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ASSEMBLY, No. 3904

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 23, 2020

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SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended by the Senate on April 13, 2020.

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

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
10 read as follows:

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

29 b. Notwithstanding the provisions of subsection a. of this
30 section to the contrary, in the event that a school district is required
31 to close the schools of the district for more than three consecutive
32 school days due to a declared state of emergency, declared public
33 health emergency, or a directive by the appropriate health agency or
34 officer to institute a public health-related closure, the commissioner
35 shall allow the district to apply to the 180-day requirement
36 established pursuant to subsection a. of this section, one or more
37 days of virtual or remote instruction provided to students on the day
38 or days the schools of the district were closed if the program of
39 virtual or remote instruction meets such criteria as may be
40 established by the commissioner. A district that wants to use a
41 program of virtual or remote instruction to meet the 180-day
42 requirement in accordance with this subsection shall ¹, with board
43 of education approval,¹ submit its proposed program of virtual or
44 remote instruction to the commissioner within 30 days of the
45 effective date of P.L. , c. (pending before the Legislature as this

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate floor amendments adopted April 13, 2020.

1 bill) and annually thereafter, provided however that if the school
2 district is unable to complete and submit its proposed program
3 within the 30-day period and the district is required to close its
4 schools for a declared state of emergency, declared public health
5 emergency, or a directive by the appropriate health agency or
6 officer to institute a public health-related closure, the commissioner
7 may retroactively approve the program.

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

14 If a program of virtual or remote instruction is implemented for
15 the general education students the same educational opportunities
16 shall be provided to ¹the special education students, to the extent
17 appropriate and practicable. Speech language services and
18 counseling services may be delivered to special education students
19 through the use of electronic communication or a virtual or online
20 platform, as appropriate¹ students with disabilities. Special
21 education and related services, including speech language services,
22 counseling services, physical therapy, occupational therapy, and
23 behavioral services, may be delivered to students with disabilities
24 through the use of electronic communication or a virtual or online
25 platform and as required by the student's Individualized Education
26 Program (IEP), to the greatest extent practicable¹.

27 c. In the event that the State or local health department
28 determines that it is advisable to close or mandates closure of the
29 schools of a school district due to a declared state of emergency,
30 declared public health emergency, or a directive by the appropriate
31 health agency or officer to institute a public health-related closure,
32 the superintendent of schools shall have the authority to implement
33 the school district's program of virtual or remote instruction. ¹The
34 superintendent shall consult with the board of education prior to
35 such decision if practicable. The superintendent shall ensure that
36 students, parents, staff, and the board of education or boards of
37 education are informed promptly of the superintendent's decision. ¹

38 d. The commissioner shall define virtual and remote instruction
39 and establish guidance for its use. The guidance shall provide
40 school districts with information on:

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

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

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

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

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

4 e. (1) Nothing in subsection b., c., or d. of this section shall be
5 construed to limit, supersede or preempt the rights, privileges,
6 compensation, remedies, and procedures afforded to public school
7 employees or a collective bargaining unit under federal or State law
8 or any provision of a collective bargaining agreement entered into
9 by the school district. In the event of the closure of the schools of a
10 school district due to a declared state of emergency, declared public
11 health emergency, or a directive by the appropriate health agency or
12 officer to institute a public health-related closure for a period longer
13 than three consecutive 'school' days, public school employees
14 covered by a collective negotiations agreement shall be entitled to
15 compensation, benefits, and emoluments as provided in the
16 collective negotiations agreement as if the school facilities
17 remained open for any purpose and for any time lost as a result of
18 school closures or use of virtual or remote instruction, except that
19 additional compensation, benefits, and emoluments may be
20 negotiated for additional work performed.

21 (2) In the event of the closure of the schools of a school district
22 due to a declared state of emergency, declared public health
23 emergency, or a directive by the appropriate health agency or
24 officer to institute a public health-related closure for a period longer
25 than three consecutive 'school' days, public school employees who
26 are not covered by a collective negotiations agreement shall be
27 entitled to any benefits, compensation, and emoluments to which
28 they otherwise would be entitled as if they had performed the work
29 for such benefits, compensation, and emoluments as if the school
30 facilities remained open for any purpose and for any time lost as a
31 result of school closures or use of virtual or remote instruction.

32 ¹(3) If the schools of a school district are subject to a health-
33 related closure for a period longer than three consecutive school
34 days, which is the result of a declared state of emergency, declared
35 public health emergency, or a directive by the appropriate health
36 agency or officer, then the school district shall continue to make
37 payments of benefits, compensation, and emoluments pursuant to
38 the terms of a contract with a contracted service provider in effect
39 on the date of the closure as if the services for such benefits,
40 compensation, and emoluments had been provided, and as if the
41 school facilities had remained open. Payments received by a
42 contracted service provider pursuant to this paragraph shall be used
43 to meet the payroll and fixed costs obligations of the contracted
44 service provider. A school district shall make all reasonable efforts
45 to renegotiate a contract in good faith subject to this paragraph and
46 may direct contracted service providers, who are a party to a
47 contract and receive payments from the school district under this
48 paragraph, to provide services on behalf of the school district which

1 may reasonably be provided and are within the general expertise or
2 service provision of the original contract. Negotiations shall not
3 include indirect costs such as fuel or tolls. As a condition of
4 negotiations, a contracted service provider shall reveal to the school
5 district whether the entity has insurance coverage for business
6 interruption covering work stoppages. A school district shall not be
7 liable for the payment of benefits, compensation, and emoluments
8 pursuant to the terms of a contract with a contracted service
9 provider under this paragraph for services which otherwise would
10 not have been provided had the school facilities remained open.
11 Nothing in this paragraph shall be construed to require a school
12 district to make payments to a party in material breach of a contract
13 with a contracted service provider if the breach was not due to a
14 closure resulting from a declared state of emergency, declared
15 public health emergency, or a directive by the appropriate health
16 agency or officer.

17 (4) If the schools of a school district are subject to a health-
18 related closure for a period longer than three consecutive school
19 days, which is the result of a declared state of emergency, declared
20 public health emergency, or a directive by the appropriate health
21 agency or officer, the school district shall be obligated to make
22 payments for benefits, compensation, and emoluments and all
23 payments required pursuant to P.L.1968, c.243 (C.18A:6-51 et
24 seq.), to an educational services commission, county special
25 services school district, and a jointure commission, and under any
26 shared services agreement and cooperative contract entered into
27 with any other public entity. An educational services commission,
28 county special services school district, and jointure commission
29 shall continue to make payments of benefits, compensation, and
30 emoluments pursuant to the terms of a contract with a contracted
31 service provider or a shared services agreement in effect on the date
32 of the closure as if the services for such benefits, compensation, and
33 emoluments had been provided, and as if the school facilities had
34 remained open. Payments received by a contracted service provider
35 or public entity pursuant to this paragraph shall be used to meet the
36 payroll and fixed costs obligations of the contracted service
37 provider or public entity. An educational services commission,
38 county special services school district, jointure commission or any
39 lead school district under a shared services agreement or
40 cooperative contract, shall make all reasonable efforts to renegotiate
41 a contract in good faith subject to this paragraph and may direct
42 contracted service providers or public entities, who are a party to a
43 contract and receive payments under this paragraph, to provide
44 services which may reasonably be provided and are within the
45 general expertise or service provision of the original contract.
46 Negotiations shall not include indirect costs such as fuel or tolls.
47 As a condition of negotiations, a contracted service provider or

1 public entity shall reveal whether the entity has insurance coverage
2 for business interruption covering work stoppages.

3 f. For purposes of subsections b., c., d., and e. of this section,
4 “school district” shall include a charter school and a renaissance
5 school project.¹

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

7
8 2. (New Section) a. In the event that an approved private
9 school for students with disabilities is required to close the school
10 for more than three consecutive school days due to a declared state
11 of emergency, declared public health emergency, or a directive by
12 the appropriate health agency or officer to institute a public health-
13 related closure, the commissioner shall allow the school to apply
14 one or more days of virtual or remote instruction provided to
15 students on the day or days the school was closed to qualify as a
16 day of instruction for the purposes of calculating tuition if the
17 program of virtual or remote instruction meets such criteria as may
18 be established by the commissioner. An approved private school for
19 students with disabilities that wants to use a program of virtual or
20 remote instruction to qualify as a day of instruction for the purposes
21 of calculating tuition shall submit its proposed program of virtual or
22 remote instruction to the commissioner within 30 days of the
23 effective date of P.L. , c. (C.) (pending before the Legislature
24 as this bill) and annually thereafter, provided however that if the
25 school is unable to complete its proposed program within the 30-
26 day period and the school is required to close for a declared state of
27 emergency, declared public health emergency, or a directive by the
28 appropriate health agency or officer to institute a public health-
29 related closure, the commissioner may retroactively approve the
30 program.

31 A day of virtual or remote instruction, if instituted under a
32 program approved by the commissioner, shall be considered the
33 equivalent of a full day of school attendance for the purposes of
34 meeting State and local graduation requirements, the awarding of
35 course credit, and such other matters as determined by the
36 commissioner.

37 ¹Special education and related services, including speech
38 language services, counseling services, physical therapy,
39 occupational therapy, and behavioral services, may be delivered to
40 students with disabilities through the use of electronic
41 communication or a virtual or online platform and as required by
42 the student’s Individualized Education Program (IEP), to the
43 greatest extent practicable.¹

44 b. In the event that the State or local health department
45 determines that it is advisable to close or mandates closure of an
46 approved private school for students with disabilities due to a
47 declared state of emergency, declared public health emergency, or a
48 directive by the appropriate health agency or officer to institute a

1 public health-related closure, the principal of the school shall have
2 the authority to implement the school's program of virtual or
3 remote instruction.

4 c. The commissioner shall define virtual and remote instruction
5 and establish guidance for its use. The guidance shall provide
6 schools with information on:

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

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

11 (3) the impact of virtual or remote instruction on the schedule
12 for administering State assessments; and

13 (4) such other topics as the commissioner deems necessary.
14

15 ¹3. The State Board of Education shall promulgate regulations
16 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
17 (C.52:14B-1 et seq.), to effectuate the provisions of P.L. , c.
18 (C.) (pending before the Legislature as this bill).¹
19

20 ¹[3.] 4.¹ This act shall take effect immediately.