

[Second Reprint]

SENATE, No. 464

STATE OF NEW JERSEY
220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

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District 32 (Bergen and Hudson)

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District 38 (Bergen and Passaic)

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Senators Thompson, Greenstein and Pou

SYNOPSIS

Revises conditions for use of virtual or remote instruction to meet minimum 180-day school year requirement.

CURRENT VERSION OF TEXT

As amended by the Senate on March 3, 2022.



(Sponsorship Updated As Of: 3/7/2022)

1 AN ACT concerning flexible instruction days for public schools and
 2 approved private schools for students with disabilities, and
 3 amending P.L.1996, c.138 and P.L.2020, c.27.
 4

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

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

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

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

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 SED committee amendments adopted February 3, 2022.

²Senate floor amendments adopted March 3, 2022.

1 virtual or remote instruction to the commissioner within 30 days of
2 the effective date of P.L.2020, c.27 and annually thereafter,
3 provided however that if the school district is unable to complete
4 and submit its proposed program within the 30-day period and the
5 district is required to close its schools for inclement weather or
6 hazardous transportation conditions, a declared state of emergency,
7 a declared public health emergency, ¹**['or']** a directive by the
8 appropriate health agency or officer to institute a public health-
9 related closure, ¹or any other circumstance that requires the closure
10 of the schools of the district,¹ the commissioner may retroactively
11 approve the program. ²As part of its proposed program of virtual or
12 remote instruction, a school district shall designate not less than
13 three school make up days, in addition to the minimum 180 days
14 needed to meet the 180-day requirement established pursuant to
15 subsection a. of this section, which make up days shall be used to
16 provide in person instruction in the event the school district is
17 required to close its schools. A school district shall use at least
18 three designated school make up days to provide in person
19 instruction that shall be applied to the 180-day requirement
20 established pursuant to subsection a. of this section prior to
21 providing any day of virtual or remote instruction under a program
22 approved by the commissioner.²

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

29 ¹A school district shall provide written notification to the board
30 of education and the executive county superintendent stating that
31 the school district is providing its program of virtual or remote
32 instruction, as approved by the commissioner pursuant to this
33 subsection, and specifying the day or days, if consecutive, that the
34 school district is providing its program of virtual or remote
35 instruction. The written notification shall attest that all students in
36 the district have access to a computer or to sufficient broadband, or
37 to any other technology required for the virtual or remote
38 instruction on the day or days specified in the written notification.
39 If the written notification does not include the attestation, the
40 executive county superintendent shall notify the commissioner.

41 ²The executive county superintendent shall notify the commissioner
42 of any irregularities with respect to the school district's use of its
43 program of virtual or remote instruction, which irregularities may
44 include, but are not limited to, the use of virtual or remote
45 instruction during a school closure, for which the circumstances
46 used to determine the school closure are not appropriate
47 circumstances upon which to base a school closure.² The

1 commissioner shall not allow the school district to apply to the 180-
2 day requirement established pursuant to subsection a. of this section
3 any day of virtual or remote instruction provided to students when
4 the school district is closed if the commissioner determines that the
5 school district did not ensure that all students have access to a
6 computer or to sufficient broadband, or to any other technology
7 required for the virtual or remote instruction on the day or days
8 specified in the written notification ², or, based upon notification
9 from an executive county superintendent of irregularities, if the
10 commissioner determines that the school district failed to provide
11 its program of virtual or remote instruction in a manner consistent
12 with the provisions of this subsection ².¹

13 ²If a school district should reasonably expect to implement its
14 program of virtual or remote instruction for five or more
15 consecutive school days, or if a school district provides written
16 notification to the board of education and the executive county
17 superintendent that it will provide its program of virtual or remote
18 instruction for five or more consecutive school days, the school
19 district shall obtain prior written approval of the commissioner to
20 implement its program of virtual or remote instruction pursuant to
21 the provisions of this subsection. ²

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

31 c. In the event that the State or local health department
32 determines that it is advisable to close or mandates closure of the
33 schools of a school district due to 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,
36 or in the event that there is inclement weather or hazardous
37 transportation conditions ¹or any other circumstance ¹ that requires
38 the closure of the schools of a school district for one or more school
39 days, the superintendent of schools shall have the authority to
40 implement the school district's program of virtual or remote
41 instruction. The superintendent shall consult with the board of
42 education prior to such decision if practicable. The superintendent
43 shall ensure that students, parents, staff, and the board of education
44 or boards of education are informed promptly of the
45 superintendent's decision.

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

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

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

1 provider or public entity shall be paid as if the school facilities had
2 remained open and in full operation. Upon request of the school
3 district, the educational services commission, county special
4 services school district, and a jointure commission shall certify, and
5 provide any supporting documentation to a school district as may be
6 necessary to verify, that payments received have been used solely to
7 meet the payroll and fixed costs of the contracted service provider
8 or public entity. Any portion of those payments not used to meet
9 the payroll and fixed costs shall be returned to the school district.
10 An educational services commission, county special services school
11 district, jointure commission or any lead school district under a
12 shared services agreement or cooperative contract, shall make all
13 reasonable efforts to renegotiate a contract in good faith subject to
14 this paragraph and may direct contracted service providers or public
15 entities, who are a party to a contract and receive payments under
16 this paragraph, to provide services which may reasonably be
17 provided and are within the general expertise or service provision of
18 the original contract. Negotiations shall not include indirect costs
19 such as fuel or tolls. As a condition of negotiations, a contracted
20 service provider or public entity shall reveal whether the entity has
21 insurance coverage for business interruption covering work
22 stoppages.

23 (5) The provisions of paragraphs (1) through (4) of this
24 subsection e. shall not apply to any employee whose weekly hours
25 of work are reduced, and to whom unemployment benefits are
26 provided, pursuant to a shared work program approved pursuant to
27 the provisions of P.L.2011, c.154 (C.43:21-20.3 et seq.). A
28 contracted service provider, educational services commission,
29 county special services school district, or jointure commission shall
30 notify any school district with which it has entered into a contract to
31 provide services of its intent to reduce the hours of work of its
32 employees pursuant to a shared work program approved pursuant to
33 the provisions of P.L.2011, c.154 (C.43:21-20.3 et seq.).
34 Notwithstanding the provisions of paragraph (3) of this subsection
35 e., if a contracted service provider reduces the amount that it pays
36 to its employees providing services to a school district, and that
37 reduction is the result of a reduction of workhours of those
38 employees made pursuant to a shared work program approved
39 pursuant to the provisions of P.L.2011, c.154 (C.43:21-20.3 et seq.),
40 then the amount paid by the public school district to the contracted
41 service provider shall be reduced by the same amount.
42 Notwithstanding the provisions of paragraph (4) of this subsection
43 e., if an educational services commission, county special services
44 school district, or jointure commission reduces the amount that it
45 pays to its employees providing services to a school district, and
46 that reduction is the result of a reduction of workhours of the those
47 employees made pursuant to a shared work program approved
48 pursuant to the provisions of P.L.2011, c.154 (C.43:21-20.3 et seq.),

1 then the amount paid by the public school district to the educational
2 services commission, county special services school district, or
3 jointure commission shall be reduced by the same amount.

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

7 (cf: P.L.2020, c.57, s.3)

8

9 2. Section 2 of P.L.2020, c.27 (C.18A:46-21.1) is amended to
10 read as follows:

11 2. a. In the event that an approved private school for students
12 with disabilities is required to close the school for one or more
13 【than three consecutive】 school days due to inclement weather or
14 hazardous transportation conditions, a declared state of emergency,
15 a declared public health emergency, '【or】' a directive by the
16 appropriate health agency or officer to institute a public health-
17 related closure, 'or any other circumstance that requires the closure
18 of the school.'¹ the commissioner shall allow the school to apply one
19 or more days of virtual or remote instruction provided to students
20 on the day or days the school was closed to qualify as a day of
21 instruction for the purposes of calculating tuition if the program of
22 virtual or remote instruction meets such criteria as may be
23 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.2020, c.27 and annually thereafter, provided
29 however that if the school is unable to complete its proposed
30 program within the 30-day period and the school is required to close
31 for inclement weather or hazardous transportation conditions, a
32 declared state of emergency, a declared public health emergency,
33 '【or】' a directive by the appropriate health agency or officer to
34 institute a public health-related closure, 'or any other circumstance
35 that requires the closure of the school.'¹ the commissioner may
36 retroactively approve the program. ²As part of its proposed
37 program of virtual or remote instruction, an approved private school
38 for students with disabilities shall designate not less than three
39 school make up days that qualify as days of instruction for the
40 purposes of calculating tuition, in addition to its anticipated number
41 of enrolled days in the school year, which make up days shall be
42 used to provide in person instruction in the event the school is
43 required to close. An approved private school for students with
44 disabilities shall use at least three designated school make up days
45 to provide in person instruction that qualify as days of instruction
46 for the purposes of calculating tuition prior to providing any day of

1 virtual or remote instruction under a program approved by the
2 commissioner.²

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

9 ¹An approved private school for students with disabilities shall
10 provide written notification to its governing body and to the
11 executive county superintendent of the county in which the school
12 is located stating that the school is providing its program of virtual
13 or remote instruction, as approved by the commissioner pursuant to
14 this subsection, and specifying the day or days, if consecutive, that
15 the school is providing its program of virtual or remote instruction.
16 The written notification shall attest that all students of the school
17 have access to a computer or to sufficient broadband, or to any
18 other technology required for the virtual or remote instruction on
19 the day or days specified in the written notification. If the written
20 notification does not include the attestation, the executive county
21 superintendent shall notify the commissioner. ²The executive
22 county superintendent shall notify the commissioner of any
23 irregularities with respect to the school's use of its program of
24 virtual or remote instruction, which irregularities may include, but
25 are not limited to, the use of virtual or remote instruction during a
26 school closure, for which the circumstances used to determine the
27 school closure are not appropriate circumstances upon which to
28 base a school closure.² The commissioner shall not allow the
29 school to apply any day of virtual or remote instruction provided to
30 students when the school is closed to qualify as a day of instruction
31 for the purposes of calculating tuition if the commissioner
32 determines that the school did not ensure that all students have
33 access to a computer or to sufficient broadband, or to any other
34 technology required for the virtual or remote instruction on the day
35 or days specified in the written notification ², or, based upon
36 notification from an executive county superintendent of
37 irregularities, if the commissioner determines that the school failed
38 to provide its program of virtual or remote instruction in a manner
39 consistent with the provisions of this subsection². ¹

40 ²If an approved private school for students with disabilities
41 should reasonably expect to implement its program of virtual or
42 remote instruction for five or more consecutive school days that
43 qualify as days of instruction for the purposes of calculating tuition,
44 or if an approved private school for students with disabilities
45 provides written notification to its governing body and the
46 executive county superintendent that it will provide its program of
47 virtual or remote instruction for five or more consecutive school

1 days, the school shall obtain prior written approval of the
2 commissioner to implement its program of virtual or remote
3 instruction pursuant to the provisions of this subsection.²

4 Special education and related services, including speech
5 language services, counseling services, physical therapy,
6 occupational therapy, and behavioral services, may be delivered to
7 students with disabilities through the use of electronic
8 communication or a virtual or online platform and as required by
9 the student's Individualized Education Program (IEP), to the
10 greatest extent practicable.

11 b. In the event that the State or local health department
12 determines that it is advisable to close or mandates closure of an
13 approved private school for students with disabilities due to a
14 declared state of emergency, declared public health emergency, or a
15 directive by the appropriate health agency or officer to institute a
16 public health-related closure, or in the event that there is inclement
17 weather or hazardous transportation conditions¹ or any other
18 circumstance¹ that requires the closure of an approved private
19 school for students with disabilities for one or more school days, the
20 principal of the school shall have the authority to implement the
21 school's program of virtual or remote instruction.

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

25 (1) providing instruction to students who may not have access to
26 a computer or to sufficient broadband, or to any technology
27 required for 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 schedule
30 for administering State assessments; and

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

32 (cf: P.L.2020, c.27, s.2)

33
34 3. This act shall take effect immediately.