

Part 156. TRANSPORTATION

(Statutory authority: Education Law, §§101, 207, 305[14] [d] as amd. by ch. 552, L. 1995[34]; 1604[23], 1709, 3602[7] [a]-[b], [d], 3624, 3625, 3635[4]; Vehicle and Traffic Law, §§509-g, 1229-d; L. 1990, ch. 661; L. 1993, ch. 700, §2; L. 1995, ch. 439; L. 1996, ch. 698; L. 1997, ch. 436, §1, part A, §58; L. 2002, chs. 472, 529, 600; L. 2003, ch. 159; L. 2003, ch. 270)

§ 156.1 Applications, contracts, and other information to be filed.

Historical Note

(a) Application for the approval of all bus routes and bus capacities, together with transportation contracts, including contracts for the operation of district-owned conveyances and all contracts for the maintenance and/or garaging of district-owned conveyances shall be filed by the superintendent or district superintendent of schools with the Commissioner of Education on forms prescribed by him. In addition thereto, such superintendent or district superintendent of schools shall file with the commissioner the instructions to bidders, bid forms and specifications upon which such contracts were awarded, a summary of bids submitted, a statement of the actions taken to solicit bids, including copies of the advertising required by law, any additional advertising, a list of the potential bidders actively solicited, and such other information as the commissioner may require.

(b) The advertisement for bids for contracts for anticipated transportation needs for the following school year shall be published not later than June 1st, except that the advertisement for bids for contracts for transportation of children with disabilities shall be published not later than July 1st. Any contract awarded as a result of competitive bidding, together with the documents required by the provisions of subdivision (a) of this section, shall be filed with the Commissioner of Education within 30 days following approval of the contract by the board of education or trustee. Contracts which cannot be awarded on or before August 1st, together with other required documents, shall be filed with the commissioner within five days after approval by the board of education or trustee.

(c) Separate contracts shall be awarded for transportation to and from school and for other purposes, including but not limited to field trips and athletic events. The commissioner may grant a waiver of this requirement for contracts or contract extensions covering school years prior to the school year beginning July 1, 1996, provided districts file with the department detailed documentation allocating the total contract expense between to and from school and other purpose transportation services.

(d) Bid specifications shall 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. The commissioner may authorize special requirements which are essential due to special circumstances. No bid shall be accepted

which is contingent on a discount if one or more other bids are also accepted. No bid may be rejected for failure to meet a specification which unduly restricts competitive bidding.

(e) [*Reserved*]

(f) A board of education or the trustee of a public school district and a contractor shall not materially modify an approved transportation contract except where such modification is necessary to comply with any Federal, State or local law, rule or regulation imposed after the execution of such contract or to enhance pupil safety and/or result in savings consistent with maintaining pupil safety. The school district shall provide satisfactory documentation to the commissioner of the enhancements in pupil safety and/or of any increased savings consistent with maintaining pupil safety that may result from the proposed amendment. Demonstrable enhancements in pupil safety shall include, but not be limited to: installation of stop arms, two-way radios or other communication devices, video cameras, and perimeter motion detector systems. Such amendments shall result in no additional cost to the State, locality, or school district. Amendments will not be approved if the commissioner determines that they violate competitive bidding requirements, violate any provision of law, or fail to increase or maintain the safety of pupil transportation.

Historical Note

Sec. repealed, new filed March 1, 1963; repealed, new added by renum. 156.11, filed Nov. 28, 1977; amds. filed: Dec. 19, 1995; Feb. 13, 1996 eff. March 29, 1996. Amended (b), (c); repealed (e).

§ 156.2 Approval of routes, seating capacities, and computerized bus routing services for State aid purposes.

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| <u>Historical Note</u> |
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(a) Routes. The mileage to be used for State aid purposes shall be the distance along the highway or highways over which the bus travels, beginning at the schoolhouse where the pupils transported attend and proceeding by the most direct route to convey all the pupils entitled to transportation, and returning to the point of origin; provided that the route may begin at some other point whenever it is established to the satisfaction of the commissioner that the facts warrant. In no event will any route be considered for State aid purposes unless it extends more than a mile and a half from the schoolhouse. No State aid will be available for feeder routes unless the distance traveled is more than one mile.

(b) Approved seating capacity. The approved seating capacities shall be determined on the basis of the number of pupils legally entitled to transportation; provided, however, that no district shall be required to obtain another conveyance when the originally approved capacity is no longer required. Standing passengers shall not be carried in excess of 20 percent of the seated capacity.

(c) Duplication of service. The Commissioner of Education may disallow capacities and mileage which in his judgment are duplication of service and inconsistent with maximum efficiency. Bus routes shall be so arranged that the maximum number of pupils entitled to transportation can be transported with the minimum number of bus miles and for a cost consistent with adequate service.

(d) Other transportation. Nothing herein contained shall prevent trustees and boards of education under rules established by them, from providing transportation in addition to that credited for State aid purposes, provided the same is reasonable and in conformity with the provisions of law, and money is legally available therefor.

(e) Computerized bus routing services.

(1) For purposes of apportionment for transportation services, pursuant to Education Law, section 3602(7)(b)(iv), *computerized bus routing services* shall mean programming, software development and software acquisition which result in the economical and efficient development of school bus routes meeting the criteria of this section and which have been approved by the commissioner. Programming and software development may be provided either by school district personnel or by contract.

(2) Each school district which seeks an apportionment pursuant to Education Law, section 3602 (7)(b)(iv) shall annually prepare and submit to the commissioner for prior approval a contract or plan describing the service.

Historical Note

Sec. amd. filed Nov. 15, 1962; repealed, new filed: March 1, 1963; Oct. 31, 1967; repealed, new added by renum. 156.12, filed Nov. 28, 1977; amd. filed May 24, 1982 eff. June 23, 1982.

§ 156.3 Safety regulations for school bus drivers, monitors, attendants and pupils.

Historical Note
Research Reference
Case Notes

(a) Definitions. For purposes of this section:

(1) A *school bus driver* shall mean any person who drives a school bus which is owned, leased or contracted for by a public school district, board of cooperative educational services or nonpublic school for the purpose of transporting pupils. However, for the purposes of this section, the following shall not be considered to be school bus drivers:

(i) a driver of a passenger or suburban type vehicle if such driver is a school

district employee who is not ordinarily required to transport pupils and is operating such vehicle for the purpose of transporting one or more pupils to a hospital or other medical facility, a physician's office, or home for medical treatment or because of illness;

(ii) a driver of a suburban intercity coach or transit type bus, transporting pupils on trips other than between home and school, such as field trips, athletic trips, and other special transportation services;

(iii) a parent who transports exclusively his or her own children; and

(iv) a volunteer driver for a nonpublic school who transports pupils on other than a regularly established route on an occasional basis.

(2) A *school bus* shall mean 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.

(3) A *school bus monitor* shall mean 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.

(4) A *school bus attendant* shall mean 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.

(5) A *nonpublic school* shall mean a private or parochial school offering instruction in any or all grades, pre-kindergarten through 12.

(b) School bus driver and instructor qualifications.

(1) Approval for employment. Approval for employment of a school bus driver shall be in writing on a form prescribed by the Commissioner of Education.

(2) Age. All drivers of school transportation conveyances shall be at least 21 years of age.

(3) Physical fitness.

(i) Each driver of a school transportation conveyance shall have the physical and mental ability to operate safely a school transportation conveyance and to satisfactorily perform the other responsibilities of a school bus driver; and shall meet the requirements of section 6.11 of the regulations of the Commissioner of Motor Vehicles (15 NYCRR 6.11) to the extent that such requirements are consistent with the requirements of this subdivision and provided that the vision standards prescribed in section 6.11(b)(10) of the regulations of the Commissioner of Motor Vehicles (15 NYCRR) shall not be waived.

(ii) Each regular or substitute driver of a school bus owned, leased or contracted for by a school district, board of cooperative educational services or a nonpublic school shall be examined by a physician or nurse practitioner to the extent authorized by law and consistent with the written practice agreement pursuant to Education Law, section 6902 (3), in accordance with the provisions of this subdivision. The physical examination shall be reported immediately on forms prescribed by the commissioner to the chief school officer of the district. The physical examination shall include, as a minimum, those requirements specified on the prescribed physical examination report. The examining physician or nurse practitioner shall require the school bus driver to undergo any diagnostic tests that are necessary to determine whether the driver has the physical and mental ability to operate safely a school transportation conveyance. Each school bus driver shall receive an annual physical examination, and each driver who is to be initially employed shall be examined within four weeks prior to the beginning of service. In no case shall the interval between physical examinations exceed a 13-month period.

(iii) Each regular or substitute driver of a school bus owned, leased or contracted for by a school district, board of cooperative educational services or nonpublic school shall pass a physical performance test approved by the commissioner, upon recommendation of an advisory group of certified school bus driver instructors, at least once every two years. Additionally, the test shall be administered to any driver following an absence from service of 60 or more consecutive days from his or her scheduled work duties. In no case shall the interval between physical performance tests exceed 24 months.

(a) Except as provided in clause (d) of this subparagraph, the physical performance test shall be conducted by a certified school bus driver instructor and shall assess the driver/applicant's ability to perform the following functions of a school bus driver: 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, and exit quickly oneself and students from an emergency door.

(b) A driver/applicant who fails any portion of the physical performance test shall be deemed unqualified to operate a school transportation conveyance until a re-examination is passed. Such driver/applicant may request re-examination which shall be administered no sooner than three days from the prior test. The cost of such re-examination shall be borne by the employer if the driver/applicant passes the re-examination, or the driver/ applicant if he or she fails the re-examination.

(c)

(1) A school bus driver who is employed by a school district, board of cooperative educational services, or

contractor as of September 1, 1997 shall have until July 1, 2000 to take and pass the driver physical performance test. All drivers hired by school districts, boards of cooperative educational services, or contractors after September 1, 1997 shall be required to pass the driver physical performance test before they may transport pupils.

(2) A school bus driver who is employed by a nonpublic school as of January 1, 2005 shall have until January 1, 2008 to take and pass the driver physical performance test. All drivers hired by nonpublic schools after January 1, 2005 shall be required to pass the driver physical performance test before they may transport pupils.

(d) School districts, boards of cooperative educational services, nonpublic schools or transportation contractors may apply to the commissioner for a temporary waiver to permit Department of Motor Vehicles (DMV) certified 19A examiners, employed by that carrier, to administer the physical performance test to school bus drivers employed by that carrier. Such waiver may be granted where it is established that there are insufficient certified school bus driver instructors on staff to administer the test in a timely manner. Upon the issuance of such waiver, a certified school bus driver instructor's physical presence shall not be required during the administration of the test, provided that such testing is conducted under the general supervision of a certified school bus driver instructor who is employed by such board of education, board of cooperative educational services, nonpublic school or transportation contractor. Such certified school bus driver instructor shall instruct the DMV certified 19A examiner in the proper administration of the physical performance test and shall review and approve the test results of all physical performance tests administered by the examiner.

(4) Required licenses and certification. Each driver of a motor vehicle conveying school children shall have the appropriate operator's or commercial driver's license to operate such motor vehicle.

(5) Pre-service, safety training, and refresher training for school bus drivers.

(i) Pre- service. Each school bus driver initially employed by a board of education or transportation contractor subsequent to July 1, 1973, or initially employed by a nonpublic school on or after July 1, 2004, shall have received at least two hours of instruction on school bus safety practices. Each driver of a vehicle transporting pupils with disabilities exclusively who is initially employed subsequent to January 1, 1976, or initially employed on or after July 1, 2004 for nonpublic school bus drivers, shall have received an additional hour of instruction concerning the special needs of a pupil with a disability.

(ii)

(a) During the first year of employment, each driver initially employed by a board of education, board of cooperative educational services or transportation contractor subsequent to July 1, 1973 shall complete a basic course of instruction in school bus safety practices approved by the commissioner, which shall include two hours of instruction concerning the special needs of a pupil with a disability.

(b) During the first year of employment, each school bus driver initially employed by a nonpublic school on or after July 1, 2005 shall complete a basic course of instruction in school bus safety practices approved by the commissioner, which shall include two hours of instruction concerning the special needs of a pupil with a disability. Each school bus driver initially employed by a nonpublic school on or after July 1, 2004 and on or before June 30, 2005, shall complete such course within the first two years of such employment.

(iii) All school bus drivers shall receive a minimum of two hours of refresher instruction in school bus safety at least two times a year, at sessions 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 of vehicles transporting pupils with disabilities exclusively shall also include instruction relating to the special needs of a pupil with a disability.

(iv) Occasional drivers for other than regular routes shall not be required to receive the training specified in this paragraph. For the purposes of this paragraph, *occasional driver* shall mean a certified teacher employed by a school district or a board of cooperative educational services, who is not primarily employed on either a full-time or part-time basis as a school bus driver or substitute school bus driver.

(v) Except as otherwise provided in clauses (a) and (b) of this subparagraph, all training required in this subdivision shall be provided by, or under the direct supervision of a school bus driver instructor certified by the commissioner. To qualify for certification as a school bus driver instructor (SBDI), individuals shall successfully complete a school bus driver instructor training and evaluation course taught by a certified master instructor. The course shall be approved by the commissioner upon the recommendation of the commissioner's school bus driver instructor advisory committee, an advisory group consisting of at least seven certified school bus driver instructors appointed annually for such purpose by the commissioner. Each person who applies for admission to this course shall be currently employed by a public school district, board of cooperative educational services, nonpublic school or private contractor who is currently providing pupil transportation services for a public school district, nonpublic school or board of cooperative educational services. The SBDI course shall include but shall not be limited to the following content areas: planning and making presentations including lesson plans and objectives, school bus accident statistics and interpretation, effective communications, and evaluation. Each such person shall possess a high

school diploma or equivalent diploma and shall have completed the basic course of instruction in school bus safety practices. In addition, each such person shall have completed the Advanced New York State School Bus Driver Training Course or a Department of Motor Vehicles approved Point/Insurance Reduction Program. To maintain certification, school bus driver instructors shall be required to attend the annual professional development seminar (PDS) approved by the commissioner upon the recommendation of the SBDI advisory committee, and taught by a certified master instructor. The PDS shall provide refresher training for all SBDIs in presentation skills, lesson planning, school bus safety techniques, requirements and statistics. The PDS shall provide SBDIs with training materials for the upcoming school year safety training campaign, including information which shall be conveyed to all school bus drivers in the next two driver refreshers.

(a) A certified school bus driver instructor's physical presence shall not be required during training conducted upon initial employment of a school bus driver by a board of education, board of cooperative educational services or transportation contractor, provided that such training is conducted under the general supervision of such an approved instructor.

(vi) Master instructors shall be certified by the commissioner to conduct training programs for individuals to become certified school bus driver instructors, and work in the development of safety training curricula including the development and delivery of the annual professional development seminar. To qualify as a master instructor, an individual must have been a certified school bus driver instructor for at least five years, have demonstrated the ability to teach others the concepts of the school bus safety training program, and meet such other requirements as may be prescribed by the commissioner including, but not limited to possession of a New York State teaching certificate or employment experience in a pupil transportation position in New York State, and satisfactory completion of a mentor/training program or project.

(6) Character requirement. The driver of a vehicle for the transportation of school children shall be of good moral character and thoroughly reliable. At the time of initial application and at such other times as the superintendent of schools, district superintendent of schools, or nonpublic school chief administrator may determine, each applicant for approval for employment as a school bus driver shall furnish to the superintendent or administrator at least three statements from three different persons who are not related either by blood or marriage to the applicant pertaining to the moral character and to the reliability of the applicant.

(c) School bus monitor and attendant qualifications.

(1) Approval for employment. Approval for employment as a school bus monitor or attendant shall be in writing on a form prescribed by the Commissioner of Education.

(2) Age. All school bus monitors and attendants shall be at least 19 years of age.

(3) Physical fitness.

(i) Each school bus monitor and attendant shall have the physical and mental ability to satisfactorily perform his or her duties.

(ii) Each monitor or attendant may be examined on order of the chief school administrator by a duly licensed physician within two weeks prior to the beginning of such monitor's or attendant's service in each school year. The report of the physician, in writing, shall be considered by the chief school administrator in determining the fitness of the monitor or attendant to carry out his or her functions. The examining physician shall require the monitor or attendant to undergo any diagnostic tests that are necessary to determine the physical and mental ability of the monitor or attendant to perform his or her duties.

(iii) Each school bus monitor or attendant of a school bus owned, leased or contracted for by a school district or board of cooperative educational services shall pass a physical performance test approved by the commissioner at least once every two years. Additionally, the test shall be administered to any monitor or attendant following an absence from service 60 or more consecutive days from his or her schedule work duties. In no case shall the interval between physical performance tests exceed 24 months. Individuals employed by a school district, board of cooperative educational services or contractor as a monitor or attendant on July 1, 2003 shall have until July 1, 2004 to take and pass a physical performance test. Individuals hired as a monitor or attendant after July 1, 2003, must take and pass a physical performance test before they may assume their duties.

(a) Except as provided in clause (b) of this subparagraph, the physical performance test shall be administered by a certified school bus driver instructor and shall assess the school bus monitor or attendant's ability to perform his or her duties including, but not limited to, the following functions: climb and descend the bus steps, carry or drag students in a bus emergency evacuation, and exit quickly oneself from an emergency door.

(b) School districts, boards of cooperative educational services, or transportation contractors may apply to the commissioner for a temporary waiver to permit Department of Motor Vehicles (DMV) certified 19A examiners, employed by that carrier, to administer the physical performance test to monitors and attendants employed by that carrier. Such waiver may be granted where it is established that there are insufficient certified school bus driver instructors on staff to administer the test in a timely manner. Upon the issuance of such waiver, a certified school bus driver instructor's physical presence shall not be required during the administration of the test, provided that such testing is conducted under the general supervision of a certified school bus driver instructor who is employed by such board of education, board of cooperative educational services or transportation contractor. Such SBDI shall instruct the DMV certified 19A examiner in the proper administration of the physical performance test and shall review and approve the test results of all physical performance tests

administered by the examiner.

(c) A school bus monitor or attendant who fails any portion of the physical performance test shall be deemed unqualified to perform the duties of that position. The monitor or attendant may request a re-examination. The cost of such re-examination shall be borne by the employer if the monitor/attendant passes the re-examination, or by the monitor/attendant if he or she fails the re-examination.

(4) Required certifications. Any person employed by a school district, board of cooperative educational services or pupil transportation contractor as a school bus attendant serving pupils with a disabling condition on January 1, 2004, shall have until July 1, 2004 to obtain training and certification in cardiopulmonary resuscitation where such skills are required as part of the individualized education plan prepared for the student. Any such person hired after January 1, 2004 shall, prior to assuming their duties as a school bus attendant, obtain training and certification in cardiopulmonary resuscitation where such skills are required as part of the individualized education plan prepared for the student. School districts, boards of cooperative educational services or contractors may require monitors or attendants to maintain certification in first aid.

(5) Pre-service, safety training, and refresher training. Except as otherwise provided in this paragraph, each school bus monitor or attendant employed by a board of education, board of cooperative educational services or pupil transportation contractor on July 1, 2003 shall comply with the training requirements of this paragraph no later than July 1, 2004. Individuals hired after July 1, 2003 shall comply with such requirements before assuming their duties on a school bus.

(i) Pre-service instruction. All school bus monitors or attendants shall receive three hours of pre-service instruction as prescribed by the commissioner upon recommendation of the commissioner's school bus driver instructor advisory committee, which shall include, but is not limited to, school bus safety practices, child management techniques, and the proper techniques for assisting children to safely embark and disembark a school bus. In addition to such instruction, any person employed on January 1, 2004 as a school bus monitor, or as a school bus attendant serving pupils with a disabling condition, shall, by July 1, 2004, receive instruction as prescribed by the commissioner upon recommendation of the commissioner's school bus driver instructor advisory committee relating to special needs transportation, including, but not limited to, the proper techniques for assisting disabled students in entering and exiting the school bus. Any person hired after January 1, 2004 shall complete such special needs instruction prior to assuming their duties as a school bus monitor or as a school bus attendant.

(ii) A certified school bus driver instructor's physical presence shall not be required during training conducted upon initial employment of a school bus monitor or attendant by a board of education or transportation contractor, provided that such training is conducted under the general supervision of such certified instructor.

(iii) Specialized training. Each school bus monitor or attendant hired after July 1, 2003 shall complete within their first year of employment basic course of

instruction for monitors and attendants. Multiple curricula may be approved for use by the commissioner. Such courses shall provide not less than 10 hours of instruction on a range of topics prescribed by the commissioner upon recommendation of the commissioner's school bus driver instructor advisory committee.

(iv) All school bus monitors and attendants shall receive two two-hour refresher training sessions annually at sessions conducted between July 1st and the first day of school and between December 1st and March 1st of each school year.

(d) Rules affecting pupils.

(1) Drivers, monitors and attendants shall not allow pupils to enter or leave the bus while it is in motion.

(2) Drivers, monitors and attendants are held responsible for reasonable behavior of pupils in transit.

(3) Drivers, monitors and attendants shall not allow pupils to thrust their heads or arms out of open windows.

(4) The driver of a school bus, when discharging pupils who must cross the highway, shall instruct such pupils to cross the highway at a distance of 10 feet in front of the vehicle so as to be in the vision of the driver. The driver shall also keep such school bus halted with red signal lights flashing until such pupils have reached the opposite side of the highway.

(5) Fuel tanks shall not be filled while pupils are in the bus.

(e) Driving rules.

(1) Drivers shall be familiar with the Vehicle and Traffic Law, regulations of the Commissioner of Motor Vehicles and regulations of the Commissioner of Education pertaining to pupil transportation.

(2) Drivers shall make a full stop at all railroad crossings and at State highways before crossing except that no stop need be made at any railroad crossing where a police officer or a traffic control signal or sign directs traffic to proceed.

(3) Drivers shall give warning before making a left-hand or right-hand turn.

(4) Drivers, monitors and attendants shall not leave the school bus when children are inside except in case of emergency, and in such case before leaving the bus the driver shall stop the motor, remove the ignition key, and set the parking brake. Monitors or attendants may leave the school bus for the purposes of assisting children to embark or disembark the vehicle and to safely cross the street. Drivers, monitors and attendants shall check the vehicle to insure that no child is left behind on board unattended at the conclusion of the school bus route.

(5) Drivers, monitors and attendants shall not smoke at anytime while within a school bus. Drivers, monitors and attendants shall not eat or drink any liquid, or

perform any act or conduct themselves in any manner which may impair the safe operation of a school bus while such vehicle is transporting pupils.

(6) Drivers shall not exceed a maximum speed limit of 55 miles per hour on any road within or outside of New York State while their school bus is being used for the transportation of pupils.

(f) Drills on school buses.

(1) The drills on school buses required by section 3623 of the Education Law shall include practice and instruction in the location, use and operation of the emergency door, fire extinguishers, first-aid equipment and windows as a means of escape in case of fire or accident. Drills shall also include instruction in safe boarding and exiting procedures with specific emphasis on when and how to approach, board, disembark, and move away from the bus after disembarking. Each drill shall include specific instructions for pupils to advance at least 10 feet in front of the bus before crossing the highway after disembarking. Each drill shall emphasize 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. All such drills shall include instruction in the importance of orderly conduct by all school bus passengers with specific emphasis given to student discipline rules and regulations promulgated by each board of education. Such instruction and the conduct of the drills shall be given by a member or members of the teaching or pupil transportation staff. Pupils attending public and nonpublic schools who do not participate in the drills held pursuant to this paragraph shall also be provided drills on school buses, or as an alternative, shall be provided classroom instruction covering the content of such drills.

(2) A minimum of three such drills shall be held on each school bus during the school year, the first to be conducted during the first seven days of school, the second between November 1st and December 31st and the third between March 1st and April 30th.

(3) No drills shall be conducted when buses are on routes.

(4) The school authorities shall certify on the annual report to the State Education Department that their district has complied with this subdivision.

(g) Instruction on use of seat belts. In each school district in which pupils are transported on school buses equipped with seat safety belts, such district shall insure that all pupils who are transported on any school bus owned, leased or contracted for by the district or board of cooperative educational services shall receive instruction on the use of seat safety belts. Such instruction shall be provided at least three times each year to both public and nonpublic school pupils who are so transported and shall include, but not be limited to:

- (1) proper fastening and release of seat safety belts;
- (2) acceptable placement of seat safety belts on pupils;

- (3) times at which the seat safety belts should be fastened and released; and
- (4) acceptable placement of the seat safety belts when not in use.

Historical Note

Sec. repealed, new filed: March 1, 1963; Oct. 31, 1967; repealed, new added by renum. 156.13, filed Nov. 28, 1977; amds. filed: Dec. 17, 1979; Oct. 27, 1980; Sept. 30, 1981; Sept. 24, 1985; Sept. 8, 1986 as emergency measure, expired 60 days after filing; Sept. 30, 1986 as emergency measure; Nov. 25, 1986; amds. filed: Jan. 23, 1990; Sept. 19, 1995 as emergency measure; Nov. 7, 1995; Feb. 13, 1996; March 19, 1996; July 22, 1997; June 17, 2003; Sept. 12, 2003 as emergency measure; Nov. 18, 2003; June 25, 2004 as emergency measure eff. July 1, 2004. Amended (a)-(c).

Research Reference

84 NY Jur 2d, Pleading §254.

94 NY Jur 2d, Schools, Universities, and Colleges §§ 317, 319

CASE NOTES

Ban on smoking by bus drivers when no students are on buses is subject to collective bargaining and 8 NYCRR §156.3[g][5], which concerns transportation of pupils, neither prohibits ban nor preempts District's duty to negotiate ban. Newark Valley Cent. School Dist. v. Public Employment Relations Bd., 1994, 632 N.E.2d 443, 610 N.Y.S.2d 134, 83 N.Y.2d 315.

Where complainant had adrenal glands removed and it was necessary to take hormone medication, complainant should not be precluded under 8 NYCRR §156.3 from employment as school bus driver, because substantial medical evidence demonstrated that ailment would not impede on her ability to safely operate bus. State Div. of Human Rights on Complaint of Giannavola v. LeRoy Cent. School Dist. (4 Dept. 1985) 485 N.Y.S.2d 907, 107 A.D.2d 153, appeal denied 484 N.E.2d 672, 494 N.Y.S.2d 1029, 65 N.Y.2d 610.

Absent evidence as to effect upon safety, Court could not assume that age limitation of 65 for school bus drivers contained in §156.3(b) was bone fide occupational qualification for purpose of determining whether violated Age Discrimination in Employment Act. E.E.O.C. v. KDM School Bus Co., 1985, 612 F.Supp. 369.

§ 156.4 Bus purchase approval.

Historical Note

The purchase by a school district of any bus to be used for the transportation of children shall be approved by the Commissioner of Education on forms prescribed by him. Every purchase agreement shall include the clause, "specifications subject to the approval of the

Education Department." All school buses must comply with the State Vehicle and Traffic Law and with rules and regulations of the State Department of Transportation. Transportation aid shall not be apportioned on the purchase cost or operating cost of a district-owned school bus unless the school district has obtained the required purchase approval by the commissioner. In no event shall the approval of a school bus purchase be granted where prescribed forms are filed with the State Education Department later than one year from the date on which the bus was purchased. The commissioner may excuse for good cause the failure of a district to request purchase approval within the prescribed period.

Historical Note

Sec. repealed, new filed: March 1, 1963; Oct. 31, 1967; repealed, new added by renum. 156.14, filed Nov. 28, 1977 eff. Dec. 12, 1977.

§ 156.5 Annual extensions of transportation contracts.

Historical Note
Research Reference
Case Notes

(a) Annual extensions of contracts shall be prepared on forms prescribed by the commissioner; such extensions shall be filed with and approved by the commissioner and are subject to all laws, rules and regulations pertaining to the filing of transportation contracts.

(b) Only contracts awarded in accordance with the competitive bidding requirements of subdivision 14 of section 305 of the Education Law may be extended.

(c) Annual extensions of fixed-price contracts, contracts based upon unit rates, such as per-bus, per-pupil or per-mile, and contracts based upon a combination of a fixed price and unit rate may provide for increases in such fixed prices and/or unit rates not to exceed the contractual amount paid in the preceding year by more than the increase in the regional consumer price index for the 12-month period ending on May 31st immediately preceding the commencement of the contract extension.

(d) Each district proposing to extend a contract shall maintain for a period of six years after expiration or termination of the contract extension or six years after final payment under the contract extension satisfactory evidence of the increase in the cost of the contractor's operation during the 12-month period immediately preceding the month in which the contract terminates. Upon the request of the commissioner, each district shall file such evidence with the commissioner.

(e) Each district proposing to extend a contract in an amount which is in excess of the maximum increase allowed by use of the consumer price index for the New York, N.Y. - Northern N.J. area, based upon the index for all urban consumers (CPI-U), shall file with

the commissioner satisfactory documentation of the actual cost of qualifying criminal history and driver licensing testing fees attributable to special requirements for drivers of school buses pursuant to arts. 19 and 19-A of the Vehicle and Traffic Law.

Historical Note

Sec. repealed, filed March 1, 1963; new filed Oct. 31, 1967; repealed, new added by renum. 156.15, filed Nov. 28, 1977; amds. filed: Sept. 19, 1988; Feb. 13, 1996 eff. March 29, 1996. Amended (d); added (e).

Research Reference

94 NY Jur 2d, Schools, Universities, and Colleges § 28.5
97 NY Jur 2d, Statutes § 102

CASE NOTES

Within statute providing that a board of education extending a contract may increase the amount paid by an amount not to exceed the consumer price index increase during the preceding twelve month period, provided that there has been at least an equivalent increase in the amount of contractor's cost of operation during the period of the contract, the phrases "the preceding twelve month period" and "during the period of the contract" both refer to the retrospective year preceding the expiration of the contract, and even if the statute were subject to conflicting interpretation, the regulations promulgated pursuant to it leave no doubt as to its intended application by the administrative agency. *A.C. Transp., Inc. v. Board of Educ. of City of New York* (1 Dept. 1999) 687 N.Y.S.2d 1, 253 A.D.2d 330, leave to appeal denied 1999 WL 339460, leave to appeal denied 713 N.E.2d 417, 691 N.Y.S.2d 382, 93 N.Y.2d 808.

A board of education has no legal obligation to accept a contract renewal offer from the current holder of its transportation contract. 39 Educ.Dept.Rep. 48.

§ 156.6 Leasing of school buses under emergency conditions.

Historical Note

(a) Pursuant to the provisions of section 1709 of the Education Law, school buses may be leased from sources other than a school district, board of cooperative educational services, or county vocational education and extension board under emergency conditions which shall include but not be limited to the following:

- (1) strikes;
- (2) removal of bus from service due to:
 - (i) accident;

- (ii) mechanical failure; or
 - (iii) fire, theft, vandalism;
- (3) delay in delivery date.

(b) Within 10 days from the date the emergency occurs, a statement explaining the transportation emergency and its estimated duration shall be forwarded to the Commissioner of Education for approval.

(c) Such approval of the commissioner shall be for a period not to exceed 90 days, unless an emergency still exists. In such event, a request setting forth in detail, the reasons for extension of the emergency shall be filed with the commissioner for approval.

Historical Note

Sec. repealed, new filed: March 1, 1963; Oct. 31, 1967; repealed, new added by renum. 156.16, filed Nov. 28, 1977 eff. Dec. 12, 1977.

§ 156.7 Calculation of nonallowable pupil deduction.

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| <u>Historical Note</u> |
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(a) In those instances in which a school district provides transportation services, by district- owned, leased, or contracted school buses, a nonallowable pupil deduction shall be calculated for purposes of determining aid pursuant to section 3602 of the Education Law, for transportation expenses incurred in the 1990-91 school year and each school year thereafter, pursuant to this paragraph.

(1) The calculation of the nonallowable pupil deduction for each school district shall be as follows: the dollar amount of the district's nonallowable pupil deduction for expenses for transportation services, by district-owned, leased, or contracted school buses, incurred in each of the school years 1987-88, 1988-89, and 1989-90, as audited and confirmed by the Education Department, shall be summed, with such sum divided by the sum of the district's net transportation expenses related to mileage travelled by district-owned, leased, or contracted school buses for the three years, with the result expressed as a decimal to four places without rounding. This nonallowable pupil decimal shall be calculated by the Education Department for each district, and shall be reported to each district by July 1, 1991. Net transportation expense for purposes of this paragraph shall be the total expense attributable to transportation service to and from school and BOCES programs, for which an apportionment is provided pursuant to article 65, 73 or 89 of the Education Law, excluding the expenses attributable to other purpose transportation.

(2) In calculating aid to be paid in each school year commencing in school year 1991-92, the nonallowable pupil decimal calculated in paragraph (1) of this subdivision

shall be multiplied by net transportation expense of the base year to determine nonallowable expense. Such nonallowable expense shall be deducted from net transportation expense to determine the allowable transportation expense for transportation aid.

(3) (i) A school district shall provide documentation to the commissioner for the calculation of a new nonallowable pupil decimal at least once every three years, on a schedule prescribed by the commissioner, using the nonallowable pupil decimal worksheet prescribed by the commissioner; and in addition, a school district shall provide such documentation during any school year in which the district experiences an increase or decrease from the nonallowable pupil decimal previously calculated pursuant to this section, when any one or more of the following conditions apply:

- (a) change in school district transportation eligibility policy;
- (b) school district reorganization with one or more other districts;
- (c) opening of a school building or closing of a building currently used as a school building;
- (d) an error made by either the school district or the Education Department in the calculation of a nonallowable pupil decimal for a prior year; or
- (e) a change in school district transportation policy to provide transportation of eligible children to or from a universal prekindergarten program pursuant to section 3602-3 of the Education Law.

(ii) Upon receipt of such documentation, the commissioner shall calculate a new nonallowable pupil decimal by dividing the total number of pupil miles of transportation services provided to nonallowable pupils on all district-owned, leased, or contracted school buses during the school year reported by the total number of pupil miles of transportation services provided to all pupils on all district-owned, leased, or contracted school buses during such school year, with the result expressed as decimal to four places without rounding. The number of pupil miles of transportation services provided to pupils attending an approved prekindergarten program pursuant to section 3602-e of the Education Law shall be excluded for the purposes of such calculation, provided that the transportation services furnished to such prekindergarten pupils are provided on a space-available basis and do not require, or result in:

- (a) any expansion of approved bus routes or additional trips; or
- (b) any increase in contracted expenditures for transportation expenses; or
- (c) any purchase or lease of additional vehicles.

(iii) The new nonallowable pupil decimal shall be used in calculating transportation aid in each school year after the school year in which such documentation is provided, in lieu of the decimal previously calculated pursuant to this section.

(b) For purposes of calculating transportation aid pursuant to section 3602 of Education Law, for school districts using public service carriers, the deduction for nonallowable

pupils shall be the actual expenditures for transporting such pupils.

Historical Note

Sec. repealed, new filed: March 1, 1963; Oct. 31, 1967; repealed, filed Nov. 28, 1977; new filed Dec. 17, 1979; repealed, new filed April 30, 1991; amds. filed: Feb. 13, 1996; Dec. 23, 1997 as emergency measure; March 13, 1998 as emergency measure eff. March 17, 1998; March 13, 1998 eff. April 2, 1998. Amended (a)(3).

§ 156.8 Regional transportation expenses.

Historical Note

(a) The proration of expenses for regional or joint transportation services shall be determined according to the provisions of a transportation contract between the board(s) of education and the board(s) of cooperative educational services which participate in such regional or joint transportation.

(b) The proration of expenses for cooperative school bus maintenance shall be determined according to the provisions of a transportation contract between the board(s) of education and the board(s) of cooperative educational services participating in such cooperative school bus maintenance.

(c) The approvable expenditures, for purposes of State aid for transportation, of a school district which provides regional transportation or cooperative school bus maintenance services to one or more additional school districts, shall not exceed gross expenditures less all sums received from such other district or districts for the provision of such services.

Historical Note

Sec. repealed, new filed: March 1, 1963; Oct. 31, 1967; repealed, filed Nov. 28, 1977; new filed Jan. 23, 1980 eff. Feb. 25, 1980.

§ 156.9 Equipment and other expenses eligible for transportation aid.

Historical Note

For purposes of transportation aid payable pursuant to Education Law, section 3602(7)(b), equipment and other expenses shall be approved in accordance with this section.

(a) Equipment approvable for transportation aid shall include:

(1) vehicles used to transport pupils on a regular basis and items attached to such vehicles; and

(2) items required for the maintenance of such vehicles, whether such items are on or in such vehicles or on or in the garage or facility used to house such vehicles.

(b) Equipment used for transmission of radio communications within the district transportation program and computer data processing equipment for transportation programs shall be eligible for transportation aid only upon prior written approval of the commissioner. Approval of costs for transmission and computer equipment shall be based upon the commissioner's determination of the extent to which such equipment is used for transportation programs.

(c) Equipment eligible for aid pursuant to Education Law, section 3602 (6), or any other law, shall not be eligible for aid pursuant to Education Law, section 3602 (7)(b), and this section.

(d) Equipment may be approved for aid pursuant to Education Law, section 3602 (7)(b), and this section if:

(1) such school bus and garage equipment contributes to the safety of pupils being transported;

(2) the equipment is essential for efficient operation or maintenance of vehicles used for pupil transportation;

(3) the equipment is essential for the conservation of energy; or

(4) the equipment is required by a State agency pursuant to law or regulation.

(e) Other expenses eligible for transportation aid shall include those which are specifically necessary for the efficient management and operation of a pupil transportation system, as approved by the commissioner; provided, however, that legal fees shall not be approved.

(f) Only expenses for the items set forth in this section made after June 30, 1982 and approved by the commissioner will be eligible for transportation aid. No expense that is eligible for aid under any other section of law or regulation shall be eligible for aid under this section.

Historical Note

Sec. repealed, new filed March 1, 1963; repealed, filed Oct. 31, 1967; new filed Nov. 28, 1983 eff. Dec. 21, 1983.

§ 156.10 Retirement benefits and transportation during the school day eligible for transportation aid.

Historical Note

(a) For purposes of transportation aid payable pursuant to Education Law, section 3602(7)(a), approved retirement expenses shall be determined by multiplying by the ratio of other aidable transportation expenses to total transportation expenses, exclusive of retirement expenses:

(1) the district share of retirement expense payable to the New York State Teachers' Retirement System in the base year for transportation personnel;

(2) the district share of retirement expense payable to the New York State Employees' Retirement System in the base year for transportation personnel;

(3) the district share of retirement expense payable to the New York City Teachers' Retirement System in the base year for transportation personnel;

(4) the district share of retirement expense payable to the New York City Employees' Retirement System in the base year for transportation personnel; and

(5) the district share of retirement expense payable to the New York City Board of Education Retirement System in the base year for transportation personnel.

(b) No expense that is eligible for aid under subdivision (a) of this section or under Education Law, section 3602(7)(b)(v), concerning transportation during the school day, shall be eligible for aid under any other section of law or regulation.

Historical Note

Sec. repealed, new filed March 1, 1963; amd. filed Sept. 9, 1966; repealed, filed Oct. 31, 1967; new filed May 1, 1984 as emergency measure; made permanent and amd. by order filed June 26, 1984 eff. June 27, 1984.

§ 156.11 Appropriate costs for a transportation contract.

Historical Note

All contracts for the transportation of children authorized pursuant to paragraph (h) of subdivision 25 of section 1709 of the Education Law, and not specifically authorized by any other section of law, shall be subject to a test of "appropriate cost" pursuant to this section.

(a) In determining the appropriate transportation contract cost, the transportation service provider school district shall demonstrate 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 determined in accordance with subdivision (b) of this section.

(b) An appropriate unit cost for the proposed transportation service shall be determined

by dividing the grand total of transportation expenditures 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 transportation contract costs shall satisfy the test of "appropriate cost" required by this section if such proposed transportation contract costs are equal to the product of such resulting, appropriate unit cost and the number of comparable service units to be provided under the proposed contract. The grand total of transportation expenditures used in this calculation shall include all expenses that would be eligible for transportation aid if they were incurred under a transportation contract with a private contractor, including but not limited to the transportation related costs of operation, maintenance and repair of vehicles, fringe benefits, buildings, utilities, depreciation, training, insurance, interest payments, and administration. Written documentation of specific expenditures of the school district included in the grand total of transportation expenditures and the service units used in such calculations shall be retained by the transportation service provider school district for a period of at least three years after the termination of such contracted transportation service and shall be available for public inspection.

(c) This section shall not apply to the transportation of children of school age provided pursuant to provisions of the Education Law other than Education Law, section 1709(25)(h), including but not limited to subdivision 24, paragraph (g) of subdivision 25 or subdivision 27 of section 1709 of the Education Law.

Historical Note

Sec. repealed, new filed March 27, 1973; amd. filed July 1, 1975; renum. 156.1, filed Nov. 28, 1977; new filed: June 28, 1994 as emergency measure; Sept. 27, 1994 as emergency measure eff. Sept. 27, 1994; Sept. 27, 1994 eff. Oct. 13, 1994.

§ 156.12 **Transportation contracts awarded through a request for proposals.**

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| <u>Historical Note</u> |
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(a) Pursuant to the provisions of paragraph (a) of subdivision 14 of section 305 of the Education Law, all contracts for the transportation of pupils which are subject to the competitive bidding requirements of General Municipal Law shall be awarded to the lowest responsible bidder or through an evaluation of proposals submitted in response to a request for proposals by a board of education.

(b) When a board of education elects to award a contract through an evaluation of proposals in response to a request for proposals, such board of education shall evaluate each proposal from a responding contractor in accordance with the following criteria:

- (1) the previous experience of the contractor in transporting pupils;

- (2) the name of each transportation company of which the contractor has been an owner or manager;
- (3) a description of any safety programs implemented by the contractor;
- (4) a record of accidents in motor vehicles under the control of the contractor;
- (5) the driving history of employees of the contractor;
- (6) inspection records and model year of each of the motor vehicles under the control of the contractor;
- (7) maintenance schedules of the motor vehicles under the control of the contractor;
- (8) a financial analysis of the contractor;
- (9) documentation of compliance with motor vehicle insurance requirements; and
- (10) total cost of the proposal.

(c) Any public notice soliciting proposals for transportation services, as well as any instructions provided to potential respondents to a request for proposals pursuant to this section, shall specify all of the criteria to be used in evaluating such proposals and shall specify the weightings that the board of education has assigned to each criterion for the purpose of evaluating proposals submitted in response to the request for proposals. For this purpose no single criterion shall be weighted in excess of 50 percent of the total weight of all of the criteria to be used.

(d) Each district awarding a contract through an evaluation of proposals shall submit such contract to the Commissioner for approval pursuant to the provisions of Education Law, sections 305 (14) and 3625, together with satisfactory evidence of the date of the request for such proposals, the forms and instructions used in making such request, the contract specifications, all proposals received, the criteria used in evaluating the proposals, the weights assigned to each criterion, the scores used to assess each category of the criteria, and such other information as the commissioner deems necessary for such approval.

(e) Proposals for contracts for anticipated transportation needs for the following school year shall be requested no later than June 1st, except that proposals for contracts for transportation of children with disabilities shall be requested no later than July 1st of the school year for which such contracts are to be awarded.

(f) Notwithstanding the provisions of subdivision (e) of this section, in the case of an emergency or other unforeseen occurrence or condition affecting transportation services, and requiring immediate action which cannot await responses to a request for proposals, interim contracts may be awarded for a period not to exceed one month, pending the award of a contract for such services in accordance with the provisions of subdivisions (a) through (d) of this section.

(g) Proposals for contracts which cannot be anticipated in accordance with the provisions of subdivision (e) of this section, because of an emergency or other unforeseen

occurrence or condition affecting transportation services, shall be requested at least 30 days prior to the beginning date of service.

Historical Note

Sec. amd. filed Oct. 31, 1967; renum. 156.2, filed Nov. 28, 1977; new filed: Dec. 24, 1996 as emergency measure; Feb. 10, 1997; amds. filed: March 18, 1997 as emergency measure; May 6, 1997 eff. May 22, 1997.

§ 156.13

Historical Note

Sec. amds. filed: Jan. 11, 1963; Feb. 27, 1968; June 10, 1968; Nov. 4, 1970; March 27, 1973; Sept. 30, 1975; Oct. 27, 1975; July 30, 1976; March 29, 1977; June 27, 1977; Aug. 2, 1977; Nov. 28, 1977; renum. 156.3, filed Nov. 28, 1977 eff. Dec. 12, 1977.

§ 156.14

Historical Note

Sec. repealed, new filed July 8, 1971; renum. 156.4, filed Nov. 28, 1977 eff. Dec. 12, 1977.

§ 156.15

Historical Note

Sec. filed May 21, 1965; amds. filed: July 8, 1970; Aug. 4 and 6, 1971; renum. 156.5, filed Nov. 28, 1977 eff. Dec. 12, 1977.

§ 156.16

Historical Note

Sec. filed May 21, 1965; renum. 156.6, filed Nov. 28, 1977 eff. Dec. 12, 1977.