

# ASSEMBLY, No. 3904

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 23, 2020

**Sponsored by:**

**Assemblyman JOHN J. BURZICHELLI**  
**District 3 (Cumberland, Gloucester and Salem)**  
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**Senator JAMES BEACH**  
**District 6 (Burlington and Camden)**  
**Senator THOMAS H. KEAN, JR.**  
**District 21 (Morris, Somerset and Union)**

**Co-Sponsored by:**

**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.