

P.L. 2020, CHAPTER 27, *approved April 14, 2020*  
Assembly, No. 3904 (*First Reprint*)

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 'renaissance school project,' 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

**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:

<sup>1</sup>Senate floor amendments adopted April 13, 2020.

1 established by the commissioner. A district that wants to use a  
2 program of virtual or remote instruction to meet the 180-day  
3 requirement in accordance with this subsection shall <sup>1</sup>, with board  
4 of education approval,<sup>1</sup> submit its proposed program of virtual or  
5 remote instruction to the commissioner within 30 days of the  
6 effective date of P.L. , c. (pending before the Legislature as this  
7 bill) and annually thereafter, provided however that if the school  
8 district is unable to complete and submit its proposed program  
9 within the 30-day period and the district is required to close its  
10 schools for a declared state of emergency, declared public health  
11 emergency, or a directive by the appropriate health agency or  
12 officer to institute a public health-related closure, the commissioner  
13 may retroactively approve the program.

14 A day of virtual or remote instruction, if instituted under a  
15 program approved by the commissioner, shall be considered the  
16 equivalent of a full day of school attendance for the purposes of  
17 meeting State and local graduation requirements, the awarding of  
18 course credit, and such other matters as determined by the  
19 commissioner.

20 If a program of virtual or remote instruction is implemented for  
21 the general education students the same educational opportunities  
22 shall be provided to <sup>1</sup>the special education students, to the extent  
23 appropriate and practicable. Speech language services and  
24 counseling services may be delivered to special education students  
25 through the use of electronic communication or a virtual or online  
26 platform, as appropriate] students with disabilities. Special  
27 education and related services, including speech language services,  
28 counseling services, physical therapy, occupational therapy, and  
29 behavioral services, may be delivered to students with disabilities  
30 through the use of electronic communication or a virtual or online  
31 platform and as required by the student's Individualized Education  
32 Program (IEP), to the greatest extent practicable<sup>1</sup>.

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

44 d. The commissioner shall define virtual and remote instruction  
45 and establish guidance for its use. The guidance shall provide  
46 school districts with information on:

- 1       (1) providing instruction to students who may not have access to  
2 a computer or to sufficient broadband, or to any technology  
3 required for virtual or remote instruction;  
4       (2) the required length of a virtual or remote instruction day;  
5       (3) the impact of virtual or remote instruction on the school  
6 lunch and school breakfast programs;  
7       (4) the impact of virtual or remote instruction on the schedule  
8 for administering State assessments; and  
9       (5) such other topics as the commissioner deems necessary.  
10      e. (1) Nothing in subsection b., c., or d. of this section shall be  
11 construed to limit, supersede or preempt the rights, privileges,  
12 compensation, remedies, and procedures afforded to public school  
13 employees or a collective bargaining unit under federal or State law  
14 or any provision of a collective bargaining agreement entered into  
15 by the school district. In the event of the closure of the schools of a  
16 school district due to a declared state of emergency, declared public  
17 health emergency, or a directive by the appropriate health agency or  
18 officer to institute a public health-related closure for a period longer  
19 than three consecutive <sup>1</sup>school<sup>1</sup> days, public school employees  
20 covered by a collective negotiations agreement shall be entitled to  
21 compensation, benefits, and emoluments as provided in the  
22 collective negotiations agreement as if the school facilities  
23 remained open for any purpose and for any time lost as a result of  
24 school closures or use of virtual or remote instruction, except that  
25 additional compensation, benefits, and emoluments may be  
26 negotiated for additional work performed.  
27      (2) In the event of the closure of the schools of a school district  
28 due to a declared state of emergency, declared public health  
29 emergency, or a directive by the appropriate health agency or  
30 officer to institute a public health-related closure for a period longer  
31 than three consecutive <sup>1</sup>school<sup>1</sup> days, public school employees who  
32 are not covered by a collective negotiations agreement shall be  
33 entitled to any benefits, compensation, and emoluments to which  
34 they otherwise would be entitled as if they had performed the work  
35 for such benefits, compensation, and emoluments as if the school  
36 facilities remained open for any purpose and for any time lost as a  
37 result of school closures or use of virtual or remote instruction.  
38      <sup>1</sup>(3) If the schools of a school district are subject to a health-  
39 related closure for a period longer than three consecutive school  
40 days, which is the result of a declared state of emergency, declared  
41 public health emergency, or a directive by the appropriate health  
42 agency or officer, then the school district shall continue to make  
43 payments of benefits, compensation, and emoluments pursuant to  
44 the terms of a contract with a contracted service provider in effect  
45 on the date of the closure as if the services for such benefits,  
46 compensation, and emoluments had been provided, and as if the  
47 school facilities had remained open. Payments received by a  
48 contracted service provider pursuant to this paragraph shall be used

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

23 (4) If the schools of a school district are subject to a health-  
24 related closure for a period longer than three consecutive school  
25 days, which is the result of a declared state of emergency, declared  
26 public health emergency, or a directive by the appropriate health  
27 agency or officer, the school district shall be obligated to make  
28 payments for benefits, compensation, and emoluments and all  
29 payments required pursuant to P.L.1968, c.243 (C.18A:6-51 et  
30 seq.), to an educational services commission, county special  
31 services school district, and a jointure commission, and under any  
32 shared services agreement and cooperative contract entered into  
33 with any other public entity. An educational services commission,  
34 county special services school district, and jointure commission  
35 shall continue to make payments of benefits, compensation, and  
36 emoluments pursuant to the terms of a contract with a contracted  
37 service provider or a shared services agreement in effect on the date  
38 of the closure as if the services for such benefits, compensation, and  
39 emoluments had been provided, and as if the school facilities had  
40 remained open. Payments received by a contracted service provider  
41 or public entity pursuant to this paragraph shall be used to meet the  
42 payroll and fixed costs obligations of the contracted service  
43 provider or public entity. An educational services commission,  
44 county special services school district, jointure commission or any  
45 lead school district under a shared services agreement or  
46 cooperative contract, shall make all reasonable efforts to renegotiate  
47 a contract in good faith subject to this paragraph and may direct  
48 contracted service providers or public entities, who are a party to a

1 contract and receive payments under this paragraph, to provide  
2 services which may reasonably be provided and are within the  
3 general expertise or service provision of the original contract.  
4 Negotiations shall not include indirect costs such as fuel or tolls.  
5 As a condition of negotiations, a contracted service provider or  
6 public entity shall reveal whether the entity has insurance coverage  
7 for business interruption covering work stoppages.

8 f. For purposes of subsections b., c., d., and e. of this section,  
9 “school district” shall include a charter school and a renaissance  
10 school project.<sup>1</sup>

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

12

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

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

42 <sup>1</sup>Special education and related services, including speech  
43 language services, counseling services, physical therapy,  
44 occupational therapy, and behavioral services, may be delivered to  
45 students with disabilities through the use of electronic  
46 communication or a virtual or online platform and as required by  
47 the student’s Individualized Education Program (IEP), to the  
48 greatest extent practicable.<sup>1</sup>

1       b. In the event that the State or local health department  
2 determines that it is advisable to close or mandates closure of an  
3 approved private school for students with disabilities due to a  
4 declared state of emergency, declared public health emergency, or a  
5 directive by the appropriate health agency or officer to institute a  
6 public health-related closure, the principal of the school shall have  
7 the authority to implement the school's program of virtual or  
8 remote instruction.

9       c. The commissioner shall define virtual and remote instruction  
10 and establish guidance for its use. The guidance shall provide  
11 schools with information on:

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

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

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

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

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20       <sup>1</sup>3. The State Board of Education shall promulgate regulations  
21 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
22 (C.52:14B-1 et seq.), to effectuate the provisions of P.L. \_\_\_\_\_,  
23 c. (C. ) (pending before the Legislature as this bill).<sup>1</sup>

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25       <sup>1</sup>[3.] 4.<sup>1</sup> This act shall take effect immediately.

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30       Permits use of virtual or remote instruction to meet minimum  
31 180-day school year requirement under certain circumstances.