

SENATE, No. 2337

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED APRIL 9, 2020

Sponsored by:

Senator GERALD CARDINALE

District 39 (Bergen and Passaic)

Senator JAMES BEACH

District 6 (Burlington and Camden)

Senator THOMAS H. KEAN, JR.

District 21 (Morris, Somerset and Union)

Co-Sponsored by:

Senators Addiego and Singleton

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)

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

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

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 complete and submit its proposed program within the 30-day period
2 and the district is required to close its schools 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 may retroactively approve the
6 program.

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

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

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

33 d. The commissioner shall define virtual and remote instruction
34 and establish guidance for its use. The guidance shall provide school
35 districts with information on:

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

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

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

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

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

45 e. (1) Nothing in subsection b., c., or d. of this section shall be
46 construed to limit, supersede or preempt the rights, privileges,
47 compensation, remedies, and procedures afforded to public school

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1 employees or a collective bargaining unit under federal or State law
2 or any provision of a collective bargaining agreement entered into by
3 the school district. In the event of the closure of the schools of a
4 school district due to a declared state of emergency, declared public
5 health emergency, or a directive by the appropriate health agency or
6 officer to institute a public health-related closure for a period longer
7 than three consecutive school days, public school employees covered
8 by a collective negotiations agreement shall be entitled to
9 compensation, benefits, and emoluments as provided in the collective
10 negotiations agreement as if the school facilities remained open for
11 any purpose and for any time lost as a result of school closures or use
12 of virtual or remote instruction, except that additional compensation,
13 benefits, and emoluments may be negotiated for additional work
14 performed.

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

26 (3) If the schools of a school district are subject to a health-related
27 closure for a period longer than three consecutive school days, which
28 is the result of a declared state of emergency, declared public health
29 emergency, or a directive by the appropriate health agency or officer,
30 then the school district shall continue to make payments of benefits,
31 compensation, and emoluments pursuant to the terms of a contract
32 with a contracted service provider in effect on the date of the closure
33 as if the services for such benefits, compensation, and emoluments
34 had been provided, and as if the school facilities had remained open.
35 Payments received by a contracted service provider pursuant to this
36 paragraph shall be used to meet the payroll and fixed costs
37 obligations of the contracted service provider. A school district shall
38 make all reasonable efforts to renegotiate a contract in good faith
39 subject to this paragraph and may direct contracted service providers,
40 who are a party to a contract and receive payments from the school
41 district under this paragraph, to provide services on behalf of the
42 school district which may reasonably be provided and are within the
43 general expertise or service provision of the original contract.
44 Negotiations shall not include indirect costs such as fuel or tolls. As
45 a condition of negotiations, a contracted service provider shall reveal
46 to the school district whether the entity has insurance coverage for
47 business interruption covering work stoppages. A school district shall

1 not be liable for the payment of benefits, compensation, and
2 emoluments pursuant to the terms of a contract with a contracted
3 service provider under this paragraph for services which otherwise
4 would not have been provided had the school facilities remained
5 open. Nothing in this paragraph shall be construed to require a school
6 district to make payments to a party in material breach of a contract
7 with a contracted service provider if the breach was not due to a
8 closure resulting from a declared state of emergency, declared public
9 health emergency, or a directive by the appropriate health agency or
10 officer.

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

43 f. For purposes of subsections b., c., d., and e. of this section,
44 “school district” shall include a charter school and a renaissance
45 school project.

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

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

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

27 Special education and related services, including speech language
28 services, counseling services, physical therapy, occupational therapy,
29 and behavioral services, may be delivered to students with
30 disabilities through the use of electronic communication or a virtual
31 or online platform and as required by the student's Individualized
32 Education Program (IEP), to the greatest extent practicable.

33 b. In the event that the State or local health department determines
34 that it is advisable to close or mandates closure of an approved private
35 school for students with disabilities due to a declared state of
36 emergency, declared public health emergency, or a directive by the
37 appropriate health agency or officer to institute a public health-related
38 closure, the principal of the school shall have the authority to implement
39 the school's program of virtual or remote instruction.

40 c. The commissioner shall define virtual and remote instruction
41 and establish guidance for its use. The guidance shall provide schools
42 with information on:

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

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

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

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

5 3. The State Board of Education shall promulgate regulations
6 pursuant to the “Administrative Procedure Act,” P.L.1968, c.410
7 (C.52:14B-1 et seq.), to effectuate the provisions of
8 P.L. , c. (C.) (pending before the Legislature as this bill).
9

10 4. This act shall take effect immediately.
11
12

13 STATEMENT
14

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

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

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

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

26 Nothing in the bill may be construed to limit, supersede or preempt
27 the rights, privileges, compensation, remedies, and procedures
28 afforded to public school employees or a collective bargaining unit
29 under federal or State law or any provision of a collective bargaining
30 agreement entered into by the school district. The bill also provides
31 that public school employees covered by a collective negotiations
32 agreement will be entitled to compensation, benefits, and
33 emoluments as provided in the collective negotiations agreement as
34 if the school facilities remained open for any purpose and for any
35 time lost as a result of school closures or use of virtual or remote
36 instruction, except that additional compensation, benefits, and
37 emoluments may be negotiated for additional work performed. In
38 addition, the bill provides that public school employees who are not
39 covered by a collective negotiations agreement will be entitled to
40 compensation, benefits, and emoluments as if the school facilities
41 remained open. The bill makes provisions for the payments of
42 benefits, compensation, and emoluments pursuant to the terms of a
43 contract with a contracted service provider in effect on the date of the
44 health-related school closure. The bill also makes provisions for the
45 payments of benefits, compensation, and emoluments by a school
46 district to an educational services commission, county special
47 services school district, and a jointure commission and under any

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1 shared services agreement and cooperative contract entered into with
2 any other public entity. Payments by educational services
3 commissions, county special services school districts, and jointure
4 commissions to contracted service providers and under shared
5 services agreements are also addressed.