

SENATE, No. 4200

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED DECEMBER 2, 2021

Sponsored by:

Senator NICHOLAS J. SACCO

District 32 (Bergen and Hudson)

Senator JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/20/2021)

S4200 SACCO, LAGANA

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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 school,
12 renaissance school project, county vocational school district, or
13 county special services school district shall comply with the rules
14 and standards for the equalization of opportunity which have been
15 or may hereafter be prescribed by law or formulated by the
16 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, or a directive by the appropriate health
34 agency or officer to institute a public health-related closure, the
35 commissioner shall allow the district to apply to the 180-day
36 requirement established pursuant to subsection a. of this section,
37 one or more days of virtual or remote instruction provided to
38 students on the day or days the schools of the district were closed if
39 the program of virtual or remote instruction meets such criteria as
40 may be established by the commissioner. A district that wants to
41 use a program of virtual or remote instruction to meet the 180-day
42 requirement in accordance with this subsection shall, with board of
43 education approval, submit its proposed program of virtual or
44 remote instruction to the commissioner within 30 days of the
45 effective date of P.L.2020, c.27 and annually thereafter, provided

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 however that if the school district is unable to complete and submit
2 its proposed program within the 30-day period and the district is
3 required to close its schools for inclement weather or hazardous
4 transportation conditions, a declared state of emergency, a declared
5 public health emergency, or a directive by the appropriate health
6 agency or officer to institute a public health-related closure, the
7 commissioner 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 students with disabilities. Special education
17 and related services, including speech language services, counseling
18 services, physical therapy, occupational therapy, and behavioral
19 services, may be delivered to students with disabilities through the
20 use of electronic communication or a virtual or online platform and
21 as required by the student's Individualized Education Program
22 (IEP), to the greatest extent practicable.

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

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

- 40 (1) providing instruction to students who may not have access to
41 a computer or to sufficient broadband, or to any technology
42 required for virtual or remote instruction;
- 43 (2) the required length of a virtual or remote instruction day;
- 44 (3) the impact of virtual or remote instruction on the school
45 lunch and school breakfast programs;
- 46 (4) the impact of virtual or remote instruction on the schedule
47 for administering State assessments; and
- 48 (5) such other topics as the commissioner deems necessary.

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

18 (2) In the event of the closure of the schools of a school district
19 due to a declared state of emergency, declared public health
20 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 who
23 are not covered by a collective negotiations agreement shall be
24 entitled to any benefits, compensation, and emoluments to which
25 they otherwise would be entitled as if they had performed the work
26 for such benefits, compensation, and emoluments as if the school
27 facilities remained open for any purpose and for any time lost as a
28 result of school closures or use of virtual or remote instruction.

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

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

16 (4) If the schools of a school district are subject to a health-
17 related closure for a period longer than three consecutive school
18 days, which is the result of a declared state of emergency, declared
19 public health emergency, or a directive by the appropriate health
20 agency or officer, the school district shall be obligated to make
21 payments for benefits, compensation, and emoluments and all
22 payments required pursuant to P.L.1968, c.243 (C.18A:6-51 et
23 seq.), to an educational services commission, county special
24 services school district, and a jointure commission, and under any
25 shared services agreement and cooperative contract entered into
26 with any other public entity. An educational services commission,
27 county special services school district, and jointure commission
28 shall continue to make payments of benefits, compensation, and
29 emoluments pursuant to the terms of a contract with a contracted
30 service provider or a shared services agreement in effect on the date
31 of the closure as if the services for such benefits, compensation, and
32 emoluments had been provided, and as if the school facilities had
33 remained open. Payments received by a contracted service provider
34 or public entity pursuant to this paragraph shall be used to meet the
35 payroll and fixed costs obligations of the contracted service
36 provider or public entity, and employees of the contracted service
37 provider or public entity shall be paid as if the school facilities had
38 remained open and in full operation. Upon request of the school
39 district, the educational services commission, county special
40 services school district, and a jointure commission shall certify, and
41 provide any supporting documentation to a school district as may be
42 necessary to verify, that payments received have been used solely to
43 meet the payroll and fixed costs of the contracted service provider
44 or public entity. Any portion of those payments not used to meet
45 the payroll and fixed costs shall be returned to the school district.
46 An educational services commission, county special services school
47 district, jointure commission or any lead school district under a
48 shared services agreement or cooperative contract, shall make all

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

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

40 f. For purposes of subsections b., c., d., and e. of this section,
41 "school district" shall include a charter school and a renaissance
42 school project.

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

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

47 2. a. In the event that an approved private school for students
48 with disabilities is required to close the school for one or more

1 **【than three consecutive】** school days due to inclement weather or
2 hazardous transportation conditions, a declared state of emergency,
3 a 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 shall allow the school to apply
6 one or more days of virtual or remote instruction provided to
7 students on the day or days the school was closed to qualify as a
8 day of instruction for the purposes of calculating tuition if the
9 program of virtual or remote instruction meets such criteria as may
10 be established by the commissioner. An approved private school for
11 students with disabilities that wants to use a program of virtual or
12 remote instruction to qualify as a day of instruction for the purposes
13 of calculating tuition shall submit its proposed program of virtual or
14 remote instruction to the commissioner within 30 days of the
15 effective date of P.L.2020, c.27 and annually thereafter, provided
16 however that if the school is unable to complete its proposed
17 program within the 30-day period and the school is required to close
18 for inclement weather or hazardous transportation conditions, a
19 declared state of emergency, a declared public health emergency, or
20 a directive by the appropriate health agency or officer to institute a
21 public health-related closure, the commissioner may retroactively
22 approve the program.

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

36 b. In the event that the State or local health department
37 determines that it is advisable to close or mandates closure of an
38 approved private school for students with disabilities due to a
39 declared state of emergency, declared public health emergency, or a
40 directive by the appropriate health agency or officer to institute a
41 public health-related closure, or in the event that there is inclement
42 weather or hazardous transportation conditions that requires the
43 closure of an approved private school for students with disabilities
44 for one or more school days, the principal of the school shall have
45 the authority to implement the school's program of virtual or remote
46 instruction.

- 1 c. The commissioner shall define virtual and remote instruction
2 and establish guidance for its use. The guidance shall provide
3 schools 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 schedule
9 for administering State assessments; and
 - 10 (4) such other topics as the commissioner deems necessary.
- 11 (cf: P.L.2020, c.27, s.2)

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- 13 3. This act shall take effect immediately.

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STATEMENT

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18 This bill permits a public school or an approved private school
19 for students with disabilities (APSSD) to meet the 180-day school
20 year requirement through the use of virtual or remote instruction
21 when the school is required to close for one or more school days
22 due to inclement weather or hazardous transportation conditions, or
23 due to other certain emergencies specified by law.

24 Pursuant to current law, a public school or APSSD may meet the
25 180-day requirement through the use of virtual or remote instruction
26 only if the school or APSSD is required to close for more than three
27 consecutive school days due to a declared state of emergency, a
28 declared public health emergency, or a directive by the appropriate
29 health agency or officer to institute a public health-related closure.
30 Current law does not permit a public school or APSSD to utilize
31 virtual or remote instruction in the event that the school or APSSD
32 is closed due to inclement weather or hazardous transportation
33 conditions. Additionally, current law does not permit a public
34 school or APSSD to utilize virtual or remote instruction in the event
35 that the closure is for a single school day or for two consecutive
36 school days.

37 Under the provisions of this bill, a public school or APSSD is
38 permitted to meet the 180-day school year requirement through the
39 use of virtual or remote instruction when the school is required to
40 close for one or more school days due to inclement weather or
41 hazardous transportation conditions, a declared state of emergency,
42 a declared public health emergency, or a directive by the
43 appropriate health agency or officer to institute a public health-
44 related closure.