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 amended by the General Assembly on December 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 \(^2\) or by an
      approved private school for students with disabilities \(^2\) 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 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)

EXPLANATION – Matter enclosed in bold-faced brackets \([\text{thus}]\) 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:
\(^1\)Assembly AED committee amendments adopted December 14, 2023.
\(^2\)Assembly floor amendments adopted December 21, 2023.
2[or] 2 any other law, 2or by an exemption provided by the
Comissioner of Education pursuant to section 4 or section 5 of
P.L. , c. (C. ) (pending before the Legislature as this bill), 2 a
board of education shall directly employ all 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.

24. a. The Commissioner of Education shall establish a process for
a board of education to apply for an exemption from the provisions of
section 3 of P.L. , c. (C. ) (pending before the Legislature as
this bill) on a case-by-case basis.

b. The exemption may be granted for personnel necessary to
operate a specified program or course offered by a school district that
supplements the educational programming of the district. The
exemption may include personnel necessary to operate an alternative
education program, programming to address learning loss, or remedial
education.

c. An exemption granted by the commissioner pursuant to this
section shall not exempt a board of education from directly employing
any personnel providing instruction for the courses or curriculum
implemented by a district to satisfy the New Jersey Student Learning
Standards or as part of the district’s implementation of school
graduation requirements for a State-endorsed diploma. 2

25. a. The Commissioner of Education shall establish a process for
a charter school or a renaissance school project to apply for an
exemption from the provisions of section 3 of P.L. , c. (C. )
(pending before the Legislature as this bill) for personnel performing
any school nursing services on a case-by-case basis.

b. The commissioner shall post any determinations issued
pursuant to subsection a. of this section on the department’s Internet
website, excluding any personally identifiable information. 2

2[4.] 2 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:

1[a] a 1 a substitute teacher;

1[b] b 1 personnel providing instruction in financial, economic,
business, and entrepreneurial literacy to satisfy graduation
requirements pursuant to regulations promulgated by the State
Board of Education;
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;  
personnel employed by other boards of education and providing services pursuant to a shared services or joint agreement;  
personnel providing individualized student learning opportunities;  
personnel providing special education and related services to a student who is enrolled in an out-of-district placement;  

faculty of a public institution of higher education providing instruction under a dual enrollment agreement established pursuant to section 1 of P.L.2014, c.74 (C.18A:61C-10);  
a business administrator who oversees the fiscal operations of a charter school or a renaissance school project and is employed by the board of trustees of the charter school or the administrative board of the renaissance school project;  

personnel providing instruction during a summer school session of a charter school or a renaissance school project; and  

personnel employed by a charter management organization who provide operation, management, or curriculum services to a charter school in this State including, but not limited to, instructional directors and school administrators.

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:

a. a private clinic or agency approved by the Department of Education;  
b. a private professional practitioner who is certified and licensed in accordance with State law; or  
c. 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.

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

The services shall include:

independent child study team evaluations;  
services to supplement existing district services;  
home instruction in accordance with regulations promulgated by the State Board of Education;  
specialist in a temporary position that supplements existing district
staff\(^1\) when a board of education is unable to hire sufficient staff to provide the service; and

(5) related services\(^2\) 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 \(2\) 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.

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2(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\(^1\) 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.\textsuperscript{2}

\textsuperscript{2}[7.] 8. The Legislature finds and declares that:
\textbf{a.} It is the public policy of this State that instruction delivered in-person provides the most educational benefit for New Jersey’s students.
\textbf{b.} There are very limited educationally appropriate circumstances where the availability of virtual or remote instruction serves as a benefit for students.
\textbf{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.
\textbf{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.

\textsuperscript{2}[8] 9. \textbf{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.
\textbf{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.
\textbf{c.} This section shall not be construed to limit the availability of remote-work for disability-related accommodations.

\textsuperscript{2}[9] 10. \textbf{a.} Notwithstanding the provisions of subsection \textbf{a.} of section 8 of P.L., c. (pending before the Legislature as this bill) to the contrary, a school district may utilize \textsuperscript{\textsuperscript{2}}[individualized]\textsuperscript{2} virtual or remote instruction for \textsuperscript{\textsuperscript{2}}[a] an individual\textsuperscript{2} student \textsuperscript{2} or a class of students\textsuperscript{2} when equivalent instruction cannot be provided through in-person instruction, subject to the approval of the Commissioner of Education.
\textbf{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 \textsuperscript{\textsuperscript{2}}[a specific] an individual\textsuperscript{2} student \textsuperscript{2} or a class of students\textsuperscript{2} pursuant to this section.
c. The application shall:
(1) identify and attest to the specific reasons why equivalent instruction cannot be provided through in-person instruction; and
(2) demonstrate how the board of education will ensure the virtual or remote instruction meets educational standards.

d. A school district shall apply separately to the commissioner for each student or class of students for whom the district is requesting 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 permit 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).

211. a. Notwithstanding the provisions of subsection a. of section 9 of P.L. , c. (C. ) (pending before the Legislature as this bill) to the contrary, a school district that has applied to utilize virtual or remote instruction pursuant to section 10 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall be permitted to utilize virtual or remote instruction for an individual student or a class of students on a temporary basis without the approval of the Commissioner of Education when equivalent instruction cannot be provided through in-person instruction during the period between the
district’s submission of the application and the district’s receipt of the commissioner’s determination on the application.

b. If the commissioner denies the district’s application for virtual or remote instruction, the district shall discontinue the use of virtual or remote instruction and implement in-person instruction no less than 60 instructional days after the determination is made.

c. Notwithstanding the provisions of section 9 of P.L.1996, c.138 (C.18A:7F-9) to the contrary, the commissioner shall permit 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).

2. The commissioner shall post any determinations issued pursuant to section 10 or section 11 of P.L., c. (C.) (pending before the Legislature as this bill) on the department’s Internet website, excluding any personally identifiable information.

2. 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.

2. 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.

a. Notwithstanding the provisions of subsection a. of section 9 of P.L. , c. (C. ) (pending before the Legislature as this bill) or any other section of law to the contrary, a charter school or a renaissance school project may provide summer school sessions by virtual or remote instruction, either in whole or in part, subject to the approval of the Commissioner of Education.

b. The commissioner shall post any determinations issued pursuant to subsection a. of this section on the department’s Internet website, excluding any personally identifiable information.

This act shall take effect on the first day of the fourth month next following the date of enactment and shall first apply to the first full school year 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.