*** THIS SECTION IS CURRENT THROUGH CH. 510, also incorporating A.9462, A.10652-A (Legislative overrides of Governor's veto) 08/16/2006 ***
*** WITH THE EXCEPTION OF CHS. 36, 37, 99-103, 166, 178, 227, 291, 423, 435 and 487 ***

EDUCATION LAW
TITLE IV. TEACHERS AND PUPILS
ARTICLE 65. COMPULSORY EDUCATION AND SCHOOL CENSUS
PART I. COMPULSORY EDUCATION

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

NY CLS Educ § 3212 (2006)

§ 3212. Definition of **persons in parental relation** and their duties; duties of certain other persons

1. Definition. As used in this article, a **person in parental relation** to another individual shall include his father or mother, by birth or adoption, his step-father or step-mother, his legally appointed guardian, or his custodian. A person shall be regarded as the custodian of another individual if he has assumed the charge and care of such individual because the parents or legally appointed guardian of such individual have died, are imprisoned, are mentally ill, or have been committed to an institution, or because, they have abandoned or deserted such individual or are living outside the state or their whereabouts are unknown, or have designated the person pursuant to title fifteen-A of article five of the general obligations law as a **person in parental relation** to the child.

2. Duties of **persons in parental relation.** Every **person in parental relation** to another individual included by the provisions of part one of this article:

a. Shall submit at the time such individual begins to attend upon instruction evidence of age as required for the issuance of an employment certificate, or show that such evidence cannot be produced. When such evidence cannot be produced, or when circumstances exist which reasonably indicate that such individual may be a missing child, the superintendent of schools or his or her authorized representative [fig 1] shall report and make inquiry to the statewide central register for missing children pursuant to section eight hundred thirty-seven-e of the executive law. If such child appears to match a child registered with the statewide central register for missing children, or one registered with the national crime information center register, the superintendent or his or her authorized

representative shall immediately contact the local law enforcement authority. No civil or criminal liability shall arise or attach to any school district or employee thereof for any act or omission to act as a result of, or in connection with, the duties or activities authorized or directed by this paragraph.

b. Shall cause such individual to attend upon instruction as hereinbefore required, and to comply with the provisions of part one of this article with respect to the employment or occupation of minors in any business or service whatever.

c. Shall cause such individual to be placed in proper physical condition to attend upon required instruction, if his physical condition is remediable by the taking of reasonable measures.

d. Shall furnish proof that an individual who is not attending upon instruction at a public or parochial school in the city or district where the **person in parental relation** resides is attending upon required instruction elsewhere. Failure to furnish such proof shall be presumptive evidence that such individual is not attending.

e. Shall furnish, with respect to an individual from seventeen to twenty-one years of age, on demand of a duly authorized representative of the school authorities, satisfactory proof that he is able to speak, read and write English as required for the completion of the fifth year of the elementary school course of study, or cause such individual to submit to an examination to determine his ability in these respects.

3. Exception. A **person in parental relation** to another individual included by the foregoing provisions of this section shall not be subject thereto if it can be shown that he is unable to control such individual.

4. Duties of certain individuals from sixteen to twenty-one years of age. An individual from sixteen to twenty-one years of age, if not under the control of a **person in parental relation,** shall comply with such requirements of part one of this article as are applicable.

5. Duties of other persons.

a. No person shall induce another individual to absent himself from attendance upon required instruction or harbor him while he is absent or aid or abet him in violating any provision of part one of this article.

b. No person shall interfere with an attendance officer in the lawful pursuit of his duties, or neglect or refuse to answer his lawful inquiries.

c. No person shall violate any provision of part one of this article in relation to employment of minors, duties of employers, issuance or transfer of any paper authorizing the employment of minors.

d. No person shall make a false oral or written statement in or in relation to any

employment certificate or other paper required by part one of this article as to any matter required to appear therein.

e. [Repealed]

f. No person shall present as his own any substitute, altered or transferred certificate or badge.

6. Birth certificates. For the purpose of part one of this article, the board of health upon request shall furnish to the school authorities, or to the **person in parental relation** to a minor, or to an individual from seventeen to twenty-one years of age, a duly certified transcript of the birth certificate, filed according to law, of an individual from five to twenty-one years of age.

HISTORY: Add, L 1947, ch 820, eff July 1, 1947, with substance transferred from § 627.
Section heading, amd, L 1974, ch 919, § 12, eff Sept 1, 1974.
Sub 1, amd, L 1958, ch 101, L 1974, ch 919, § 12, L 1978, ch 550, § 19, eff July 24, 1978.
Sub 1, amd, **L 2005, ch 119, § 6**, eff June 30, 2005.
Sub 2, amd, L 1974, ch 919, § 12, eff Sept 1, 1974.
Sub 2, par a, amd, L 1985, ch 617, § 3, eff Oct 26, 1985, **L 1994, ch 690, § 2**, eff Aug 18, 1994 (see 1994 note below).
Sub 3, amd, L 1974, ch 919, § 12, eff Sept 1, 1974.
Sub 4, amd, L 1974, ch 919, § 12, eff Sept 1, 1974.
Sub 5, par a, amd, L 1974, ch 919, § 13, eff Sept 1, 1974.
Sub 5, par e, repealed, L 1966, ch 975, § 18, eff Jan 1, 1967.
Sub 6, amd, L 1949, ch 687, § 45, L 1974, ch 919, § 14, eff Sept 1, 1974.

NOTES:

Editor's Notes
See 1966 note under § 3215.

Laws 1994, ch 690, §§ 1, 12, eff Aug 18, 1994, provide as follows:
Section 1. Declaration of legislative intent. The legislature hereby finds and declares that the abduction of a child is a particularly heinous offense. Although in many instances, there is little that could have been done to avoid such a tragedy, the sooner a child can be identified as "missing," the more immediate the response of law enforcement agencies and hopefully, the better the chances of finding the child and protecting him or her from harm. Therefore, as part of the Sara Anne Wood Child Protection Agenda, these provisions are directed at improving our ability to watch over our children by encouraging and, in some instances, requiring agencies of state and local government to

exercise closer supervision of children entrusted to them and to share information that may assist in locating missing children.

§ 12. This act shall take effect on the eighteenth day of August next succeeding the date in which it shall have become a law; provided, however, that effective immediately, the division of criminal justice services, the department of education and the department of health shall promulgate such rules and regulations as may be necessary to effectuate the purposes of this act.

New York References:

This section referred to in CLS Exec § 837-e

Statewide central register for missing children, CLS Exec § 837-e

Research References & Practice Aids:

45 NY Jur 2d, Domestic Relations § 517

67 NY Jur 2d, Infants and Other Persons Under Legal Disability § 204

94 NY Jur 2d, Schools, Universities, and Colleges §§ 282, 285-287

68 Am Jur 2d, Schools §§ 224, 227

Matthew Bender's New York Civil Practice:

4 Cox, Arenson, Medina, New York Civil Practice: SCPA PP 1712.03, 1713.02

Annotations:

Religious beliefs of parents as defense to prosecution for failure to comply with compulsory education law. 3 ALR2d 1401

Case Notes:

Information against parents for an alleged violation of this section, in keeping their child, a minor between seven and sixteen years of age, from attending upon full time instruction in the public school, must be dismissed where child was repeatedly sent home by her teachers for refusal to take part in a ceremony of saluting the flag as provided for in § 802, and parents always sent child back and child always returned to school though she persisted in her refusal to join in the ceremony. People ex rel. Fish v Sandstrom (1939) 279 NY 523, 18 NE2d 840, 120 ALR 646.

Consistent with teacher tenure and compulsory education provisions of the Education Law, school district could abolish position of attendance teacher and divide duties of that position among principals and assistant principals in the school district, while assigning preferred status to a tenure teacher, who previously held such position entitling him to reinstatement should a vacancy occur within four years in his former position or a similar one. Young v Board of Education (1974) 35 NY2d 31, 358 NYS2d 709, 315 NE2d 768.

In a criminal prosecution in the Family Court, Education Law § 3212, subd 5 was properly invoked as a source of authority for the punishment of defendant for organizing a boycott of school facilities. Insofar as other and earlier cases held that no criminal jurisdiction was lodged in the Family Court or its predecessors, with respect to § 3212, of the Education Law, these have been nullified by the amendments to the judiciary article of the state Constitution, effective Sept 1, 1962 by the statute transferring the prior jurisdiction of the Childrens Court and the Domestic Relations Court of the City of New York to the Family Court and by the development of the Case Law. Cavanagh v Galamison (1968) 31 AD2d 635, 297 NYS2d 651.

Invoking the general aura of "Civil Rights", without reference to any specific provision of law, did not grant to defendants a constitutional immunity based on claims of free speech and right to petition to thwart the provisions of state law requiring children to be in attendance at the established places of instruction. Cavanagh v Galamison (1968) 31 AD2d 635, 297 NYS2d 651.

Before a parent may remove a child from public school in defiance of the compulsory school attendance law to compel the public school system to accept some alteration the parent may believe necessary in the operation of the school system, the parent should be certain that he or she can establish either that the child will receive alternative schooling which meets the requirements of the State Education Law or that to send the child to school would imperil the health or safety of the child. Where a parent was keeping a child out of school, following isolated incidents of alleged racial comments by the child's teacher, without giving the child the education required to meet the minimum standards prescribed by the Education Law, the child was properly found to be neglected child. Re Baum (1978) 61 AD2d 123, 401 NYS2d 514.

Evidence established prima facia case that home-educated children were neglected children under CLS Family Court Act Art 10 for their failure to receive substantially equivalent instruction to that provided in public schools, since inference of neglect could be drawn from facts that parents frustrated attempts by school officials to observe home teaching and ignored requests by school district for production of curriculum, lesson plans, and school calendars; petition was not subject to dismissal for lack of proof as to comparative nature and quality of instruction available in public schools. Re Andrew TT. (1986, 3d Dept) 122 App Div 2d 362, 504 NYS2d 326.

In child protection proceeding, proof that minor child is not attending public or parochial school in district where parents reside makes out prima facie case of educational neglect

pursuant to CLS Educ § 3212; once such proof is established, it is incumbent on parent to go forward with evidence that minor is attending school and receiving required instruction in another place. Re Christa H. (1987, 4th Dept) 127 App Div 2d 997, 513 NYS2d 65.

Proof that younger child missed school at least 39 times and was tardy 38 days, together with circumstances surrounding her older sister's similar number of absences, warranted both direct and derivative findings of educational neglect with respect to younger child. In re Ember "R" (2001, 3d Dept) 285 AD2d 757, 727 NYS2d 767, app den 97 NY2d 604, 736 NYS2d 308, 761 NE2d 1035.

A Board of Education filed an action against the parents of a white child for child neglect for refusing to send their child to the designated public school, which was attended solely by Negro and Puerto Rican children. A defense, that the school offered educationally inferior opportunities, as compared to opportunities offered in schools largely attended by white pupils, was not sustained. A defense, that the school offered inferior educational opportunities, due to discriminatory teacher staffing having inferior qualifications to those possessed by teachers in schools dominated by the white race, was sustained, since the Board was responsible for this condition. Re Skipwith (1958) 14 Misc 2d 325, 180 NYS2d 852.

The Family Court must be considered as having jurisdiction over charges of violating the provisions of this section relating to inducing minors to absent themselves from school and interfering with attendance officers in lawful pursuit of their duties, and prevailing upon children to remain away from their scheduled classes, no matter how laudable the objective, is properly punishable. People ex rel. Belfon v Anonymous (1964) 44 Misc 2d 392, 253 NYS2d 934.

The Family Court is not a criminal court having jurisdiction of all crimes and offenses by or against children, but only has such jurisdiction over those offenses provided by legislative implementation, and had no jurisdiction to entertain several cases charging inducing truancy, harboring truants, and interfering with a truant officer in violation of the Education Law, § 3212(5)(a)(b). Wilson v Family Court (1965) 46 Misc 2d 478, 259 NYS2d 602.

A petitioner seeking admission of her niece to the respondent school system must establish a clear, legal right to the relief sought in order to compel the board to provide a free education for the infant, and her right is not established where there was no evidence of the relinquishment of parental control and no evidence that such control had been permanently transferred to the petitioner. The court also noted the actual residence of the parents was unstated and there was no evidence produced as to who was actually financially supporting the child. Drayton v Baron (1967) 52 Misc 2d 778, 276 NYS2d 924.

The enforcement power under Article 65 of the Education Law was granted to school authorities and officials; parents of school children have no standing to institute or

maintain proceedings to enforce violation of paragraphs a and b of subdivision 5 of § 3212 of the Education Law. People ex rel. Williams v Shanker (1968) 58 Misc 2d 147, 295 NYS2d 10.

In an action alleging in substance that the respondents and their organizations had deprived children of educational opportunities and facilities during recent school strikes in New York City in violation of Education Law § 3212 and praying that such respondents be apprehended and dealt with according to law, the petition failed to state a cause of action in that there must be an allegation of wilful and unlawful intent. Maynard v Shanker (1969) 59 Misc 2d 55, 297 NYS2d 801.

On proof that minor is not attending school in district where parent resides, burden of going forward with proof shifts to parents to overcome presumption of nonattendance with proof that minor is attending required instruction elsewhere. Re H. (1974) 78 Misc 2d 412, 357 NYS2d 384.

Evidence in proceeding to have children declared neglected on account of nonattendance at school did not preponderately show that home instruction was substantial equivalent to instruction at district school or that there was compliance with attendance requirements. Re H. (1974) 78 Misc 2d 412, 357 NYS2d 384.

The stated policy of defendant school district, which provides for latitude with respect to the enrollment of children who do not reside with their parents or legal guardians into the district's schools, is not violative of a statute which places the duty of "causing a minor to attend" school upon the person standing in parental relationship to the minor (Education Law, § 3212, subd 1), which relationship encompasses more than parenthood and judicial guardianship; however, any interpretation of the district's policy which has the effect of limiting registration to only those children for whom a legally appointed guardianship has been obtained, is invalid and unenforceable; a permanent injunction has been rendered academic by virtue of a court order requiring defendant to enroll plaintiff's grandchildren in its schools and a determination with respect to damages arising from the district's refusal to enroll the children is inappropriate since the situation required legal redress and not compensation. Simms v Roosevelt Union Free School Dist. (1979) 100 Misc 2d 827, 420 NYS2d 96.

In a proceeding by the natural father of a fifth grade child seeking an order directing a school district and its superintendent to allow the father to inspect records concerning the child and to discuss the records in conferences with the school district, the father would be entitled to inspect and review the education records of his child, where the father and mother were living separate and apart under terms of a separation agreement providing for custody of the child in the mother with rights of visitation to the father and where the parents were not divorced nor was there any court order affecting custody, visitation or support, even though the natural mother had signed a statement indicating that she did not wish or authorize the school district to transmit school records to the natural father. Page v Rotterdam-Mohonasen Cent. School Dist. (1981) 109 Misc 2d 1049, 441 NYS2d 323.

Respondent father failed to provide his children with an adequate education in accordance with the provisions of Educ Law Art 65 where, relying upon a frivolous claim of residency within petitioner school district, he continued to drop said children off at a school within said district despite petitioner's protest that, not being residents of said school district, they were not entitled to attend school therein; respondent could not defend the educational neglect petition by relying on petitioner's acceptance and education of the children under vehement protest. Moreover, although there was insufficient evidence to establish that either child was currently experiencing an impairment of mental or emotional condition as a result of such neglect, the confrontation between the petitioner and respondent had placed the children in imminent danger of becoming impaired within the meaning of Family Ct Act § 1012(f)(i)(A). Re Baer (1984) 125 Misc 2d 563, 480 NYS2d 178.

As custodial parent in joint custody situation, mother would be given sole discretion and decisionmaking power as to whether parties' 13-year-old daughter should attend her school's sex education program which, according to father, had 2 class sessions involving objectionable subject matter, where child had option of attending study halls instead of 2 classes in question without penalty, but parties agreed that she would choose to attend these classes if she were consulted. Hight v McKinney (1995, Fam Ct) 164 Misc 2d 983, 627 NYS2d 271.

Father may not keep children from school one and eight-tenths miles away, notwithstanding school board refuses transportation and unguarded railroad crossing must be traversed. Parent held to be neglecting children. Re Conlin (1954, Child Ct) 130 NYS2d 811.

Respondent board of education was not required to pay for petitioner's daughters to attend another school district or private school, and petitioner was responsible for complying with compulsory education law despite her perception that her daughters were not safe at their assigned school after another student allegedly made racially discriminatory remarks and physical threats against them, where there was no evidence to support petitioner's claims that her daughters were in danger, and respondent demonstrated that it would act appropriately and promptly should legitimate safety concerns arise. 2000 Op Comm Ed No. 14,309.

Petitioner met statutory definition of "custodian" where there was no evidence that children had any other responsible adult claiming to be their parent or guardian, children were 8 and 9 years old and had been cared for by petitioner for past 5 years, and petitioner provided copies of their previous school records, their social security cards and birth certificates. 2001 Op Comm Ed No. 14,784.

A determination of exactly who is the person or **persons in parental relation** to a student, while important, is not a condition precedent to the admission of a resident to the public schools. Re Appeal of Rounds, 1983 Op Comr Ed No 11220.

Natural parent must show how either she or her child are harmed by appointment of

surrogate parent in hearing examining appropriateness of child's individual education program; hearing officer specifically provided for natural parent to fully participate in hearing, including calling her own witnesses and cross-examining any witnesses called by another person; so as long as natural parent is allowed to fully participate in hearing, any defect in representation afforded by surrogate parent is academic; surrogate parent is required to act in best interest of child and is presumed to do so. Re A Parent Of A Child With A Handicapping Condition, 1987 Op Comm Ed No 11910.

Education Law §§ 3204(1) and 3205(1)(a) require all children from 6 to 16 years of age attend full-time instruction at public school or elsewhere. If instruction is given other than at public school, it must be "substantially equivalent" to the instruction given to minors of similar age and attainment at the public schools of the district where the minor resides and must be given by a "competent" teacher. The parent or guardian of the child in question must assure that the child receives the instruction mandated by the Education Law and must furnish proof that the child "is attending upon required instruction elsewhere." Failure to provide such proof raises a presumption that the child is not receiving the required instruction, which may result in a finding of educational neglect. The content of the information for individual home instruction submitted by the petitioners was inadequate. The regulations of the Commissioner require that petitioners submit either a list of syllabi, curriculum materials and textbooks, or, alternatively, a plan of instruction to be used in each of the required subjects. Petitioner provided neither, instead submitting only a list of textbooks and a standardized "course outline" offered by the Calvert School correspondence course. The list of textbooks was accompanied by neither a list of syllabi nor curriculum materials. Although petitioners could have, in the alternative, submitted a plan of instruction for each course, they failed to do so. Under the circumstances, there is no choice but to find petitioners not in compliance with the Commissioner's regulations. Appeal of White, 1990 Op Comr Educ No 12368.

Petitioner's First Amendment right to free exercise of religion was not infringed by requirement that she complete Individualized Home Instruction Plan pursuant to 8 NYCRR § 100.10 while her daughter was being educated at home; compulsory education law and § 100.10 were enacted to promote state's legitimate and compelling interest in assuring that children receive education to prepare them to be productive members of society. 1994 Op Comm Ed No. 13225.

Religious Freedom Restoration Act was not violated by requirement that petitioner complete Individualized Home Instruction Plan under 8 NYCRR § 100.10 while her daughter was being educated at home, in light of state's legitimate and compelling interest in assuring that children receive education to prepare them to be productive members of society. 1994 Op Comm Ed No. 13225.

Parents of a child within compulsory school age have duty to see to it that such child attends school. Parents have no right to keep such child from proper attendance at school because school district is not providing transportation. Re Conlin, - St Dept --, Dec #5926 (1954).

Nephew of district resident is entitled to attend district school free of charge where boy's parents have effectively abandoned him without aunt having to obtain legal guardianship based on evidence that aunt exercises exclusive custody and control over boy and that he resides with her. Appeal of Deborah V., Ops Comr Ed No. 12259.