

[Second Reprint]

ASSEMBLY, No. 5874

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED DECEMBER 11, 2023

Sponsored by:

Assemblywoman PAMELA R. LAMPITT

District 6 (Burlington and Camden)

Assemblywoman LINDA S. CARTER

District 22 (Middlesex, Somerset and Union)

Assemblyman ERIK K. SIMONSEN

District 1 (Atlantic, Cape May and Cumberland)

Co-Sponsored by:

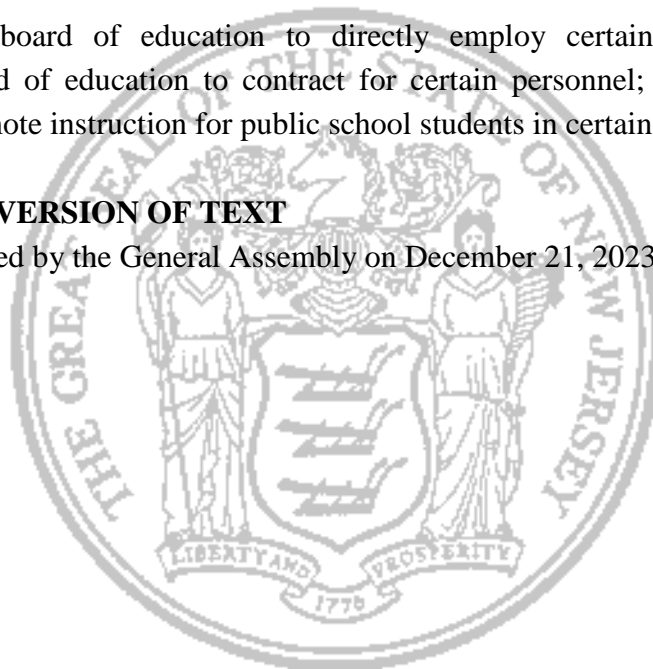
Assemblyman DeAngelo, Assemblywomen McKnight, Swift, Assemblyman Atkins, Assemblywoman Matsikoudis, Assemblyman Spearman, Assemblywomen Tucker, Flynn, Haider, Assemblyman Sampson, Assemblywomen Reynolds-Jackson and Quijano

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.



(Sponsorship Updated As Of: 1/4/2024)

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 ²[or by an
11 approved private school for students with disabilities]² 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)

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.

²Assembly floor amendments adopted December 21, 2023.

1 ²**[or]** ² any other law, ²or by an exemption provided by the
 2 Commissioner of Education pursuant to section 4 or section 5 of
 3 P.L. , c. (C.) (pending before the Legislature as this bill),² a
 4 board of education shall directly employ all persons performing any
 5 duty, function, service, assignment, or job requiring an appropriate
 6 certificate issued by the State Board of Examiners for, or on behalf
 7 of, a board of education.

8
 9 ²4. a. The Commissioner of Education shall establish a process for
 10 a board of education to apply for an exemption from the provisions of
 11 section 3 of P.L. , c. (C.) (pending before the Legislature as
 12 this bill) on a case-by-case basis.

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

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

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

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

34
 35 ²**[4.] 6.² Notwithstanding the provisions of section 3 of P.L.
 36 , c. (C.) (pending before the Legislature as this bill) to the
 37 contrary, a board of education may contract with the following
 38 personnel to ensure that required programs and services are
 39 provided and shall not be required to directly employ the personnel,
 40 provided that the personnel hold an applicable certificate:**

41 ¹**[(a)] a.¹ a substitute teacher;**

42 ¹**[(b)] b.¹ personnel providing instruction in financial, economic,
 43 business, and entrepreneurial literacy to satisfy graduation
 44 requirements pursuant to regulations promulgated by the State
 45 Board of Education;**

- 1 ¹[(c)] c.¹ personnel providing educational services to a student
 2 who is enrolled in a school other than a public school pursuant to
 3 regulations promulgated by the State Board of Education;
- 4 ¹[(d)] d.¹ personnel employed by other boards of education and
 5 providing services pursuant to a shared services or joint agreement;
- 6 ¹[(e)] e.¹ personnel providing individualized student learning
 7 opportunities; ²[and]²
- 8 ¹[(f)] f.¹ personnel providing special education and related
 9 services to a student who is enrolled in an out-of-district
 10 placement²;
- 11 g. faculty of a public institution of higher education providing
 12 instruction under a dual enrollment agreement established pursuant to
 13 section 1 of P.L.2014, c.74 (C.18A:61C-10);
- 14 h. a business administrator who oversees the fiscal operations of a
 15 charter school or a renaissance school project and is employed by the
 16 board of trustees of the charter school or the administrative board of
 17 the renaissance school project;
- 18 i. personnel providing instruction during a summer school session
 19 of a charter school or a renaissance school project; and
- 20 j. personnel employed by a charter management organization who
 21 provide operation, management, or curriculum services to a charter
 22 school in this State including, but not limited to, instructional directors
 23 and school administrators².
- 24
- 25 ²[5.] 7.² a. Notwithstanding the provisions of section 3 of
 26 P.L. , c. (C.) (pending before the Legislature as this bill) to
 27 the contrary, a board of education may contract for the services
 28 listed in subsection c. of this section for public school students
 29 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^{2,2} except that for the following related
4 services:

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

10 (b) physical therapy assistants shall work ²[in the presence of
11 and]² under the supervision of a certified physical therapist; and

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

17

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

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

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

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

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

32 c. The services shall include:

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

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

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

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

46 (c) specialists in behavior modification or other disciplines for
47 which there is no license or certification shall hold, at a minimum, a

1 bachelor's degree in education, psychology, or a related field from
2 an accredited institution of higher education and shall work under
3 the supervision of certified board of education personnel.]²

4
5
6 ²[7.] 8.² The Legislature finds and declares that:

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

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

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

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

20
21 ²[8] 9.² a. Except as otherwise expressly permitted pursuant to
22 P.L. , c. (C.) (pending before the Legislature as this bill) or
23 any other law, instructional services provided by a school district
24 shall be delivered through in-person methods.

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

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

36
37 ²[9.] 10.² a. Notwithstanding the provisions of subsection a. of
38 section 8 of P.L. , c. (C.) (pending before the Legislature as
39 this bill) to the contrary, a school district may utilize
40 ²[individualized]² virtual or remote instruction for ²[a] an
41 individual² student ²or a class of students² when equivalent
42 instruction cannot be provided through in-person instruction,
43 subject to the approval of the Commissioner of Education.

44 b. A school district shall apply to the commissioner, in a form
45 and manner prescribed by the commissioner, to utilize virtual or
46 remote instruction for ²[a specific] an individual² student ²or a class
47 of students² pursuant to this section.

1 c. The application shall:

2 (1) identify and attest to the specific ²[, individualized]² reasons
3 why equivalent instruction cannot be provided ²[to the student]²
4 through in-person instruction; and

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

7 d. A school district shall apply separately to the commissioner
8 for each ²individual² student ²or class of students² for whom the
9 district is requesting ²[individualized]² virtual or remote
10 instruction.

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

15 f. The commissioner shall establish:

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

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

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

31 g. Notwithstanding the provisions of section 9 of P.L.1996,
32 c.138 (C.18A:7F-9) to the contrary, the Commissioner of Education
33 shall ²[allow] permit² a board of education that provides virtual or
34 remote instruction approved pursuant to this section to apply the
35 instruction to the 180-day requirement established pursuant to
36 subsection a. of section 9 of P.L.1996, c.138 (C.18A:7F-9).

37

38 ²11. a. Notwithstanding the provisions of subsection a. of section
39 9 of P.L. , c. (C.) (pending before the Legislature as this bill) to
40 the contrary, a school district that has applied to utilize virtual or
41 remote instruction pursuant to section 10 of P.L. , c. (C.)
42 (pending before the Legislature as this bill) shall be permitted to utilize
43 virtual or remote instruction for an individual student or a class of
44 students on a temporary basis without the approval of the
45 Commissioner of Education when equivalent instruction cannot be
46 provided through in-person instruction during the period between the

1 district's submission of the application and the district's receipt of the
2 commissioner's determination on the application.

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

7 c. Notwithstanding the provisions of section 9 of P.L.1996,
8 c.138 (C.18A:7F-9) to the contrary, the commissioner shall permit a
9 board of education that provides virtual or remote instruction
10 approved pursuant to this section to apply the instruction to the 180-
11 day requirement established pursuant to subsection a. of section 9
12 of P.L.1996, c.138 (C.18A:7F-9).²

13
14 ²12. The commissioner shall post any determinations issued
15 pursuant to section 10 or section 11 of P.L. , c. (C.) (pending
16 before the Legislature as this bill) on the department's Internet
17 website, excluding any personally identifiable information.²

18
19 ²[10.] 13.² Notwithstanding the provisions of subsection a. of
20 section ²[8] 9.² of P.L. , c. (C.) (pending before the
21 Legislature as this bill) or any other section of law to the contrary, a
22 board of education, as part of the district's implementation of
23 school graduation requirements for a State-endorsed diploma, may
24 provide instruction in financial, economic, business, and
25 entrepreneurial literacy, as required by regulations promulgated by
26 the State Board of Education, by virtual or remote instruction, either
27 in whole or in part.

28
29 ²[11.] 14.² a. Notwithstanding the provisions of subsection a. of
30 section ²[8] 9.² of P.L. , c. (C.) (pending before the
31 Legislature as this bill) to the contrary, individualized student
32 learning opportunities may include, but are not limited to:

33 (1) independent study;
34 (2) study abroad programs;
35 (3) student exchange programs;
36 (4) credit recovery programs; and
37 (5) structured learning experiences including, but not limited to,
38 work-based programs, internships, apprenticeships, and service-
39 learning experiences.

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

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

1 d. As used in this section, “individualized student learning
2 opportunities” means student experiences based upon specific
3 instructional objectives that meet or exceed the New Jersey Student
4 Learning Standards for students in grades nine through 12 pursuant
5 to regulations promulgated by the State Board of Education.
6

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

13 b. The commissioner shall post any determinations issued
14 pursuant to subsection a. of this section on the department’s Internet
15 website, excluding any personally identifiable information.²
16

17 ²[12.] 16.² This act shall take effect on the first day of the
18 fourth month next following the date of enactment ²and shall first
19 apply to the first full school year following the date of enactment²,
20 except that the Commissioner of Education may take any
21 anticipatory administrative action, in advance of the effective date,
22 as may be necessary to implement the provisions of this act.