

[First Reprint]

ASSEMBLY, No. 5874

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED DECEMBER 11, 2023

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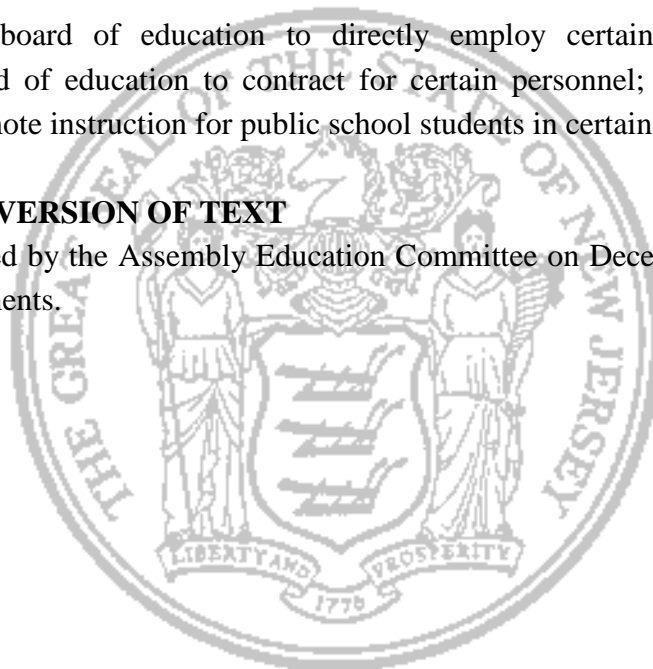
Assemblyman DeAngelo, Assemblywomen McKnight, Swift, Assemblyman Atkins, Assemblywoman Matsikoudis, Assemblyman Spearman, Assemblywomen Tucker, Flynn, Haider, Assemblyman Sampson and Assemblywoman Reynolds-Jackson

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)

1 AN ACT concerning school employees and virtual or remote
2 instruction and supplementing chapter 27 and chapter 35 of Title
3 18A of the New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. The Legislature finds and declares that:

9 a. It is the public policy of this State that personnel directly
10 employed by the board of education of a public school or by an
11 approved private school for students with disabilities in the State
12 provide the highest quality of education for New Jersey students.

13 b. Every effort should be made to have the personnel of a public
14 school be directly employed by the board of education.

15 c. In certain cases, it is necessary for a board of education to
16 contract certain services from qualified and certified individuals in
17 order to the serve the students of the State.

18 d. It is altogether necessary and proper for the Legislature to
19 establish requirements for boards of education to directly employ
20 certain individuals and ensure services contracted by boards of
21 education are of the highest quality.

22
23 2. As used in sections 1 through 6 of P.L. , c. (C.)
24 (pending before the Legislature as this bill):

25 “Board of education” means and includes a board of education as
26 defined in N.J.S.18A:18A-2, the board of directors of an
27 educational services commission, and the administrative board of a
28 renaissance school project or any other local education agency.

29 “Individualized student learning opportunities” means student
30 experiences, including independent study, study abroad programs,
31 student exchange programs, and structured learning experiences,
32 including, but not limited to: work-based programs; internships;
33 apprenticeships; and service-learning experiences; based on specific
34 instructional objectives that meet or exceed the New Jersey Student
35 Learning Standards for students in grades nine through 12 pursuant
36 to regulations promulgated by the State Board of Education.

37 “Public school” means and includes a school, under college
38 grade, which derives its support entirely or in part from public
39 funds, a school district, a charter school, a renaissance school
40 project, an educational services commission, or any other local
41 education agency.

42
43 3. Except as otherwise expressly permitted pursuant to
44 P.L. , c. (C.) (pending before the Legislature as this bill)
45 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.

1 persons performing any duty, function, service, assignment, or job
2 requiring an appropriate certificate issued by the State Board of
3 Examiners for, or on behalf of, a board of education.

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

11 ¹[(a)] a.¹ a substitute teacher;

12 ¹[(b)] b.¹ personnel providing instruction in financial, economic,
13 business, and entrepreneurial literacy to satisfy graduation
14 requirements pursuant to regulations promulgated by the State
15 Board of Education;

16 ¹[(c)] c.¹ personnel providing educational services to a student
17 who is enrolled in a school other than a public school pursuant to
18 regulations promulgated by the State Board of Education;

19 ¹[(d)] d.¹ personnel employed by other boards of education and
20 providing services pursuant to a shared services or joint agreement;

21 ¹[(e)] e.¹ personnel providing individualized student learning
22 opportunities; and

23 ¹[(f)] f.¹ personnel providing special education and related
24 services to a student who is enrolled in an out-of-district placement.

25
26 5. a. Notwithstanding the provisions of section 3 of P.L. , c.
27 (C.) (pending before the Legislature as this bill) to the contrary,
28 a board of education may contract for the services listed in
29 subsection c. of this section for public school students with:

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

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

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

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

40 c. The services shall include:

41 (1) independent child study team evaluations;

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

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

46 (4) speech-language services provided by a speech-language
47 specialist ¹in a temporary position that supplements existing district

1 staff¹ when a board of education is unable to hire sufficient staff to
2 provide the service; and

3 (5) related services except that for the following related services:

4 (a) certified occupational therapy assistants, and others employed
5 in a supportive role to licensed and, where applicable, certified
6 providers of related services, shall work under the supervision of an
7 appropriately licensed and, where applicable, certified provider of
8 the services;

9 (b) physical therapy assistants shall work in the presence of and
10 under the supervision of a certified physical therapist; and

11 (c) specialists in behavior modification or other disciplines for
12 which there is no license or certification shall hold, at a minimum, a
13 bachelor's degree in education, psychology, or a related field from
14 an accredited institution of higher education and shall work under
15 the supervision of certified board of education personnel.

16

17 6. a. Notwithstanding the provisions of section 3 of P.L. , c.
18 (C.) (pending before the Legislature as this bill) to the
19 contrary, an approved private school for students with disabilities
20 may contract for the services listed in subsection c. of this section
21 for public school students with:

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

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

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

29 b. All instructional or related services personnel shall hold an
30 applicable certificate or license on a non-emergency basis.

31 c. The services shall include:

32 (1) speech-language services provided by a speech-language
33 specialist ¹in a temporary position that supplements existing staff of
34 an approved private school for students with disabilities¹ when an
35 approved private school for students with disabilities is unable to
36 hire sufficient staff to provide the service; and

37 (2) related services except that for the following related services:

38 (a) certified occupational therapy assistants, and others employed
39 in a supportive role to licensed and, where applicable, certified
40 providers of related services, shall work under the supervision of an
41 appropriately licensed and, where applicable, certified provider of
42 the services;

43 (b) physical therapy assistants shall work in the presence of and
44 under the supervision of a certified physical therapist; and

45 (c) specialists in behavior modification or other disciplines for
46 which there is no license or certification shall hold, at a minimum, a
47 bachelor's degree in education, psychology, or a related field from

1 an accredited institution of higher education and shall work under
2 the supervision of certified board of education personnel.

3

4 7. The Legislature finds and declares that:

5 a. It is the public policy of this State that instruction delivered
6 in-person provides the most educational benefit for New Jersey's
7 students.

8 b. There are very limited educationally appropriate
9 circumstances where the availability of virtual or remote instruction
10 serves as a benefit for students.

11 c. When utilized at the discretion of a properly certified teaching
12 staff member to aid in in-person instruction, technological tools can
13 be educationally beneficial and the Legislature does not intend to
14 limit their use.

15 d. It is therefore necessary and proper to recognize the existence
16 and current utilization of virtual or remote instruction and provide
17 certain opportunities for students to receive this type of instruction.

18

19 8. a. Except as otherwise expressly permitted pursuant to
20 P.L. , c. (C.) (pending before the Legislature as this bill) or
21 any other law, instructional services provided by a school district
22 shall be delivered through in-person methods.

23 b. This section shall not be construed to limit the ability or
24 discretion of a teaching staff member to utilize technological tools
25 as an aide to in-person instruction. Technological tools shall
26 include, but shall not be limited to, online learning applications,
27 educational software, third party websites, internet-based
28 educational resources, online data and assessment platforms, and
29 any other board of education approved software program or
30 application used to assist with curricular or education specific
31 needs.

32 c. This section shall not be construed to limit the availability of
33 remote-work for disability-related accommodations.

34

35 9. a. Notwithstanding the provisions of subsection a. of section
36 8 of P.L. , c. (C.) (pending before the Legislature as this bill)
37 to the contrary, a school district may utilize individualized virtual or
38 remote instruction for a student when equivalent instruction cannot
39 be provided through in-person instruction, subject to the approval of
40 the Commissioner of Education.

41 b. A school district shall apply to the commissioner, in a form
42 and manner prescribed by the commissioner, to utilize virtual or
43 remote instruction for a specific student pursuant to this section.

44 c. The application shall:

45 (1) identify and attest to the specific, individualized reasons why
46 equivalent instruction cannot be provided to the student through in-
47 person instruction; and

1 (2) demonstrate how the board of education will ensure the
2 virtual or remote instruction meets educational standards.

3 d. A school district shall apply separately to the commissioner
4 for each student for whom the district is requesting individualized
5 virtual or remote instruction.

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

10 f. The commissioner shall establish:

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

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

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

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

32

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

42

43 11. a. Notwithstanding the provisions of subsection a. of section
44 8 of P.L. , c. (C.) (pending before the Legislature as this bill)
45 to the contrary, individualized student learning opportunities may
46 include, but are not limited to:

47 (1) independent study;

48 (2) study abroad programs;

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

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

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

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

19

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