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SYNOPSIS
Requires board of education to directly employ certain professionals; permits board of education to contract for certain personnel; permits use of virtual or remote instruction for public school students in certain circumstances.

CURRENT VERSION OF TEXT
As reported by the Assembly Education Committee on December 14, 2023, with amendments.

(Sponsorship Updated As Of: 12/21/2023)
AN ACT concerning school employees and virtual or remote
instruction and supplementing chapter 27 and chapter 35 of Title
18A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

1. The Legislature finds and declares that:
   a. It is the public policy of this State that personnel directly
      employed by the board of education of a public school or by an
      approved private school for students with disabilities in the State
      provide the highest quality of education for New Jersey students.
   b. Every effort should be made to have the personnel of a public
      school be directly employed by the board of education.
   c. In certain cases, it is necessary for a board of education to
      contract certain services from qualified and certified individuals in
      order to the serve the students of the State.
   d. It is altogether necessary and proper for the Legislature to
      establish requirements for boards of education to directly employ
      certain individuals and ensure services contracted by boards of
      education are of the highest quality.

2. As used in sections 1 through 6 of P.L. , c. (C. )
(pending before the Legislature as this bill):
   “Board of education” means and includes a board of education as
   defined in N.J.S.18A:18A-2, the board of directors of an
   educational services commission, and the administrative board of a
   renaissance school project or any other local education agency.
   “Individualized student learning opportunities” means student
   experiences, including independent study, study abroad programs,
   student exchange programs, and structured learning experiences,
   including, but not limited to: work-based programs; internships;
   apprenticeships; and service-learning experiences; based on specific
   instructional objectives that meet or exceed the New Jersey Student
   Learning Standards for students in grades nine through 12 pursuant
   to regulations promulgated by the State Board of Education.
   “Public school” means and includes a school, under college
   grade, which derives its support entirely or in part from public
   funds, a school district, a charter school, a renaissance school
   project, an educational services commission, or any other local
   education agency.

3. Except as otherwise expressly permitted pursuant to
P.L. , c. (C. ) (pending before the Legislature as this bill)
or any other law, a board of education shall directly employ all

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:
1Assembly AED committee amendments adopted December 14, 2023.
persons performing any duty, function, service, assignment, or job
requiring an appropriate certificate issued by the State Board of
Examiners for, or on behalf of, a board of education.

4. Notwithstanding the provisions of section 3 of P.L.    , c.    (C.   ) (pending before the Legislature as this bill) to the contrary, a board of education may contract with the following personnel to ensure that required programs and services are provided and shall not be required to directly employ the personnel, provided that the personnel hold an applicable certificate:

   (a) a substitute teacher;

   (b) personnel providing instruction in financial, economic,
business, and entrepreneurial literacy to satisfy graduation
requirements pursuant to regulations promulgated by the State
Board of Education;

   (c) personnel providing educational services to a student
who is enrolled in a school other than a public school pursuant to
regulations promulgated by the State Board of Education;

   (d) personnel employed by other boards of education and
providing services pursuant to a shared services or joint agreement;

   (e) personnel providing individualized student learning
opportunities; and

   (f) personnel providing special education and related
services to a student who is enrolled in an out-of-district placement.

5. a. Notwithstanding the provisions of section 3 of P.L.    , c.    (C.   ) (pending before the Legislature as this bill) to the contrary, a board of education may contract for the services listed in subsection c. of this section for public school students with:

   (1) a private clinic or agency approved by the Department of
Education;

   (2) a private professional practitioner who is certified and
licensed in accordance with State law; or

   (3) an agency or program that is certified, approved, or licensed
by the Department of Human Services or the Department of Health
to provide counseling or mental health services.

   b. All instructional, child study team, or related services
personnel shall hold an applicable certificate on a non-emergency
basis.

   c. The services shall include:

   (1) independent child study team evaluations;

   (2) child study team services to supplement existing district
services;

   (3) home instruction in accordance with regulations promulgated
by the State Board of Education;

   (4) speech-language services provided by a speech-language
specialist in a temporary position that supplements existing district
when a board of education is unable to hire sufficient staff to
provide the service; and

(5) related services except that for the following related services:
(a) certified occupational therapy assistants, and others employed
in a supportive role to licensed and, where applicable, certified
providers of related services, shall work under the supervision of an
appropriately licensed and, where applicable, certified provider of
the services;
(b) physical therapy assistants shall work in the presence of and
under the supervision of a certified physical therapist; and
(c) specialists in behavior modification or other disciplines for
which there is no license or certification shall hold, at a minimum, a
bachelor’s degree in education, psychology, or a related field from
an accredited institution of higher education and shall work under
the supervision of certified board of education personnel.

6. a. Notwithstanding the provisions of section 3 of P.L. , c.
(C. ) (pending before the Legislature as this bill) to the
contrary, an approved private school for students with disabilities
may contract for the services listed in subsection c. of this section
for public school students with:
(1) a private clinic or agency approved by the Department of
Education;
(2) a private professional practitioner who is certified and
licensed in accordance with State law; or
(3) an agency or program that is certified, approved, or licensed
by the Department of Human Services or the Department of Health
to provide counseling or mental health services.

b. All instructional or related services personnel shall hold an
applicable certificate or license on a non-emergency basis.
c. The services shall include:
(1) speech-language services provided by a speech-language
specialist in a temporary position that supplements existing staff of
an approved private school for students with disabilities when an
approved private school for students with disabilities is unable to
hire sufficient staff to provide the service; and
(2) related services except that for the following related services:
(a) certified occupational therapy assistants, and others employed
in a supportive role to licensed and, where applicable, certified
providers of related services, shall work under the supervision of an
appropriately licensed and, where applicable, certified provider of
the services;
(b) physical therapy assistants shall work in the presence of and
under the supervision of a certified physical therapist; and
(c) specialists in behavior modification or other disciplines for
which there is no license or certification shall hold, at a minimum, a
bachelor’s degree in education, psychology, or a related field from
an accredited institution of higher education and shall work under
the supervision of certified board of education personnel.

7. The Legislature finds and declares that:
   a. It is the public policy of this State that instruction delivered
      in-person provides the most educational benefit for New Jersey’s
      students.
   b. There are very limited educationally appropriate
      circumstances where the availability of virtual or remote instruction
      serves as a benefit for students.
   c. When utilized at the discretion of a properly certified teaching
      staff member to aid in in-person instruction, technological tools can
      be educationally beneficial and the Legislature does not intend to
      limit their use.
   d. It is therefore necessary and proper to recognize the existence
      and current utilization of virtual or remote instruction and provide
      certain opportunities for students to receive this type of instruction.

8. a. Except as otherwise expressly permitted pursuant to
   P.L.  , c. (pending before the Legislature as this bill) or
   any other law, instructional services provided by a school district
   shall be delivered through in-person methods.
   b. This section shall not be construed to limit the ability or
      discretion of a teaching staff member to utilize technological tools
      as an aide to in-person instruction. Technological tools shall
      include, but shall not be limited to, online learning applications,
      educational software, third party websites, internet-based
      educational resources, online data and assessment platforms, and
      any other board of education approved software program or
      application used to assist with curricular or education specific
      needs.
   c. This section shall not be construed to limit the availability of
      remote-work for disability-related accommodations.

9. a. Notwithstanding the provisions of subsection a. of section
   8 of P.L. , c. (pending before the Legislature as this bill)
   to the contrary, a school district may utilize individualized virtual or
   remote instruction for a student when equivalent instruction cannot
   be provided through in-person instruction, subject to the approval of
   the Commissioner of Education.
   b. A school district shall apply to the commissioner, in a form
      and manner prescribed by the commissioner, to utilize virtual or
      remote instruction for a specific student pursuant to this section.
   c. The application shall:
      (1) identify and attest to the specific, individualized reasons why
      equivalent instruction cannot be provided to the student through in-
      person instruction; and
d. A school district shall apply separately to the commissioner for each student for whom the district is requesting individualized virtual or remote instruction.

e. The commissioner shall not make a determination on an application until the notification and comment procedures established pursuant to paragraph (1) of subsection f. of this section are completed.

f. The commissioner shall establish:

(1) a process for notifying any individual currently providing the instructional services sought to be implemented virtually or remotely, and the majority representative of the district’s employees of the submission of an application, and provide them with a copy of the application and notice of the right to object to, or comment on, the application prior to the commissioner’s determination;

(2) a process for notifying a school district, any individual currently providing the instructional services which are being sought to be implemented virtually or remotely, and the majority representative of the district’s employees regarding a determination on the request for virtual or remote instruction; and

(3) a procedure for a school district, any individual currently providing the instructional services which are being sought to be implemented virtually or remotely, and the majority representative of the district’s employees to appeal the determination.

g. Notwithstanding the provisions of section 9 of P.L.1996, c.138 (C.18A:7F-9) to the contrary, the Commissioner of Education shall allow a board of education that provides virtual or remote instruction approved pursuant to this section to apply the instruction to the 180-day requirement established pursuant to subsection a. of section 9 of P.L.1996, c.138 (C.18A:7F-9).

10. Notwithstanding the provisions of subsection a. of section 8 of P.L. , c. (C. ) (pending before the Legislature as this bill) or any other section of law to the contrary, a board of education, as part of the district’s implementation of school graduation requirements for a State-endorsed diploma, may provide instruction in financial, economic, business, and entrepreneurial literacy, as required by regulations promulgated by the State Board of Education, by virtual or remote instruction, either in whole or in part.

11. a. Notwithstanding the provisions of subsection a. of section 8 of P.L. , c. (C. ) (pending before the Legislature as this bill) to the contrary, individualized student learning opportunities may include, but are not limited to:

(1) independent study;

(2) study abroad programs;
(3) student exchange programs;
(4) credit recovery programs; and
(5) structured learning experiences including, but not limited to,
work-based programs, internships, apprenticeships, and service-
learning experiences.

b. A board of education approving an individualized student
learning opportunity may determine if the individualized student
learning opportunity may be completed by virtual or remote
instruction, either in whole or in part.

c. Individualized student learning opportunities shall apply
toward the credit requirements for a State-endorsed diploma
established pursuant to regulations promulgated by the State Board
of Education.

d. As used in this section, “individualized student learning
opportunities” means student experiences based upon specific
instructional objectives that meet or exceed the New Jersey Student
Learning Standards for students in grades nine through 12 pursuant
to regulations promulgated by the State Board of Education.

12. This act shall take effect on the first day of the fourth month
next following the date of enactment, except that the Commissioner
of Education may take any anticipatory administrative action, in
advance of the effective date, as may be necessary to implement the
provisions of this act.