SCHOOL LAW

General Information

This 33rd edition of School Law is a compendium of information about New York State school law arranged according to 38 topics, represented by the chapter headings, in a question-and-answer format. The questions are numbered according to the chapters in which they appear and their order in those chapters. When question numbers are referred to, they are set in boldface type (14:5).

There are two considerations to remember when using School Law. First, all legal references throughout the handbook are to the New York State Education Law unless noted otherwise in unnumbered footnotes at the beginning of chapters or sections. Second, when a specific number of days is referred to in a statute or elsewhere in the law, Saturdays, Sundays, and holidays are included when calculating such days unless otherwise stated in specific provisions of the law, or the period of time is two days or less (Gen. Constr. Law § 20) or the period of time specified ends on a Saturday, Sunday, or a public holiday. In such cases, the specified time will occur on the next succeeding business day (Gen. Constr. Law § 25-a).

Abbreviations

The following abbreviations represent sources:

United States Supreme Court
U.S. United States Reports
S.Ct. Supreme Court Reporter

Federal Courts of Appeals
F., F.2d, F.3d Federal Reporter
F.Appx. Federal Appendix

Federal District Courts
F.Supp., F.Supp.2d Federal Supplement

New York State Court of Appeals
N.Y., N.Y.2d, N.Y.3d New York Reports

New York State Supreme Court, Appellate Division
A.D., A.D.2d, A.D.3d Appellate Division Reports

New York State Lower Courts
Misc.2d, Misc.3d New York Miscellaneous Reports

Other Reports
Ed Dept Rep (State) Education Department Reports
Fair Empl. Prac. Case (BNA) Fair Employment Practice Cases
FOIL-AO Freedom of Information Law Advisory Opinions, Committee on Open
Government
IDE LR Individuals with Disabilities Education Law Reporter
### General Information

- **OML-AO**: Open Meetings Law Advisory Opinions, Committee on Open Government
- **Opn. Att'y Gen.**: New York State Attorney General's Opinions
- **Opn. St. Comp.**: State Comptroller's Opinions
- **PERB**: Public Employment Relations Board Official Decisions, Opinions and Related Matters
- **SRO**: State Review Officer Decisions
- **St. Dep't Rep.**: State Department Report
- **LEXIS**: LexisNexis Total Research System

### Statutory Citations

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### New York State Law

- **Arts & Cult. Aff. Law**: Arts and Cultural Affairs Law
- **C.P.L.R.**: Civil Practice Law and Rules
- **Civ. Rights Law**: Civil Rights Law
- **Civ. Serv. Law**: Civil Service Law
- **Corrections Law**: Corrections Law
- **Educ. Law**: Education Law
- **Elec. Law**: Election Law
- **Envtl. Conserv. Law**: Environmental Conservation Law
- **EPTL**: Estates, Powers & Trust Law
- **Exec. Law**: Executive Law
- **Gen. Constr. Law**: General Construction Law
- **Gen. Mun. Law.**: General Municipal Law
- **High. Law**: Highway Law
- **Jud. Law**: Judiciary Law
- **Lab. Law**: Labor Law
- **Local Fin. Law**: Local Finance Law
- **Mil. Law**: Military Law
- **NYS Const.**: New York State Constitution
- **Penal Law**: Penal Law
- **Pub. Auth. Law**: Public Authorities Law
- **Pub. Health Law**: Public Health Law
- **Pub. Off. Law**: Public Officers Law
- **Real Prop. Law**: Real Property Law
- **Real Prop. Tax Law**: Real Property Tax Law
- **Retire. and Soc. Sec. Law**: Retirement and Social Security Law
The cost of providing transportation within a child safety zone is state-aidable. It is also considered an ordinary contingent expense (§ 3635-b(10)).

In addition, within amounts appropriated there for, the commissioner of transportation is required to establish and maintain a safe route to school program to eliminate or reduce physical impediments to students who walk or bicycle to school. Projects under such a program must provide, for example, for the construction, reconstruction, and other maintenance of crosswalks and bicycle lanes (Transp. Law §14(35)).

Bus Routes and Pick-up Points

35:23. What is the statutory definition of a bus route?

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” (§ 3621(3)).

School districts are charged with planning and selecting bus routes that “promote maximum efficiency in the operation of a school bus on such routes” (§ 3622).

Whenever practicable, routes should be planned to operate within the boundaries of the school district unless the pupils being transported receive instruction beyond the boundaries of the school district (Id.).

35:24. May a school bus be routed on private roads?

The commissioner of education has held that a school district is not required to provide transportation to students over privately maintained roads (see Matter of Cohen, 21 Ed Dept Rep 280 (1981)). However, a district may provide transportation to students over privately maintained roads with the landowner’s consent (Appeal of Taylor, 26 Ed Dept Rep 255 (1986)).

35:25. Must a school bus travel roads that may be impassable or unsafe?

The commissioner of education has held that a school board may refuse to use a public road to provide transportation to students if the board can establish its use would involve an “unreasonably hazardous condition” (Matter of Clark, 15 Ed Dept Rep 260 (1976)).

In Matter of McGibbon, 14 Ed Dept Rep 271 (1975), for example, the district verified that a road where a parent wanted her child to be picked up by district transportation was so narrow that a school bus and another vehicle could not pass each other, the road did not have safe shoulders, and it included steep grades that buses had been unable to negotiate without skidding into trees. Based on this information, the commissioner held that it was not unreasonable or illegal for the student to walk a mile to a pick-up point, rather than authorize the school bus to travel on an unsafe road.

In Appeal of Warner, 37 Ed Dept Rep 469 (1998), the commissioner upheld the district’s decision to deny transportation along a particular roadway after district officials visited the site and hired an accident investigation expert to evaluate the roadway. The expert told the district the sight distance and roadway width were inadequate and unsafe. An alternate pick-up point on another road was more consistent with student safety than traveling along the requested roadway (see also Appeal of Gulla, 39 Ed Dept Rep 716 (2000)).
36:9. May school districts organize or require students to participate in moments of silent meditation?

In 1985, the United States Supreme Court struck down a state statute requiring a one-minute period of silence for “meditation or voluntary prayer during the school day” (Wallace v. Jaffree, 472 U.S. 38 (1985)). In Jaffree, the legislative history of the statute reviewed by the court made it clear that the purpose was to permit prayer. Therefore, the statute was found to be unconstitutional.

Since Jaffree four federal appellate courts have examined statutes enacting moments of silence for quiet contemplation or reflection (Craft v. Governor of Texas, 562 F.3d 755 (5th Cir. 2009); Brown v. Gilmore, 258 F.3d 265 (4th Cir. 2001); Bown v. Gwinnet Cnty. Sch. Dist., 112 F.3d 1464 (11th Cir. 1997); see also May v. Cooperman, 780 F.2d 240 (3d Cir. 1985), appeal dismissed for lack of jurisdiction, 484 U.S. 72 (1987)). In three cases, the statutes were upheld as there was no evidence showing intent to promote prayer (Brown v. Gilmore, Bown v. Gwinnett Sch. Dist., Craft v. Governor of Texas).

New York’s Education Law allows for a moment of silence in the public schools at the opening of school every school day (§ 3029-a). It specifically provides: “The silent meditation authorized . . . is not intended to be, and shall not be conducted as, a religious service or exercise, but may be considered an opportunity for silent meditation on a religious theme by those who are so disposed, or a moment of silent reflection on the anticipated activities of the day.” Students may remain seated and may not be required to stand.

New York’s statute has not been challenged in the courts. According to a 1964 Formal Opinion of Counsel from the State Education Department, the application of the statute would be impermissible if the statutory moment of silence were prefaced with the statement: “We will now have a moment of silence to acknowledge our Supreme Being” (Opn. Educ. Dep’t, 3 Ed Dept Rep 255 (1964)). Since the legislative history of that statute does not indicate that it was enacted to foster organized religious prayer, it may pass constitutional scrutiny.

36:10. May school districts permit students to lead others in organized prayer during school hours?

No. Although the United States Supreme Court has not ruled on this question, other courts have found this to violate the separation of church and state requirements of the Establishment Clause. For example, where a student club was allowed to broadcast inspirational readings from the Bible and sectarian prayers over the school intercom system after the school’s morning announcements, and where student-initiated prayers were allowed in individual classrooms during classroom hours, the courts perceived the school district as endorsing such religious messages (Herdaehl v. Pontotoc Cnty. Sch. Dist., 887 F.Supp. 902 (N.D. Miss. 1995); see also Ingebritsen v. Jackson Pub. Sch. Dist., 88 F.3d 274 (5th Cir. 1996), cert. denied, 117 S.Ct. 388 (1996)).

Similarly, a federal district court in New York ruled that a school district properly halted broadcasting a Mohawk Indian “Thanksgiving Address” over the school intercom, at pep rallies and before lacrosse games. While not considered a prayer by Mohawks, the address contained speech reasonably interpreted as religious in nature. The district avoided an endorsement problem by halting the practice (Jock v. Ransom, 2007 U.S. Dist. LEXIS 47027 (N.D.N.Y June 28, 2007)).

A federal appellate court outside New York upheld a school district policy that prohibited faculty participation in student initiated prayer in any school-sponsored setting including classes, practices, pep rallies, team meetings and athletic events (Borden v. School Dist. of the Township of East Brunswick, 523 F.3d 153 (3d Cir. 2008)).