

# STATE OF NEW YORK

1869

2021-2022 Regular Sessions

## IN ASSEMBLY

January 11, 2021

Introduced by M. of A. FERNANDEZ, SIMON, WEPRIN, CRUZ, DE LA ROSA,  
BARRON, FRONTUS, GOTTFRIED -- read once and referred to the Committee  
on Education

AN ACT to amend the education law, in relation to providing for absence  
from school for the mental or behavioral health of the minor

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

Section 1. Section 3210 of the education law, subdivision 1 as amended  
by chapter 821 of the laws of 1947, paragraph b of subdivision 1 as  
amended by chapter 491 of the laws of 2014 and paragraph c of subdivi-  
sion 1 as added by chapter 549 of the laws of 1986, is amended to read  
as follows:

§ 3210. Amount and character of required attendance. 1. Regularity and  
conduct. a. A minor required by the provisions of this part [~~one of this  
article~~] to attend upon instruction shall attend regularly as prescribed  
where he resides or is employed, for the entire time the appropriate  
public schools or classes are in session and shall be subordinate and  
orderly while so attending.

b. (i) Absence for religious observance and education shall be permit-  
ted under rules that the commissioner shall establish.

(ii) In addition, the board of education or trustees shall determine  
whether school session should not be held at an individual public  
school, or district-wide, on a day where, if school were in session,  
absenteeism may result in the waste of educational resources because a  
considerable proportion of the student population is unlikely to attend  
because of a religious or cultural day of observance.

(iii) Absence due to the mental or behavioral health of the minor  
shall be permitted under rules that the commissioner shall establish.

c. In the event that a person requests the release of a minor required  
by the provisions of this part [~~one of this article~~] to attend upon  
instruction, the identity of such person shall be verified against a

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

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1 list of names provided by the person or persons in parental relation to  
2 the minor, as defined in section two of this chapter, at the time of  
3 such minor's enrollment. The school district may adopt appropriate  
4 procedures for the purpose of submitting a list of names at a later date  
5 or updating the list of names provided by the person or persons in  
6 parental relation. If such person is identified as one of those persons  
7 included on such list, such minor may be released from attendance. If  
8 such person is identified as a person not included on such list, such  
9 minor may not be released except in the event of an emergency as deter-  
10 mined in the sole discretion of the principal of the school, or his  
11 designee, provided that the person or persons in parental relation to  
12 the minor have been contacted and have agreed to such release. A school  
13 district may presume that either parent of the student has authority to  
14 obtain the release of said minor unless the school district has been  
15 provided with a certified copy of the legally binding instrument such as  
16 the court order or decree of divorce, separation or custody which  
17 provides evidence to the contrary. No situation shall be deemed an emer-  
18 gency until the facts of such situation have been verified by such prin-  
19 cipal or his designee. No civil or criminal liability shall arise or  
20 attach to any school district or employee thereof for any act or omis-  
21 sion to act as a result of, or in connection with, the duties or activ-  
22 ities authorized or directed by this paragraph. The foregoing procedure  
23 shall not apply to release of a minor pursuant to the protective custody  
24 provisions of the social services law and the family court act.

25 2. Attendance elsewhere than at a public school. a. Hours of attend-  
26 ance. If a minor included by the provisions of this part [~~one of this~~  
27 ~~article~~] attends upon instruction elsewhere than at a public school, he  
28 shall attend for at least as many hours, and within the hours specified  
29 therefor.

30 b. Absence. Absence from required attendance shall be permitted only  
31 for causes allowed by the general rules and practices of the public  
32 schools. Absence for religious observance and education shall be  
33 permitted under rules that the commissioner shall establish. Absence  
34 due to the mental or behavioral health of the minor shall be permitted  
35 under rules that the commissioner shall establish.

36 c. Holidays and vacations. Holidays and vacations shall not exceed in  
37 total amount and number those allowed by the public schools.

38 d. Exception. In applying the foregoing requirements a minor required  
39 to attend upon full time day instruction by the provisions of this part  
40 [~~one of this article~~] may be permitted to attend for a shorter school  
41 day or for a shorter school year or for both, provided, in accordance  
42 with the regulations of the state education department, the instruction  
43 he receives has been approved by the school authorities as being  
44 substantially equivalent in amount and quality to that required by the  
45 provisions of this part [~~one of this article~~].

46 § 2. This act shall take effect on the first of July next succeeding  
47 the date on which it shall have become a law. Effective immediately the  
48 addition, amendment and/or repeal of any rule or regulation necessary  
49 for the implementation of this act on its effective date are authorized  
50 to be made on or before such date.