted, who will contact a school administrator and/or CSE chairperson to discuss the issue.
 - Many times, changes to the IEP can be made that would permit the student to continue to receive transportation while ensuring the continued safety of transportation personnel and other students.

- These changes, however, cannot be made until the CSE convenes and the IEP is modified during a CSE meeting. 20 USC §1414(d)(3)(F), (4)(A)(ii); 8 NYCRR §200.4(d)(2), (4)(i).

Further, because as noted above students with disabilities and those suspected of having a disability for discipline purposes are entitled to extra protections under the law prior to being disciplined, transportation personnel may consider referring even informal disciplinary problems involving these students directly to the building principal and/or CSE chairperson to ensure the student's rights under applicable federal and/or state disability laws are not violated.

G. Decisions of Interest

1. *Appeal of CC and EC*, 48 Ed. Dep't Rep. 528, Dec. 15,938 (2009) - The commissioner of education upheld a district's refusal to provide transportation from a student's home to the public school he attended in another school district as a tuition-paying, non-resident pupil. The student had been identified as requiring accommodations and his parents claimed the other district provided services essential to meet his educational needs. However, the district of residence also offered special educational services. His parents simply preferred that he attend the other district.

The commissioner explained that a district is not obligated to provide transportation to students enrolled in the public schools of another district, if it offers an instructional program for such students.

2. *Appeal of a Student with a Disability*, 48 Ed. Dep't Rep. 223, Dec. 15,844 (2008) - Under the Education Law a school district must provide transportation up to a distance of 50 miles one way for a disabled student who attends a nonpublic school for the purpose of receiving special education services similar to those recommended by the district's CSE. However, that provision is silent as to how to measure distance for transportation eligibility purposes. In this case, the parents produced driving directions from two internet websites that showed their home was 49.4 miles from the school their son attended. The district measured the distance as greater than 50 miles traveling on a highway, and argued it was safer and more fuel efficient to travel via that route.

The commissioner held that the district should have determined the student's eligibility for transportation in the same manner as nondisabled students under different provisions of law. Under those provisions, the distance between a child's home and school for transportation eligibility purposes is measured along the "nearest available route". The commissioner ordered the district to provide transportation to the student since the nearest available route measured within the statutory distance limitation.

3. *Appeal of a Student with a Disability*, 44 Ed. Dep't Rep. 136, Dec. 15,124 (2004) - After a bus driver reported to the school principal that a student on her bus threatened her and used profane language, the principal suspended the student for 5 days and referred the student to the superintendent for a hearing pursuant to Education Law § 3214 (to suspend the student in excess of 5 days). Following a finding of guilt and a manifestation hearing where the CSE determined no manifestation of the student's disability existed, the student was suspended from school for 3 months and suspended from bus transportation for the remainder of the school year.

While the short-term suspension was expunged from the student's records because the district failed to follow the statutorily required procedural steps before suspending the student, the long-term suspension was upheld. The commissioner noted that it is appropriate to suspend a student when his conduct is insubordinate or disorderly, or endangers the safety, morals, health or welfare of others. The hearing officer credited the bus driver's testimony during the suspension hearing that the student engaged in the alleged behavior, and the commissioner will not substitute his judgment for that of the hearing officer's in matters regarding witness credibility unless there is clear and convincing evidence that the credibility determination is inconsistent with the facts.

4. *Application of a Child with a Disability*, SRO Dec. 97-36 (1997) - Parents appealed from a decision of an impartial hearing officer denying them transportation from a private after-school program (which the parents paid for) to their home. The CSE did provide transportation from the nonpublic school where the CSE placed the student to the after-school program, but refused to transport the student home.

The SRO ruled that the real issue in the case was whether the district's transportation policy significantly limited the child's access to extracurricular activities. School districts are not obligated to provide a child with a disability with each service the district makes available to children without disabilities. However, the district cannot discriminate against children with disabilities by applying different transportation rules to them. In this district, non-disabled students received late bus service home from school when they participated in the district's after-school and extracurricular programs. Thus, the SRO ruled, the fact that the CSE placed the student at a nonpublic school cannot be used by the district to deny him the same after-school, late bus service he would be entitled to receive if he were enrolled in the district's schools.

XIX. Transportation of Students with Special Needs Health and Safety Considerations

A. Medical Issues

In General

Students with special needs may have special health and medical issues and needs. School bus drivers, attendants, and monitors should be aware of them, particularly those that may affect a student's ride on a school bus. Some of those conditions may include, for example:

- Seizure disorders.
- Diabetes.
- Narcolepsy.
- Chronic illness.
- Other medical condition which could threaten a student's safety while being transported to and from school.

These conditions and their treatment may be documented on a student's individualized health plan, which should be shared with all school personnel who will be in contact with the student. See, NYS Education Department, "Making the Difference: Caring for Students with Life-Threatening Allergies", June 2008 available online at: <http://www.emsc.nysed.gov/sss/schoolhealth/schoolhealthservices/AnaphylaxixFinal162508.pdf>

Epi-pens

School bus drivers, monitors and attendants should be made aware, for example, of students who are required to carry epinephrine auto-injectors (also known as "epi-pens") because of severe allergies.

- Epi-pens inject epinephrine into a person's body to counter the effects of an anaphylactic reaction, whether such reaction is caused by food, bees, certain materials (such as latex), and the like.
- When a student carries an epi-pen, transportation personnel who will be working with the student should be aware of this fact and know what may trigger a student's allergic reaction.

School nurses and physicians are permitted to train school personnel who are unlicensed to practice medicine in the use of an epi-pen in an emergency situation where a nurse or other licensed individual is unavailable. See, NYS Education Department, "Use of Epinephrine Auto-Injector Devices in the School Setting", June 2002 available online at:

<http://www.emsc.nysed.gov/sss/schoolhealth/schoolhealthservices/epipenuse.html>, last accessed January 14, 2010.

Helpful Suggestions

While not required by law, the New York State Education Department recommends that a school district, board of cooperative educational services (BOCES) or bus company inform local emergency responders that particular buses are transporting students who are medically fragile or have particular needs that may be important for responders to know about in case of an accident, such as medical conditions, children who must be transported in safety restraints, and the like.

The district, BOCES or contractor may consider seeking parent permission to carry student health data cards on the school bus so that in the event of an emergency, emergency responders can quickly review the data cards and learn information which may be critical to the care of the students. See, NYS Education Department, "District Safety Review – Pupil Transportation, July 2006" at: http://www.ptsi.org/downloads/2006_NYSED_DER_final.pdf, last accessed February 8, 2020.

B. Emergency Drills

As discussed in another section of this course book, all students must receive training in emergency drills.

- Students with special needs must also participate in emergency bus drills, as fully as they are able.
- Drills may need to be adapted to the specific health/disability of the students on the bus.
- Additional staff may be necessary to assist these students during the emergency drills. 8 NYCRR § 156.3. See also, NYS Education Department, "District Safety Review – Pupil Transportation, July 2006" referenced above.

C. Special Equipment Requirements

Department of Transportation Requirements

1. The Regulations of the New York State Department of Transportation require that school buses designed for transporting students with special needs comply with certain national and state standards. 17 NYCRR § 720.8(B).
2. All school buses transporting students with disabilities must comply with the various safety requirements set forth in the Department of Transportation's regulations at 17 NYCRR § 720.4 pertaining to school buses, as well as the requirements set forth in 17 NYCRR § 720.8(B). 17 NYCRR § 720.8(B)(3).

The above referenced regulations of the Department of Transportation regarding school bus safety requirements for students with special needs address the following areas:

- Forward facing wheelchairs
- Securement and occupant restraint systems
- Power lifts and ramps
- Aisles and aisle clearance specifications
- Disabled symbols on the bus
- Passenger lettering capacity
- Power lifts
- Vehicle ramps
- Restraint devices
- Seating arrangements
- Securement and restraint systems for wheelchair/mobility aid and occupants
- Wheelchair/mobility aid securement system
- Occupant restraint system
- Dynamic testing
- Special lights
- Special service entrances
- Special service entrance doors
- Support equipment and accessories
- Fire control
- Interior width requirements, and
- Waivers of provisions relating to wheelchairs. 17 NYCRR § 720.8(B)(1)-(22).

3. Some examples of more specific examples include the following:

- A bus manufactured on or after January 17, 1994 must comply with Federal Motor Carrier Safety Administration regulation 571.22, regarding forward-facing wheelchairs, wheelchair securement and wheelchair occupant restraint. Additionally, school buses used to transport wheelchair-bound children must be equipped with a power lift, unless a ramp is needed for child-specific circumstances. 17 NYCRR § 720.8(B)(4).
- Buses manufactured on or after July 1, 1990 and fueled with other than diesel fuel that are used to transport three or more wheelchairs, or with a capacity of more than eight passengers and used to transport non-ambulatory students, must be equipped with an automatic fire extinguishing system and/or automatic device to warn the driver of fire in the engine compartment. 17 NYCRR § 720.8(B)(20)(a).
- Buses used to handle wheelchairs must have fire block upholstery on all padded seats, and padded panels designed to protect wheelchair passengers that are fire retardant. 17 NYCRR §§ 720.8(B)(20)(c).

School districts using contractors for transportation of students with special needs should ensure that the contractors comply with all equipment and safety requirements. Clearly, the

Department of Transportation's safety regulations in this regard are numerous. The foregoing safety and equipment requirements are provided for illustrative purposes, and are not exhaustive. Any school transportation personnel with questions and concerns as to whether a school bus is properly equipped should be directed to transportation supervisors and, if necessary, the school attorney.

Vehicle and Traffic Law Requirements

Additionally, New York's Vehicle and Traffic Law states that buses used to transport students with disabilities on a regularly scheduled route shall, with the written consent of the parent, guardian, or person in parental relationship, maintain on the bus the following information about the student:

- The student's name;
- The nature of the student's disability; and
- The name of the student's parent, guardian, or person in parental relationship and one or more telephone numbers where such person can be maintained in case of emergency, and/or the name and telephone number of any person designated by the parent, guardian or person in parental relationship who can be contacted in case of emergency. Vehicle and Traffic Law §§ 375(20)(1)(1)(i)-(iii).

For purposes of this section of law, the term "disability" means a physical or mental impairment that substantially limits one or more major life activities of the pupil, whether of a temporary or permanent nature. Vehicle and Traffic Law § 375(20)(1)(4).

The student information mentioned above is only to be used in case of an emergency involving that particular student.

- It must be maintained in a way that retains the student's privacy, and must not be accessible to anyone other than the driver or a teacher acting in a supervisory capacity. In the event the driver or such teacher is incapacitated, however, the information may be accessed by an emergency services provider. Vehicle and Traffic Law § 375(20)(1)(2).
- The information can be updated as needed but must be done at least once per year. The information must be destroyed if parental consent is revoked, the student is no longer enrolled in school, or the disability no longer exists. Vehicle and Traffic Law § 375(20)(1)(3).

D. Decisions of Interest

1. *Application of the New York City Board of Education, SRO Dec. 06-002 (2002)* - The New York City board of education appealed a determination of an impartial hearing officer that awarded a parent of a student with a disability transportation via car service to the student's

private tutor (specified on the student's IEP) when the temperature outside was below 30 degrees Fahrenheit at 11:00 a.m. The Board alleged that no medical evidence supported the parent's request for private transportation, only that he requires transportation between school and the location of the tutor. Additionally, the impartial hearing officer's order did not specify who would take the outside temperature, where the temperature should be taken, and the like.

The State Review Officer (SRO) sustained the board's appeal. He noted that although the student's IEP indicated he had asthma, no medical statement supported the need for private transportation over the public transportation being provided by the school district (even though it occasionally required bus transfers and a 2 hour trip to transport the student from school to the tutoring center. The medical statement also did not contain sufficient facts to support the hearing officer's conclusion that 30 degrees Fahrenheit should demark when private transportation would be provided. The student was not denied a FAPE by virtue of being given public transportation, so the order was overturned. The parties were encouraged by the SRO to work cooperatively to locate a tutor who could provide services closer to the student's public school and his home to reduce the travel time and out-of-doors exposure for the student.

2. *Application of a Child with a Disability*, SRO Dec. 01-042 (2001) - A student with multiple disabilities, including conduct disorder, was recommended by his CSE to attend a program over the summer located at a nearby BOCES. At the CSE meeting the parent requested an air-conditioned bus for the student, due to the student's temperature dysregulation and excessive sweating from medication he was taking. The parent was unable to produce a doctor's note from his physician to substantiate these claims. The school physician reviewed correspondence from the student's doctor and made an informed decision that no air-conditioning was necessary. On these facts the impartial hearing officer determined that the CSE did not err in failing to include an air-conditioned bus on the student's IEP.

The SRO upheld the decision of the impartial hearing officer, noting that although a school district is required to provide suitable transportation to and from special classes or programs, no evidence was available to demonstrate that an air-conditioned bus was necessary for the student to receive a FAPE. While an air-conditioned bus would constitute specialized transportation equipment if a student required same to access his education, that was not the case here.

XX. Student Conduct on School Buses

It is well established that in order to ensure student safety, a board of education may regulate the conduct of students including while they are being transported by the school district. A board also has discretion to determine the method of discipline for misbehavior occurring during transport. *Matter of Roach*, 19 Ed. Dep't Rep. 377 (1980). See also, *Appeal of Pennett*, 40 Ed. Dep't Rep. 227 (2000); *Appeal of Kearbey*, 29 Ed. Dep't Rep. 68 (1989).

Although misconduct while being transported can expose a student to a varied range of disciplinary measures, the commissioner of education has determined that in a situation where such misconduct is sufficiently serious, the board of education has authority to terminate the transportation services offered to such student. See *Matter of Roach*, 19 Ed. Dep't Rep. 377 (1980); *Appeal of Pennett*, 40 Ed. Dep't Rep. 227 (2000); *Appeal of Kearbey*, 29 Ed. Dep't Rep. 68 (1989).

A. Standard of conduct

General Rule

Student conduct is generally governed by the code of conduct which all school districts, boards of cooperative educational services (BOCES), and county vocational extension boards must adopt and enforce for the maintenance of order on school property and at school functions. Educ. Law §2801(2); 8 NYCRR §100.2(l)(2)(i).

- For purposes of a school district's code of conduct, the term "school property" includes the terms **in or on a school bus**, whether owned and operated by a district or by a carrier a district contracts with for the transportation of its students. Educ. Law §2801(1); *Appeal of M.H.*, 43 Ed. Dep't Rep. 210 (2003).
- The term "school function" refers to school-sponsored or school authorized extra-curricular event or activity regardless of where such event or activity takes place, including another state. *Id.*

Therefore, a school district's code of conduct applies equally to all students riding a school bus.

Additionally, any violent and disruptive incidents which occur on a school bus are subject to the reporting requirements outlined in the regulations of the commissioner of education. 8 NYCRR §100.2(gg).

Code of Conduct Contents

The Education Law and regulations of the commissioner of education set out the minimum requirements for a school district's code of conduct.

Pursuant to those minimum requirements, a school district's code of conduct must include, for example:

- Provisions regarding conduct including, but not limited to, acceptable civil and respectful treatment of teachers, school administrators, other school personnel, students and visitors on school property and at school functions.
- The appropriate range of disciplinary measures which may be imposed for code violations.
- The role of teachers, administrators, other school personnel, the board of education and parents.
- Disciplinary measures for incidents involving illegal substances or weapons, the use of physical force, vandalism, violation of another student's civil rights and threats of violence.
- Procedures for reporting and determining violations of the code and for imposing and carrying out disciplinary measures.
- Provisions for ensuring the code and enforcement of the code comply with federal and state laws relating to students with disabilities.
- Procedures for notifying parents of code violations, and local law enforcement agencies of code violations that constitute a crime.
- A student bill of rights and responsibilities that focuses on positive student behavior that must be publicized and explained to all students annually.
- Guidelines and programs for in-service education programs for all district staff to ensure effective implementation of the code. Educ. Law §2801(2); 8 NYCRR §100.2(1)(2)(ii).

Other Restrictions on School Bus Behavior

1. A school district also has the authority to restrict what type of objects students may bring onto a school bus.

As discussed in other sections of this course book,

- Regulations of the New York State Department of Transportation require that the main aisle and the aisle to the door of a school bus may not be obstructed. 17 NYCRR §721.4(a)(11).
- The commissioner of education has upheld a school district policy prohibiting students from carrying items on the bus which could not fit on their laps, including all musical

instruments other than flutes or clarinets, hockey sticks, lacrosse sticks, baseball bats, ski equipment, large equipment bags, large art displays, and any other item of similar size and shape. *Appeal of Moyer*, 37 Ed. Dep't Rep. 335 (1998).

2. As also discussed in other sections of this course book, it is unlawful for a school bus to operate with any standing passengers except during the first ten days of session in each school year, and in circumstances where a breakdown, accident, or other unforeseen occurrence necessitates the transportation of standing passengers. Educ. Law §3635-c; Veh. & Traf. Law §1229-b.

Monitoring Behavior on School Buses

Video cameras may be used on school buses that transport students. 8 NYCRR §156.9(d)(1).

These cameras may be used to record the students' conduct to ensure their safety and to serve as evidence of their conduct for disciplinary purposes, if necessary. See, *Appeal of Burrows*, 39 Ed. Dep't Rep. 212 (1999).

B. Relevant Disciplinary Measures

Authorized Penalties

Pursuant to the Education Law, school districts have broad discretion regarding the types of disciplinary measures they may impose on students who violate the district's code of conduct. Educ. Law §2801(2); 8 NYCRR §100.2(l)(2)(ii).

1. The types of discipline school districts may impose for such violations include, for example:
 - Verbal or written warnings.
 - Written notification to the student's parents or guardians.
 - Probation.
 - Reprimand.
 - Detention.
 - Suspension from transportation.
 - Suspension from athletic events, and social or extracurricular activities.
 - Suspension from other privileges.

- In-school suspension
 - Out of school suspension.
2. Consistent with school policy, students may be assigned seats on a school bus for both safety and disciplinary reasons. That was the case where the commissioner of education upheld a school district's actions in assigning a specific seat to a student who was the subject of teasing and harassment. *Appeal of Burrows*, 39 Ed. Dep't Rep. 212 (1999).
 3. A particular disciplinary penalty, including suspension from transportation, will be deemed appropriate as long as:
 - It is proportionate to the severity of the misconduct for which it is being imposed, and
 - Is not so excessive as to warrant the commissioner of education to substitute his judgment for that of school officials. See, *Appeal of Kearbey*, 29 Educ. Dep't Rep. 68 (1989). See also, *Appeal of Roach*, 19 Ed. Dep't Rep. 377 (1980).

An indefinite suspension from transportation is not appropriate. See, *Appeal of Roach*, 19 Ed. Dep't Rep. 377 (1980).

4. Students who misbehave on a school bus may be suspended from school subject to applicable due process provisions set out in the Education Law, further discussed below.

That was the case where a student used a grill igniter multiple times to shock another student on a school bus. *Appeal of a Student with a Disability*, 45 Ed. Dep't Rep. 396 (2006).

Similarly, the commissioner of education also upheld the suspension from school of a student who threatened others on a school bus with a razor blade. *Appeal of K.M.*, 41 Ed. Dep't Rep. 318 (2002).

Discipline Procedures Applicable to School Suspensions

Education is a right protected by the New York State Constitution and the Education Law. (N.Y. Const. Art. XI, §1; Educ. Law §§3202(1); 3205).

Therefore, students who violate their school district's code of conduct cannot be suspended from school and deprived of this right unless school officials follow the procedures established in the Education Law and regulations of the commissioner of education that afford students due process rights. For example,

- Before school officials can impose a short-term out of school suspension of five days or less, they must give the student and his or her parents notice of the charged misconduct, notify parents of their right to an informal conference to discuss the charges, and give parents and the student the opportunity to participate in such a conference with the building principal. Educ. Law §3214(3)(b)(1); 8 NYCRR §100.2(1)(4).

- Long-term suspensions of more than five days require a superintendent's hearing at which students may bring their parents, and also have the right to be represented by an attorney or other counsel, to testify on their own behalf and present witnesses and other evidence on their own behalf, and to cross-examine witnesses against them. Educ. Law §3214(3)(c).

Discipline Procedures Applicable to Suspension from Transportation

Although, as mentioned above, at student who misbehaves on a school bus can be suspended from school, he or she may be suspended from transportation without being suspended from school.

The commissioner of education has ruled, however, that unlike school attendance, transportation to and from school is not an absolute right. Instead, it is an entitlement that is limited by factors such as distance between home and school, and the type of school district involved. *Matter of Roach*, 19 Ed. Dep't Rep. 377 (1980).

As a result, a student's suspension from transportation is not subject to the type of hearing that applies to out of school suspensions. What is required, instead, is:

- An informal conference, prior to the suspension, between the student, parent and school official authorized to impose discipline to discuss the factual situation underlying the threatened suspension from transportation. See, *Appeal of R.D.*, 42 Ed. Dep't Rep. 237 (2003); *Appeal of McGraw*, 28 Ed. Dep't Rep. 84 (1988); *Appeal of Roach*.
- School districts must be reasonably certain that the student to be suspended from transportation actually was involved in the misconduct supporting the suspension. *Appeal of Hale*, 30 Ed. Dep't Rep. 26 (1990).

Authority to Suspend Transportation Privileges

The authority to suspend a student's transportation privileges lies with the board of education and/or other authorized school official.

- A school bus driver may not unilaterally suspend a student's transportation privileges by, for example, ordering a student to leave the bus. See, *Appeal of Pennett*, 40 Ed. Dep't Rep. 227 (2000).
- According to the commissioner of education, a school bus driver's actions in unilaterally suspending such privileges would be inconsistent with a board of education's duty to ensure student safety.

It also would violate a parent's right to an informal discussion with school officials authorized to impose a suspension from transportation prior to the suspension. *Id.*

C. Misbehavior at School Bus Stops

School districts have the authority to suspend students for off-campus behavior. As a result, students may be disciplined for misconduct at a bus stop.

That was the case where the commissioner of education upheld the long-term suspension of two students who stole another student's cell phone and book bag after disembarking the school bus at the end of the school day. *Appeal of W.T.*, 46 Ed. Dep't Rep. 363 (2007).

Similarly, the commissioner also upheld the suspension of students who displayed and used knives to poke holes in another student's back packs and used matches at a bus stop. See, *Appeal of C.Q.*, 41 Ed. Dep't Rep. 294 (2002); *Appeal of Jayme K.*, 40 Ed. Dep't Rep. 114 (2000).

D. Effects of Suspension from Transportation

When a district suspends a student's transportation privileges, the parents or guardian of the child involved become responsible for seeing that the child gets to and from school.

However, if suspending a student from school transportation amounts to a suspension from school attendance because of the distance between home and school and the unavailability of an alternative public or private means of transportation, a district must make "appropriate arrangements" to provide for the student's education. *Matter of Stewart*, 21 Educ. Dep't Rep. 654 (1982).

- According to the commissioner of education, a suspension of transportation privileges may not have the effect of depriving the student of education. *Matter of Stewart; Matter of Roach*, 19 Educ. Dep't Rep. 377 (1980).
- As discussed in another section of this course book, if transportation is a related service required by the individualized education program (IEP) of a student with disabilities, suspension from transportation for an unruly student with disabilities is subject to the same due process protection that applies to the discipline of students with disabilities also discussed in another section of this course book. The only exception applies if a school district provides the student transportation by other means. OCR Response to Inquiry, 20 IDELR 864 (1993).

E. Reimbursement for Student Damage to School Buses

Section 3-112 of the General Obligations Law provides that a parent or legal guardian of a child between 10 and 18 years of age may be liable for the malicious damage caused by the child to the property (real and personal) of others with a minimum amount of \$500 and a maximum amount of \$5,000.

That statute also authorizes school districts to file a lawsuit to obtain such recompense.

Accordingly, a board of education has the authority to seek reimbursement from parents or guardians for damages their child(ren) may inflict to a school bus.

XXI. Liability for School Transportation Related Injuries

Liability for school transportation related injuries entails the financial responsibility to pay a person or entity, or to otherwise remedy a wrong, when there is injury or damage to such person or entity due to the wrongful action or inaction of the school district, school board members, or their employees.

As a general rule, school districts carrying liability insurance generally are protected to the limits of such insurance. Above these limits, and under any applicable deductible in the insurance policy, the responsibility to pay the claim rests with the school district.

A. Student Injuries When District Provides Transportation

Duty of Care

School districts are liable for the supervision and safety of students who are within their physical custody or authority. However, a school district has only the duty to exercise the same degree of care toward its students as would a reasonable, prudent parent under comparable circumstances. *Mirand v. City of New York*, 84 N.Y.2d 44 (1994); *Shante D. by Ada D. v. City of New York*, 190 A.D.2d 356 (1st Dep't 1993), *aff'd*, 83 N.Y.2d 948 (1994); *Lawes v. Bd. of Educ.*, 16 N.Y.2d 302 (1965).

Should a breach of this duty by either the school system, board members or their employees result in an injury to a student, the school district may be held liable in negligence.

Accidents When Students Are Not On Board a School Bus

1. Generally, school districts are not liable for the supervision and safety of students prior to boarding or after disembarking from a school bus. *Pratt v. Robinson*, 39 N.Y.2d 554 (1976); *Hanley v. East Moriches UFSD II*, 275 A.D.2d 389 (2d Dep't 2000); *Fornaro v. Kerry*, 139 A.D.2d 561 (2d Dep't 1988); Vehicle & Traffic Law §1174(b); 8 NYCRR §156.3(d).
 - Custodial control and responsibility at those times rest with the parents. *Pratt v. Robinson*.
 - In this regard, it has been ruled that a school district is not liable for injuries sustained by a student who leaves the custody of the district by exiting from a school bus prior to reaching school, or getting off before his or her regular bus stop at the end of the school day even if that student's conduct violates school policy. *Bushnell v. Berne-Knox-Westerlo Sch. Dist.*, 125 A.D.2d 859 (3d Dep't 1986), appeal denied, 69 N.Y.2d 609 (1987); *Hurlburt v. Noxon*, 149 Misc. 2d 374 (Sup. Ct. Chenango Co. 1990).
2. There is no general duty to assure that students get on the school bus. Therefore, a school district would not be found negligent where a student who fails to get on the school bus gets

injured. *Wenger v. Goodell*, 288 A.D.2d 815 (3d Dep't 2001); *Briggs v. Rhinebeck CSD*, 2 A.D.2d 383 (2d Dep't 2003)).

However, a district that promises to ensure a child gets on a school bus would be liable in negligence for injuries a child sustains as a result of its failure to keep the promise. That would be so because the district would be deemed to have assumed a special duty to protect the student through the making of the promise. *Wenger v. Goodell*; see also *Cerni v. Zambrana*, 271 A.D.2d 566 (2d Dep't 2000).

3. According to one state appellate court, a district would have been subject to liability in a case where a high school student got injured after leaving school in the car of a fellow student with a valid driver's license, if it had been foreseeable that allowing him to do so would have resulted in the student being injured in a collision accident. *Briggs v. Rhinebeck CSD*; see also *Davis v. Marzo*, 55 A.D.3d 1404 (4th Dep't 2008) (school district was not liable for deaths of two students who left school on lunch break in fellow student's car as school district had no notice that driver was incompetent).
4. A school district may be liable for a student's injuries when a district releases students into a foreseeable hazardous situation the district itself played a role in creating. It happened where a district deviated from its normal practice of not releasing students who walk home from school until after all the school buses were gone. As a result, one of those students was hit by a pickup truck when crossing the road in front of the school while school buses were still departing. The pickup driver's view was obstructed by a moving school bus. *Ernest v. Red Creek CSD*, 93 N.Y.2d 664 (1999).
5. School districts that transport students to and from school may be liable for their own negligence in failing to provide a "reasonably safe mode of conveyance." *Williams v. Bd. of Trustees*, 210 A.D. 161 (1924); see also *Blair v. Bd. of Educ.*, 86 A.D.2d 933 (3d Dep't 1982). That is the case even though, generally, districts would not be liable for the negligence of a bus company hired as an independent contractor to provide student transportation services, or for the negligence of that company's employees. *Chainani v. Bd. of Educ. of the City of New York*, 87 N.Y.2d 370 (1995).

Injuries When Students Are On Board a School Bus

1. A school district may be found liable for student injuries occurring on buses caused by third parties as a result of the district's failure to provide adequate supervision. *Mirand v. City of New York*, 84 N.Y.2d 44 (1994).
 - In order to prove liability the plaintiff must show school authorities had specific knowledge or notice of the dangerous conduct which caused the injury. See *Mirand v. City of New York*; *Bertola v. Board of Educ. Of City of N.Y.*, 1 A.D.2d 973 (1st Dep't 1956).
 - For instance, a school district was not liable for the injuries a student sustained when he was allegedly sexually assaulted by two other students on a school bus because the

district did not have prior notice of such conduct and cannot be liable for all of the “spontaneous acts that take place among students daily.” *Andrew T.B. v. Brewster Central School Dist.*, 67 A.D.3d 837 (2d Dep’t 2009).

2. A school district may be held vicariously liable for torts³⁶ committed by an employee in the course of his or her duties. *Murray v. Watervliet School Dist.*, 130 A.D.2d 830 (3rd Dep’t 1987); *Riviello v. Waldron*, 47 N.Y.2d 297 (1979).

An act is considered to be within the scope of employment if it is performed while the employee is engaged generally in the business of his employer no matter how irregularly performed or with what disregard of instructions; or if the act may reasonably be said to be necessary or incidental to such employment. *Riviello v. Waldron*; *Murray v. Watervliet School Dist.*; *Holmes v. Gary Goldberg & Co.*, 40 A.D.3d 1033 (2d Dep’t 2007).

Relevant factors include:

The connection between the time, place and occasion for the act; the history of the relationship between employer and employee as spelled out in actual practice; whether the act is one commonly done by such an employee; the extent of departure from normal methods of performance; and whether the specific act was one that the employer could reasonably have anticipated. *Riviello v. Waldron*.

3. A school district, as an employer, will not be liable for the acts committed by an employee for personal motives which are unrelated to the furtherance of the employer’s business. *Murray v. Watervliet School Dist.*; *Island Associated Coop. v. Hartmann*, 118 A.D.2d 830 (2d Dep’t 1986); see also *Murray v. Research Foundation of the State University of New York*, 184 Misc.2d 453 (Monroe Co. 2000) (Foundation was not liable under theory of *respondeat superior* for counselor’s sexual abuse of student).
4. Even when a school district might not be liable under the doctrine of *respondeat superior* discussed above, it could still be held liable in negligence in its hiring or retention of staff.
 - If a district fails to follow its own established procedures for making employment decisions, such as those which might require investigating the criminal history of new employees, it could be found liable in negligence. *Haddock v. New York*, 75 N.Y.2d 478 (1990).
 - However, where there is no violation of internal procedures and policies, a school district enjoys immunity with respect to the exercise of discretion in deciding whether to hire a particular employee. *Mon v. New York*, 78 N.Y.2d 309 (1991).

A school district also may be held liable for negligent hiring and supervision if it knew of an employee’s propensity to engage in injurious conduct, or should have known of such

³⁶ A tort is a wrongful act that results in injury to another’s person, property or reputation, or the like and for which the injured party is entitled to compensation.

propensity had it conducted an adequate hiring procedure. *Ernest L. v. Charlton Sch.*, 30 A.D.2d 649 (3d Dep't 2006).

B. Student Injuries When Contractor Provides Transportation

General Rule

1. A school district ordinarily is not liable when it hires an independent contractor to provide transportation services and a student is injured as a result of negligent actions on the part of the contractor in connection with the provision of such services. *Chainani v. Bd. of Educ. of the City of New York*, 87 N.Y.2d 370 (1995); *Thomas v. Bd. of Educ. of the Kingston City Sch. Dist.*, 291 A.D.2d 710 (3d Dep't 2002); *Womack v. Duvernay*, 229 A.D.2d 488 (2d Dep't 1996).
 - This general principle exists because school districts (and other contracting entities) have no control over how independent contractors perform their work. Instead, independent contractors are liable for their own improper actions. Independent contractors have a duty to perform services under a contract in a careful and prudent manner. *Smith v. Sherwood*, 2009 WL 5128038 (4th Dep't 2009); *Womack v. Duvernay*.
 - Accordingly, in one case a district was sued by the parent of a student who suffered severe injuries when struck by her school bus after she had disembarked. The school bus was driven by the employee of a bus company serving as an independent contractor. The New York Court of Appeals ruled that the district was not directly liable for the student's injuries because the student was not within the custody of the school district at the time of the accident but rather was in the custody of the independent contractor. The court also refused to hold the school district vicariously liable for the student's injuries because the activity of transporting students is not inherently dangerous and the district was not aware that the independent contractor had created a peculiar unreasonable risk. *Chainani v. Board of Educ. of the City of New York*.
2. Distinct from negligence, a school district will not be held liable either for the intentional torts of an employee of an independent contractor. See, *Doe v. Rohan*, 17 A.D. 3d 509 (2d Dep't 2005). In the *Rohan* case the court held neither the school district nor the bus company could be held liable for a bus driver's sexual abuse of a student since his actions were clearly not within the scope of his employment.

Exceptions to the General Rule

A school district could be liable for the actions of a transportation contractor if the district was found to owe a non-delegable duty to the individual harmed, or when such individual would be left without a remedy if the general rule was applied strictly. *Feliberty v. Damon*, 72 N.Y.2d 112 (1988); Prosser & Keaton on the Law of Torts § 71 (5th ed. 1984).

Thus, a state appellate court refused to dismiss a lawsuit against a school district that failed to comply with a contractual provision in its agreement with a bus company that required the presence of an aide on the bus.

- As a result of the failure to provide the aide, a student was repeatedly sexually abused while on the school bus by another student with a documented history of aggressive sexual behavior.
- In the court's view, the general rule exempting employers from liability for the negligence of independent contractors does not apply where students are released to an independent contractor into circumstances that pose a foreseeable risk of harm without the taking of steps to minimize the risk. *David "XX" v. St. Catherine's Ctr. for Children*, 267 A.D.2d 813 (3d Dep't 1999).

C. Duty to Other Motorists

School districts have a duty to act with reasonable care to other motorists when designing bus routes and designating pick up points.

1. A state supreme court refused to dismiss a case alleging that an accident where a child riding in a car was killed and others injured occurred because a school district was negligent toward other motorists when it placed a bus stop in an area with hilly terrain and obscured visibility for eastbound drivers.
 - According to the court, "It would be unreasonable to hold that a school district owes absolutely no duty whatsoever to other motorists, when determining where to place a bus stop."
 - A finding of liability, however, would depend on whether "the risk to the public safety is both consequential and unreasonable," the availability of alternative bus stop locations, "the relative efficiency and cost" of the alternatives, and whether a safer alternative was available. *Black v. Homer CSD*, 190 Misc. 2d 17, (N.Y. Sup. Ct. 2002).
2. According to a state appellate court, a school district was not negligent in designating a bus stop at which the plaintiff's car had been in a rear end collision. The evidence showed the stop had been in existence for at least 30 years without incident and the plaintiff failed to offer proof that a safer alternative existed. See *Perry v. Bd. of Educ. of the Roundout Valley CSD*, 38 A.D.3d 1085 (3d Dep't 2007).

D. Liability for Operation of School Buses by Impaired Drivers

No motor carrier shall permit a driver to be on duty or operate a bus, if by the driver's general appearance or conduct he or she appears to have consumed an intoxicating liquor within the past six hours. Vehicle and Traffic Law § 509-1 (2)(b); 15 NYCRR § 6.25.

In one case, school bus driver was en route to pick up children when her bus broke down. A state trooper who came to the aid of the disabled bus observed the driver was glassy-eyed and smelled strongly of alcohol. The driver failed four field sobriety tests, was placed under arrest for driving while intoxicated, and a later breathalyzer test revealed a blood alcohol content of 0.07 percent.

- The driver was later convicted of the charge.
- The driver's employer was convicted of permitting the driver to drive that day, in violation of section 509-1 of the Vehicle and Traffic Law, and was fined \$2,500.

On appeal, a state appellate court held that a motor carrier may be found guilty of violating the statute if it knew, or through reasonable diligence or simple observation, should have known that one of its drivers appeared to have consumed alcohol in the preceding six-hour period.

The court concluded the company had no procedure in place to address the clear mandates of the statute. If it had the driver's "obvious intoxicated appearance and conduct would have been observed and she would not have been permitted to drive the bus that morning." *In re Northland Transportation, Inc. v. Jackson*, 271 A.D.2d 846 (3d Dep't 2000).

E. Employee Injuries

Personal injuries sustained by school employees will be subject to the terms of workers' compensation benefits.

- First enacted in 1914, Workers' Compensation Law ensures that in exchange for guaranteed medical coverage and compensation for lost earnings, employees will not sue their employers for injuries sustained in the course of employment.
- Thus workers' compensation benefits are the sole and exclusive remedy for an employee or his or her survivors for injuries or death arising from the course of employment. Workers' Compensation Law §§11, 29(6). See also, *Maas v. Cornell University*, 253 A.D.2d 1 (3d Dep't 1999), *aff'd* 94 N.Y.2d 87 (1999).

This includes claims for damages caused by negligent supervision or hiring, negligent failure to initiate or follow anti-discrimination policies, or negligently carrying out disciplinary action. See *Maas v. Cornell Univ.*

Scope of Coverage

School districts are required by law to furnish workers' compensation insurance to employees and pay or provide compensation for an employee's disability or death arising out of

and in the course of employment without regard to fault as a cause of injury. Workers' Compensation Law §10.

School districts must post notifications of said insurance or be subject to a fine. Educ. Law §§ 1604(31), 1709(34), 2503(10); Workers' Compensation Law §51.

1. To be covered by workers' compensation, an injury must be accidental and have occurred in the performance of employment duties. An injury can be a mental or physical injury caused by a work related accident or an occupational disease contracted through employment. Workers' Compensation Law §2(7).
2. An injury caused by the employee's intoxication from alcohol or a controlled substance while on duty or from the willful intent of the employee to cause injury or death to himself or others will not be covered by worker's compensation law. Workers' Compensation Law §10.

Reporting Requirements

1. When an employee is injured during the course of employment, he or she should immediately seek medical treatment and notify his or her supervisor when, where and how the employee was injured. An employee must file written notice with the employer within 30 days of the injury. Workers' Compensation Law §18.
2. The employer must record the injury on Form C-2 "Employer's Report of Work-Related Injury/Illness" and file it with the state Workers' Compensation Board and its insurance carrier within ten (10) days of the accident. Workers' Compensation Law §110(1). All accidents should be investigated fully to ensure that all facts are gathered.
3. Failure to timely file the report is a misdemeanor; additionally, a civil penalty may imposed by the Workers' Compensation Board in the amount \$2,500. Workers' Compensation Law §110(1); 12 NYCRR §310.1.
4. The employer or insurance carrier must within 14 days of filing the accident report send to the employee a written statement of his/her rights under the law. Workers' Compensation Law §110(2).

Medical coverage

An employer must promptly provide an injured employee with medical treatment. The employer is liable for the costs of medical, surgical, and hospital services as well as assistive devices (eye glasses, crutches, prosthetic limbs, etc.). Workers' Compensation Law §13.

Wage replacement benefit

1. Claimants who are totally or partially disabled for more than seven days receive benefits for lost wages, in addition to coverage for medical treatment. Work. Comp. Law §§12, 15. The amount received for lost wages is equal to two-thirds (2/3) of the claimant's average weekly

wage (including overtime) for the 52 weeks preceding the accident adjusted by the percentage of disability. Workers' Compensation Law §15. If a claimant suffers total disability he would receive two-thirds of his weekly wage (up to the statutory maximum—presently \$600/wk):

$$2/3 \times \text{average weekly wage} = \text{wage replacement benefit}$$

2. If a claimant is deemed to be only partially disabled the weekly benefit is adjusted by the percentage of disability:

$$2/3 \times \text{average weekly wage} \times \% \text{ of disability} = \text{wage replacement benefit.}$$

Appeals

A claim for workers' compensation benefits may be contested on various bases including the injury was not related to work or the employee is not injured to the extent he or she is claiming.

- In such instances, a hearing is scheduled before an administrative law judge. If the claim is determined to be valid, the judge then sets the amount and duration of the compensation award.
- A decision of the administrative law judge may be appealed to the Worker's Compensation Board, That Board's decision may be appealed to the Third Department of the Appellate Division of the State Supreme Court. Workers' Compensation Law §25; 12 NYCRR §300.13.

Anti-discrimination mandate

School districts may not discharge or discriminate in any other manner against employees for claiming or attempting to claim workers' compensation benefits or because the employee has testified or is about to testify as to a claim under workers' compensation. Workers' Compensation Law §120.

An employee who establishes he or she was terminated for such a reason would be entitled to reinstatement with lost compensation and the recovery of attorneys' fees. He or she may also be awarded interest on the lost compensation. Workers' Compensation Law §120. See also, *Greenberg v. New York City Trans. Auth. Workers' Compensation Bd.*, 7 N.Y.3d 139 (2006).

XXII. Transportation of Nonpublic School Students

As set out in Section I of this course book, school districts, other than city school districts, have an obligation to transport students to and from the school they legally attend, whether that school is public, nonpublic or a charter school. Educ. Law §3635.

City school districts that choose to provide transportation for their public school students must make transportation available to nonpublic school students in like circumstances, as well. *Id.*

As a general rule, students attending nonpublic school are subject to the same eligibility requirements that apply to public school students. For example,

- They must reside from their nonpublic school within the same distance limitations that apply to public school students, previously discussed in Section III of this course book.
- They are not entitled to door-to-door transportation and may be asked to travel to and from a designated pick-up point, previously discussed in Section IV of this course book.

However, the fact that a particular student's nonpublic school is located outside his or her district of residence does not, in and of itself, make the student ineligible for transportation services.

A. Centralized Pick-Up Points

As noted above, the general rule is that students attending nonpublic school must live within the same mileage distance limitations applicable to public school students in order to be eligible for transportation services.

School districts may choose to transport nonpublic school students who live within those mileage limitations to a centralized pick-up (transfer) point at which they change buses and from there to their nonpublic school as part of a synchronized transportation plan for its public schools. *Appeal of Gorsky*, 47 Ed. Dep't Rep. 162 (2007).

In addition, school districts can, but do not have to, provide transportation from a centralized pick-up point to students who live more than 15 miles from their nonpublic school if:

- It has provided transportation to that school in at least one of the three prior years, and
- The distance between the centralized pick-up point and the nonpublic school is not more than 15 miles. Educ. Law §3635(1)(b)(ii). See also, *Appeal of Hughes*, 49 Ed. Dep't Rep. ___, Dec. No. 15, 865 (2009); *Appeal of Porzio*, 42 Ed. Dep't Rep. 166 (2002); *Appeal of Lucente*, 40 Ed. Dep't Rep. 455 (2000).

A centralized pick-up point must be a school building within the district. *Appeal of Bittlingmaier*, 45 Ed. Dep't Rep. 213 (2005); *Appeal of Lucente*, 40 Ed. Dep't Rep. 455 (2000).

When a school district provides transportation from centralized pick-up points for students who live more than 15 miles from their nonpublic school:

- It has no obligation to provide transportation to and from the centralized pick-up point. However, it may do so if the student lives on an established bus route to the centralized pick-up point, and such transportation does not result in additional costs to the district. Educ. Law §3635(1)(b)(i).
- It does not have to provide such transportation if it is not already providing transportation to that school for a student who lives within the home to school mileage limitations. *Appeal of Porzio; Appeal of Lucente*.
- Nonpublic school students otherwise not eligible cannot qualify for transportation on the basis that the district transport students to another nonpublic school nearby the one they attend. *Appeal of Capeling*, 46 Ed. Dep't Rep. 400 (2007).
- If a district erroneously provides transportation to students not entitled to such services, the solution is to discontinue transportation. *Appeal of Keller*, 47 Ed. Dep't Rep. 224 (2007).

B. Transportation Request Requirement

April 1 Deadline

Parents of nonpublic school students wishing to receive transportation services must make sure the district receives from them no later than April 1 a written request for transportation for the upcoming school year.

- When a family moves into the district after April 1, the parents must submit the written request within 30 days after establishing residency within the district. Educ. Law §3635(2).
- Mailing a request prior to April 1 will be deemed timely even if the district does not receive until after, provided there is proof it was properly addressed, stamped and mailed before that date. *Appeal of Hendrick*, 37 Ed. Dep't Rep. 188 (1997). See also, NYS Education Department, "Late Requests for Transportation to a Nonpublic School" at: http://emsc.nysed.gov/schoolbus/Parents/htm/late_requests.htm, last accessed November 4, 2009.
- The purpose of the April 1 deadline is to enable school districts to budget sufficient funds for transportation and to provide transportation services "reasonably and economically." *Appeal of Capeling*, 46 Ed. Dep't Rep. 400 (2007).

Nonpublic schools often submit to school districts a list of students who attend their school and presumably will require transportation. The submission of such a list, however, does

not relieve parents of their responsibility to ensure that the nonpublic school submits a written request prior to April 1.

In addition, when it is the nonpublic school instead of the parents of each of its students that submits to a school district the required written request for transportation services, the information forwarded to the district should include the following:

1. The name, address, age and grade of each student.
2. A signed affidavit stating the nonpublic school has been authorized by the parents/guardians of each child on the list to act as their representative in requesting transportation.
3. Included within the affidavit, a copy of the authorization duly signed by the parent, to remain on file with the school district. *Appeal of Lucente*, 40 Ed. Dep't Rep. 455 (2000).

A school district can deny transportation if the request submitted by the nonpublic school does not include the required information, except for students whose parents made a timely independent request for transportation services. *Id.*

Late Transportation Requests

1. A school district may deny late transportation requests for transportation, even if it has accepted such requests in the past.

A late request may not be denied, however, if:

- There is a reasonable explanation for the delay. *Appeal of Aguanno*, 41 Ed. Dep't Rep. 326 (2002); *Appeal of Gabay*, 39 Ed. Dep't Rep. 492 (2000); *Appeal of Tarricone*, 38 Ed. Dep't Rep. 623 (1999).
 - There is no reasonable explanation for the delay but transportation can be provided under existing arrangements at no additional cost to the district. *Appeal of Mendoza*, 34 Ed. Dep't Rep. 402 (1995).
2. Boards of education have discretion to determine if the excuse provided is reasonable and the commissioner of education will uphold such a determination unless it constitutes an abuse of discretion. *Id.*

Some examples of unreasonable explanations for transportation request delays include:

- A belated decision to enroll a student in a nonpublic school. *Appeal of R.O.*, 40 Ed. Dep't Rep. 137 (2000).
- Ignorance of the April 1 deadline. *Appeal of Ghaffar*, 46 Ed. Dep't Rep. 332 (2006).

- A decision to enroll a student in a different nonpublic school after the April 1 deadline. *Appeal of Litton*, 47 Ed. Dep't Rep. 277 (2007).
- Learning of a student's difficulties in public school after April 1. *Appeal of Galvani*, 34 Ed. Dep't Rep. 370 (1995).

C. Bus Schedules

Often the schedules of public and nonpublic schools differ with respect to when school starts in the morning and when students are dismissed. This difference can make it difficult for school districts to accommodate the transportation needs of all students, whether they attend public or nonpublic school

1. The commissioner of education has noted repeatedly that public and nonpublic schools have an obligation to cooperate in a reasonable manner in the scheduling of classes and transportation. *Appeal of Reilly*, 46 Ed. Dep't Rep. 184 (2006); *Appeal of Frasier*, 35 Ed. Dep't Rep. 499 (1996); *Appeal of Post*, 33 Ed. Dep't Rep. 151 (1993); *Appeal of Berger*, 22 Ed. Dep't Rep. 443 (1983).
 - School districts have no authority to dictate the opening and closing of nonpublic schools. *Appeal of Reilly*; *Appeal of Berger*.
 - However, school districts do not have to alter their own schedules to provide transportation to nonpublic school students.
 - Nonpublic schools may be required to accommodate a reasonable request that it modify its school day to be consistent with the starting and ending times of other nonpublic schools and a district's own synchronized transportation plan. *Appeal of Gorsky*, 47 Ed. Dep't Rep. 162 (2007).
 - The adoption of an "unreasonable" or erratic schedule by a nonpublic school will relieve a district of its obligation to arrange for transportation to meet that schedule.

That was the case where a nonpublic school dismissed elementary and middle school students at 3:20 p.m. and high school students at 5:00 p.m. *Appeal of Berger*.

The same was true where a nonpublic school with regularly scheduled hours of 8:15 a.m. to 2:15 p.m. decided to offer a math course at 7:15 a.m. rather than during normal school hours. *Appeal of Reilly*.

2. School districts have no legal authority to provide transportation to nonpublic school students on days when public schools must be closed due to legal holidays.³⁷

³⁷ See, Educ. Law §3604(8); General Construction Law §24 for a list of legal holidays and days when public schools may not be in session.

3. When school districts choose to close their public schools during spring recess, conference days and the like, they have no obligation to provide transportation for nonpublic school students whose school happens to be open. The only exception is New York City where the school district there must provide transportation to nonpublic school students at specified times when the public schools are not in session. Educ. Law §3635(2).

D. "Late Bus" Transportation Requests

Although not expressly provided for in either statute or regulation, the commissioner of education has determined that school districts must provide late bus service to nonpublic students if they provide that service to public school students in like circumstances.

This means that a school district would not have to provide late bus transportation to nonpublic school students if the after-school program at their school ends at 5:00 p.m. but the districts stops late bus services for public school students at 4:30 p.m. and there would be an additional charge to the school district to provide such services to the nonpublic students. *Appeal of Donn*, 49 Ed. Dep't Rep. ____, Decision No. 15,994 (2009).

In addition, according to the New York State Education Department, school districts are not required to provide late bus transportation for individual students or unreasonably small groups of students because the Education Law requires that they provide transportation in a reasonable and economical manner. Therefore, school districts may adopt a policy that provides late bus transportation to only where there are a reasonable number of students requesting the service. NYS Department of Education, "Late Bus Service for Nonpublic Students" at: http://www.emsc.nysed.gov/schoolbus/Parents/htm/late_bus_service.htm, last accessed January 19, 2010.

E. Release-Time Religious Instruction Transportation

School districts have no legal authority to provide transportation to students who attend religious instruction from the public school to a church or parochial school. *Appeal of Fitch*, 2 Ed. Dep't Rep. 394 (1963). See also, *Appeal of Santicola*, 37 Ed. Dep't Rep. 79 (1997).

F. Charter Schools Transportation

A charter school is an "independent and autonomous public school" that operates pursuant to a charter issued by the New York State Board of Regents. Educ. Law §§2850, 2853(1)(c), 2856.

For purposes of transportation, charter schools are treated like nonpublic schools. Educ. Law §2853(4)(b). See also, *Appeal of New Covenant Charter School*, 39 Ed. Dep't Rep. 610

(2000). Therefore, if a student enrolls in a charter school, the student's district of residence is responsible for providing transportation to and from the charter school on the same basis it provides transportation for nonpublic school students.

However, if charter school students require supplemental transportation services, the charter school is responsible for providing the same. In such an instance, the charter school may contract with a school district for such services, at cost. Educ. Law §2853(4)(e).

Decisions of Interest

1. *Cook v. Griffin*, 47 A.D.2d 23, 364 N.Y.S.2d 632 (4th Dep't 1975) - In this case a school district denied the request of a parochial school principal that it provide transportation for a field trip. According to the parent of one of the nonpublic school students, the district had to provide the transportation because it transported public school students on field trips. A state appellate court disagreed explaining that school districts are creatures of statute and have only those powers specifically delegated to them by statute. Public schools may legally conduct educational field trips as an alternative to classroom instruction. However, this authority does not mean school districts must provide for the education of nonpublic school students. If the legislature wished to grant school districts the authority to transport nonpublic school students to and from field trips, it would have done so explicitly. It did not.
2. *Appeal of Sanguine*, 48 Educ. Dep't Rep. 327 (2008) - In this case, a school district initially denied a transportation request after determining that the students did not meet the 15 miles distance limitation. The district measured 2 possible routes, one over an interstate highway (18.9 miles) and another using "back roads" (16.3 miles). The parent suggested an alternate route which the district measured to be 14.7 miles. However, the district denied the request, stating that the suggested route was less safe than the interstate and less efficient as it would require greater travel time, fuel consumption and wear and tear on the vehicles. The commissioner order the district to provide transportation because under the Education Law districts must measure the distance between a student's home and school by the "nearest available route". They cannot deny transportation because the nearest route is not the safest, most direct or efficient route.