

ASSEMBLY, No. 3904

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 23, 2020

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Assemblymen Verrelli, Zwicker, Assemblywomen McKnight, Reynolds-Jackson, Senators Addiego, Singleton, Bateman, Brown, Oroho, O'Scanlon, Pennacchio, Singer and Testa

SYNOPSIS

Permits use of virtual or remote instruction to meet minimum 180-day school year requirement under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 4/13/2020)

A3904 BURZICHELLI, SCHEPISI

2

1 AN ACT concerning flexible instruction days for public schools and
2 approved private schools for students with disabilities,
3 supplementing chapter 46 of Title 18A of the New Jersey Statutes,
4 and amending P.L.1996, c.138.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8

9 1. Section 9 of P.L.1996, c.138 (C.18A:7F-9) is amended to read
10 as follows:

11 9. a. In order to receive any State aid pursuant to P.L.2007, c.260
12 (C.18A:7F-43 et al.), a school district, charter school, county vocational
13 school district, or county special services school district shall comply
14 with the rules and standards for the equalization of opportunity which
15 have been or may hereafter be prescribed by law or formulated by the
16 commissioner pursuant to law, including those implementing P.L.1996,
17 c.138 (C.18A:7F-1 et al.) and P.L.2007, c.260 (C.18A:7F-43 et al.) or
18 related to the core curriculum content standards required by P.L.2007,
19 c.260 (C.18A:7F-43 et al.), and shall further comply with any directive
20 issued by the commissioner pursuant to section 6 of P.L.1996, c.138
21 (C.18A:7F-6). The commissioner is hereby authorized to withhold all
22 or part of a district's State aid for failure to comply with any rule,
23 standard or directive. No State aid shall be paid to any district which
24 has not provided public school facilities for at least 180 days during the
25 preceding school year, but the commissioner, for good cause shown,
26 may remit the penalty.

27 b. Notwithstanding the provisions of subsection a. of this section
28 to the contrary, in the event that a school district is required to close the
29 schools of the district for more than three consecutive school days due
30 to a declared state of emergency, declared public health emergency, or
31 a directive by the appropriate health agency or officer to institute a
32 public health-related closure, the commissioner shall allow the district
33 to apply to the 180-day requirement established pursuant to subsection
34 a. of this section, one or more days of virtual or remote instruction
35 provided to students on the day or days the schools of the district were
36 closed if the program of virtual or remote instruction meets such criteria
37 as may be established by the commissioner. A district that wants to use
38 a program of virtual or remote instruction to meet the 180-day
39 requirement in accordance with this subsection shall submit its proposed
40 program of virtual or remote instruction to the commissioner within 30
41 days of the effective date of P.L. , c. (pending before the Legislature
42 as this bill) and annually thereafter, provided however that if the school
43 district is unable to complete and submit its proposed program within
44 the 30-day period and the district is required to close its schools for a
45 declared state of emergency, declared public health emergency, or a

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 directive by the appropriate health agency or officer to institute a public
2 health-related closure, the commissioner may retroactively approve the
3 program.

4 A day of virtual or remote instruction, if instituted under a program
5 approved by the commissioner, shall be considered the equivalent of a
6 full day of school attendance for the purposes of meeting State and local
7 graduation requirements, the awarding of course credit, and such other
8 matters as determined by the commissioner.

9 If a program of virtual or remote instruction is implemented for the
10 general education students the same educational opportunities shall be
11 provided to the special education students, to the extent appropriate and
12 practicable. Speech language services and counseling services may be
13 delivered to special education students through the use of electronic
14 communication or a virtual or online platform, as appropriate.

15 c. In the event that the State or local health department determines
16 that it is advisable to close or mandates closure of the schools of a school
17 district due to a declared state of emergency, declared public health
18 emergency, or a directive by the appropriate health agency or officer to
19 institute a public health-related closure, the superintendent of schools
20 shall have the authority to implement the school district's program of
21 virtual or remote instruction.

22 d. The commissioner shall define virtual and remote instruction
23 and establish guidance for its use. The guidance shall provide school
24 districts with information on:

25 (1) providing instruction to students who may not have access to a
26 computer or to sufficient broadband, or to any technology required for
27 virtual or remote instruction;

28 (2) the required length of a virtual or remote instruction day;

29 (3) the impact of virtual or remote instruction on the school lunch
30 and school breakfast programs;

31 (4) the impact of virtual or remote instruction on the schedule for
32 administering State assessments; and

33 (5) such other topics as the commissioner deems necessary.

34 e. (1) Nothing in subsection b., c., or d. of this section shall be
35 construed to limit, supersede or preempt the rights, privileges,
36 compensation, remedies, and procedures afforded to public school
37 employees or a collective bargaining unit under federal or State law or
38 any provision of a collective bargaining agreement entered into by the
39 school district. In the event of the closure of the schools of a school
40 district due to a declared state of emergency, declared public health
41 emergency, or a directive by the appropriate health agency or officer to
42 institute a public health-related closure for a period longer than three
43 consecutive days, public school employees covered by a collective
44 negotiations agreement shall be entitled to compensation, benefits, and
45 emoluments as provided in the collective negotiations agreement as if
46 the school facilities remained open for any purpose and for any time lost
47 as a result of school closures or use of virtual or remote instruction,

1 except that additional compensation, benefits, and emoluments may be
2 negotiated for additional work performed.

3 (2) In the event of the closure of the schools of a school district due
4 to a declared state of emergency, declared public health emergency, or
5 a directive by the appropriate health agency or officer to institute a
6 public health-related closure for a period longer than three consecutive
7 days, public school employees who are not covered by a collective
8 negotiations agreement shall be entitled to any benefits, compensation,
9 and emoluments to which they otherwise would be entitled as if they
10 had performed the work for such benefits, compensation, and
11 emoluments as if the school facilities remained open for any purpose
12 and for any time lost as a result of school closures or use of virtual or
13 remote instruction.

14 (cf: P.L.2007, c.260, s.32)

15

16 2. (New Section) a. In the event that an approved private school
17 for students with disabilities is required to close the school for more than
18 three consecutive school days due to a declared state of emergency,
19 declared public health emergency, or a directive by the appropriate
20 health agency or officer to institute a public health-related closure, the
21 commissioner shall allow the school to apply one or more days of virtual
22 or remote instruction provided to students on the day or days the school
23 was closed to qualify as a day of instruction for the purposes of
24 calculating tuition if the program of virtual or remote instruction meets
25 such criteria as may be established by the commissioner. An approved
26 private school for students with disabilities that wants to use a program
27 of virtual or remote instruction to qualify as a day of instruction for the
28 purposes of calculating tuition shall submit its proposed program of
29 virtual or remote instruction to the commissioner within 30 days of the
30 effective date of P.L. , c. (C.) (pending before the Legislature as this
31 bill) and annually thereafter, provided however that if the school is
32 unable to complete its proposed program within the 30-day period and
33 the school is required to close for a declared state of emergency,
34 declared public health emergency, or a directive by the appropriate
35 health agency or officer to institute a public health-related closure, the
36 commissioner may retroactively approve the program.

37 A day of virtual or remote instruction, if instituted under a program
38 approved by the commissioner, shall be considered the equivalent of a
39 full day of school attendance for the purposes of meeting State and local
40 graduation requirements, the awarding of course credit, and such other
41 matters as determined by the commissioner.

42 b. In the event that the State or local health department determines
43 that it is advisable to close or mandates closure of an approved private
44 school for students with disabilities due to a declared state of
45 emergency, declared public health emergency, or a directive by the
46 appropriate health agency or officer to institute a public health-related
47 closure, the principal of the school shall have the authority to implement
48 the school's program of virtual or remote instruction.

- 1 c. The commissioner shall define virtual and remote instruction
2 and establish guidance for its use. The guidance shall provide schools
3 with information on:
- 4 (1) providing instruction to students who may not have access to a
5 computer or to sufficient broadband, or to any technology required for
6 virtual or remote instruction;
 - 7 (2) the required length of a virtual or remote instruction day;
 - 8 (3) the impact of virtual or remote instruction on the schedule for
9 administering State assessments; and
 - 10 (4) such other topics as the commissioner deems necessary.
- 11
- 12 3. This act shall take effect immediately.
- 13
- 14

15 STATEMENT

16

17 Under current law, a school district, county vocational school
18 district, or county special services school district must be open for
19 180 days each school year in order to qualify for State aid. In the
20 event that a school district does not meet this requirement, the
21 Commissioner of Education will withhold State aid in the succeeding
22 year. While the law does allow the commissioner to remit the penalty
23 for good cause shown, the exemption has been rarely applied. Current
24 regulations require that an approved private school for students with
25 disabilities (APSSD) calculate its tuition based on a minimum of 180
26 days of instruction. For programs in operation for less than the
27 minimum 180 days of instruction, tuition is reduced accordingly.

28 This bill would allow a school district, renaissance school project,
29 charter school, county vocational school district, county special
30 services school district, or APSSD to meet the 180-day requirement
31 in a year with an excessive number of unexpected school closures
32 due to a declared state of emergency, declared public health
33 emergency, or a directive by the appropriate health agency or officer
34 to institute a public health-related closure through the use of virtual
35 or remote instruction. Specifically, in the event that a district or
36 APSSD is required to close its schools for more than three
37 consecutive school days due to a declared state of emergency,
38 declared public health emergency, or a directive by the appropriate
39 health agency or officer to institute a public health-related closure,
40 the commissioner will allow the district or APSSD to apply to the
41 180-day requirement one or more days of virtual or remote
42 instruction provided to students on the day or days the schools of the
43 district or APSSD were closed if the program meets such criteria as
44 may be established by the commissioner. A district or APSSD that
45 wants to use a program of virtual or remote instruction to meet the
46 180-day requirement must submit its proposed program of virtual
47 instruction to the commissioner within 30 days of the effective date
48 of the bill and annually thereafter. The bill provides, however, that if

1 a district or APSSD is unable to meet the initial 30-day period and
2 the schools of a district or APSSD must close for a declared state of
3 emergency, declared public health emergency, or a directive by the
4 appropriate health agency or officer to institute a public health-
5 related closure, the commissioner is permitted to retroactively
6 approve the program. If the State or local health department
7 determines that it is advisable the schools be closed or mandates
8 closure, the superintendent of schools or principal of an APSSD, as
9 applicable, will have the authority to implement the district or
10 APSSD's program of virtual or remote learning. The bill provides
11 that a day of virtual or remote instruction, if instituted under a
12 program approved by the commissioner, will be considered the
13 equivalent of a full day of school attendance for the purposes of
14 meeting State and local graduation requirements, the awarding of
15 course credit, and for such other matters as the commissioner
16 determines.

17 The bill directs the commissioner to define virtual and remote
18 instruction and provide guidance for its use. The guidance will also
19 provide districts information on: providing instruction to students
20 who may not have access to a computer or to sufficient broadband,
21 or to any technology required for virtual or remote instruction; the
22 required length of a virtual or remote instruction day; the impact of
23 virtual or remote instruction on the school lunch and school breakfast
24 programs; the impact of virtual or remote instruction on the schedule
25 for administering State assessments; and such other topics as the
26 commissioner deems necessary.

27 Nothing in the bill may be construed to limit, supersede or preempt
28 the rights, privileges, compensation, remedies, and procedures
29 afforded to public school employees or a collective bargaining unit
30 under federal or State law or any provision of a collective bargaining
31 agreement entered into by the school district. The bill also provides
32 that public school employees covered by a collective negotiations
33 agreement will be entitled to compensation, benefits, and
34 emoluments as provided in the collective negotiations agreement as
35 if the school facilities remained open for any purpose and for any
36 time lost as a result of school closures or use of virtual or remote
37 instruction, except that additional compensation, benefits, and
38 emoluments may be negotiated for additional work performed. In
39 addition, the bill provides that public school employees who are not
40 covered by a collective negotiations agreement will be entitled to
41 compensation, benefits, and emoluments as if the school facilities
42 remained open.