

SENATE, No. 3629

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED FEBRUARY 23, 2023

Sponsored by:

Senator JOSEPH PENNACCHIO

District 26 (Essex, Morris and Passaic)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the implementation of programs of virtual or
2 remote instruction and amending P.L.1996, c.138 and P.L.2020,
3 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. (1) 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 more than three consecutive
31 school days due to a declared state of emergency, declared public
32 health emergency, or a directive by the appropriate health agency or
33 officer to institute a public health-related closure, the commissioner
34 shall allow the district to apply to the 180-day requirement
35 established pursuant to subsection a. of this section, one or more
36 days of virtual or remote instruction provided to students on the day
37 or days the schools of the district were closed if the program of
38 virtual or remote instruction meets such criteria as may be
39 established by the commissioner. A district that wants to use a
40 program of virtual or remote instruction to meet the 180-day
41 requirement in accordance with this subsection shall, with board of
42 education approval, submit its proposed program of virtual or
43 remote instruction to the commissioner within 30 days of the
44 effective date of P.L.2020, c.27 and annually thereafter, provided
45 however that if the school district is unable to complete and submit

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 its proposed program within the 30-day period and the district is
2 required to close its schools for a declared state of emergency,
3 declared public health emergency, or a directive by the appropriate
4 health agency or officer to institute a public health-related closure,
5 the commissioner may retroactively approve the program.

6 (2) Notwithstanding the provisions of subsection a. of this
7 section to the contrary, in the event that a school district determines
8 to close the schools of the district for one or more school days for
9 any reason other than a declared state of emergency, a declared
10 public health emergency, or a directive by the appropriate health
11 agency or officer to institute a public health-related closure, the
12 commissioner shall allow the district to apply to the 180-day
13 requirement established pursuant to subsection a. of this section,
14 one or more days of virtual or remote instruction provided to
15 students on the day or days the schools of the district were closed if
16 the program of virtual or remote instruction meets the criteria
17 established by the commissioner and if the school district complies
18 with the following requirements:

19 (a) if the district determines to use a program of virtual or
20 remote instruction for one to 10 consecutive school days, the
21 superintendent of schools shall have the authority to implement the
22 program of virtual or remote instruction; or

23 (b) if the district determines to implement a program of virtual
24 or remote instruction for more than 10 consecutive school days, the
25 district shall petition the commissioner for approval to implement
26 the program of virtual or remote instruction.

27 The superintendent shall provide at least 18-hours' notice to
28 students, parents, and staff of a program of virtual or remote
29 instruction implemented pursuant to paragraph (2) of subsection b.
30 of this section.

31 A day of virtual or remote instruction, if instituted under a
32 program approved **[by the commissioner]** pursuant to this section,
33 shall be considered the equivalent of a full day of school attendance
34 for the purposes of meeting State and local graduation
35 requirements, the awarding of course credit, and such other matters
36 as determined by the commissioner.

37 If a program of virtual or remote instruction is implemented for
38 the general education students the same educational opportunities
39 shall be provided to students with disabilities. Special education
40 and related services, including speech language services, counseling
41 services, physical therapy, occupational therapy, and behavioral
42 services, may be delivered to students with disabilities through the
43 use of electronic communication or a virtual or online platform and
44 as required by the student's Individualized Education Program
45 (IEP), to the greatest extent practicable.

46 c. In the event that the State or local health department
47 determines that it is advisable to close or mandates closure of the
48 schools of a school district due to a declared state of emergency,

1 declared public health emergency, or a directive by the appropriate
2 health agency or officer to institute a public health-related closure,
3 the superintendent of schools shall have the authority to implement
4 the school district's program of virtual or remote instruction. The
5 superintendent shall consult with the board of education prior to
6 such decision if practicable. The superintendent shall ensure that
7 students, parents, staff, and the board of education or boards of
8 education are informed promptly of the superintendent's decision.

9 d. The commissioner shall define virtual and remote instruction
10 and establish guidance for its use. The guidance shall provide
11 school districts with information on:

12 (1) providing instruction to students who may not have access to
13 a computer or to sufficient broadband, or to any technology
14 required for virtual or remote instruction;

15 (2) the required length of a virtual or remote instruction day;

16 (3) the impact of virtual or remote instruction on the school
17 lunch and school breakfast programs;

18 (4) the impact of virtual or remote instruction on the schedule
19 for administering State assessments; and

20 (5) such other topics as the commissioner deems necessary.

21 e. (1) Nothing in subsection b., c., or d. of this section shall be
22 construed to limit, supersede or preempt the rights, privileges,
23 compensation, remedies, and procedures afforded to public school
24 employees or a collective bargaining unit under federal or State law
25 or any provision of a collective bargaining agreement entered into
26 by the school district. In the event of the closure of the schools of a
27 school district due to a declared state of emergency, declared public
28 health emergency, or a directive by the appropriate health agency or
29 officer to institute a public health-related closure for a period longer
30 than three consecutive school days, public school employees
31 covered by a collective negotiations agreement shall be entitled to
32 compensation, benefits, and emoluments as provided in the
33 collective negotiations agreement as if the school facilities
34 remained open for any purpose and for any time lost as a result of
35 school closures or use of virtual or remote instruction, except that
36 additional compensation, benefits, and emoluments may be
37 negotiated for additional work performed.

38 (2) In the event of the closure of the schools of a school district
39 due to a declared state of emergency, declared public health
40 emergency, or a directive by the appropriate health agency or
41 officer to institute a public health-related closure for a period longer
42 than three consecutive school days, public school employees who
43 are not covered by a collective negotiations agreement shall be
44 entitled to any benefits, compensation, and emoluments to which
45 they otherwise would be entitled as if they had performed the work
46 for such benefits, compensation, and emoluments as if the school
47 facilities remained open for any purpose and for any time lost as a
48 result of school closures or use of virtual or remote instruction.

1 (3) If the schools of a school district are subject to a health-
2 related closure for a period longer than three consecutive school
3 days, which is the result of a declared state of emergency, declared
4 public health emergency, or a directive by the appropriate health
5 agency or officer, then the school district shall continue to make
6 payments of benefits, compensation, and emoluments pursuant to
7 the terms of a contract with a contracted service provider in effect
8 on the date of the closure as if the services for such benefits,
9 compensation, and emoluments had been provided, and as if the
10 school facilities had remained open. Payments received by a
11 contracted service provider pursuant to this paragraph shall be used
12 to meet the payroll and fixed costs obligations of the contracted
13 service provider, and employees of the contracted service provider
14 shall be paid as if the school facilities had remained open and in full
15 operation. A school district shall make all reasonable efforts to
16 renegotiate a contract in good faith subject to this paragraph and
17 may direct contracted service providers, who are a party to a
18 contract and receive payments from the school district under this
19 paragraph, to provide services on behalf of the school district which
20 may reasonably be provided and are within the general expertise or
21 service provision of the original contract. Negotiations shall not
22 include indirect costs such as fuel or tolls. As a condition of
23 negotiations, a contracted service provider shall reveal to the school
24 district whether the entity has insurance coverage for business
25 interruption covering work stoppages. A school district shall not be
26 liable for the payment of benefits, compensation, and emoluments
27 pursuant to the terms of a contract with a contracted service
28 provider under this paragraph for services which otherwise would
29 not have been provided had the school facilities remained open.
30 Nothing in this paragraph shall be construed to require a school
31 district to make payments to a party in material breach of a contract
32 with a contracted service provider if the breach was not due to a
33 closure resulting from a declared state of emergency, declared
34 public health emergency, or a directive by the appropriate health
35 agency or officer.

36 (4) If the schools of a school district are subject to a health-
37 related closure for a period longer than three consecutive school
38 days, which is the result of a declared state of emergency, declared
39 public health emergency, or a directive by the appropriate health
40 agency or officer, the school district shall be obligated to make
41 payments for benefits, compensation, and emoluments and all
42 payments required pursuant to P.L.1968, c.243 (C.18A:6-51 et
43 seq.), to an educational services commission, county special
44 services school district, and a jointure commission, and under any
45 shared services agreement and cooperative contract entered into
46 with any other public entity. An educational services commission,
47 county special services school district, and jointure commission
48 shall continue to make payments of benefits, compensation, and

1 emoluments pursuant to the terms of a contract with a contracted
2 service provider or a shared services agreement in effect on the date
3 of the closure as if the services for such benefits, compensation, and
4 emoluments had been provided, and as if the school facilities had
5 remained open. Payments received by a contracted service provider
6 or public entity pursuant to this paragraph shall be used to meet the
7 payroll and fixed costs obligations of the contracted service
8 provider or public entity, and employees of the contracted service
9 provider or public entity shall be paid as if the school facilities had
10 remained open and in full operation. Upon request of the school
11 district, the educational services commission, county special
12 services school district, and a jointure commission shall certify, and
13 provide any supporting documentation to a school district as may be
14 necessary to verify, that payments received have been used solely to
15 meet the payroll and fixed costs of the contracted service provider
16 or public entity. Any portion of those payments not used to meet
17 the payroll and fixed costs shall be returned to the school district.
18 An educational services commission, county special services school
19 district, jointure commission or any lead school district under a
20 shared services agreement or cooperative contract, shall make all
21 reasonable efforts to renegotiate a contract in good faith subject to
22 this paragraph and may direct contracted service providers or public
23 entities, who are a party to a contract and receive payments under
24 this paragraph, to provide services which may reasonably be
25 provided and are within the general expertise or service provision of
26 the original contract. Negotiations shall not include indirect costs
27 such as fuel or tolls. As a condition of negotiations, a contracted
28 service provider or public entity shall reveal whether the entity has
29 insurance coverage for business interruption covering work
30 stoppages.

31 (5) The provisions of paragraphs (1) through (4) of this
32 subsection e. shall not apply to any employee whose weekly hours
33 of work are reduced, and to whom unemployment benefits are
34 provided, pursuant to a shared work program approved pursuant to
35 the provisions of P.L.2011, c.154 (C.43:21-20.3 et seq.). A
36 contracted service provider, educational services commission,
37 county special services school district, or jointure commission shall
38 notify any school district with which it has entered into a contract to
39 provide services of its intent to reduce the hours of work of its
40 employees pursuant to a shared work program approved pursuant to
41 the provisions of P.L.2011, c.154 (C.43:21-20.3 et seq.).
42 Notwithstanding the provisions of paragraph (3) of this subsection
43 e., if a contracted service provider reduces the amount that it pays
44 to its employees providing services to a school district, and that
45 reduction is the result of a reduction of workhours of those
46 employees made pursuant to a shared work program approved
47 pursuant to the provisions of P.L.2011, c.154 (C.43:21-20.3 et seq.),
48 then the amount paid by the public school district to the contracted

1 service provider shall be reduced by the same amount.
2 Notwithstanding the provisions of paragraph (4) of this subsection
3 e., if an educational services commission, county special services
4 school district, or jointure commission reduces the amount that it
5 pays to its employees providing services to a school district, and
6 that reduction is the result of a reduction of workhours of the those
7 employees made pursuant to a shared work program approved
8 pursuant to the provisions of P.L.2011, c.154 (C.43:21-20.3 et seq.),
9 then the amount paid by the public school district to the educational
10 services commission, county special services school district, or
11 jointure commission shall be reduced by the same amount.

12 f. For purposes of subsections b., c., d., and e. of this section,
13 "school district" shall include a charter school and a renaissance
14 school project.
15 (cf: P.L.2020, c.57, s.3)
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17 2. Section 2 of P.L.2020, c.27 (C.18A:46-21.1) is amended to
18 read as follows:

19 2. a. (1) In the event that an approved private school for
20 students with disabilities is required to close the school for more
21 than three consecutive school days due to a declared state of
22 emergency, declared public health emergency, or a directive by the
23 appropriate health agency or officer to institute a public health-
24 related closure, the commissioner shall allow the school to apply
25 one or more days of virtual or remote instruction provided to
26 students on the day or days the school was closed to qualify as a
27 day of instruction for the purposes of calculating tuition if the
28 program of virtual or remote instruction meets such criteria as may
29 be established by the commissioner. An approved private school for
30 students with disabilities that wants to use a program of virtual or
31 remote instruction to qualify as a day of instruction for the purposes
32 of calculating tuition shall submit its proposed program of virtual or
33 remote instruction to the commissioner within 30 days of the
34 effective date of P.L.2020, c.27 and annually thereafter, provided
35 however that if the school is unable to complete its proposed
36 program within the 30-day period and the school is required to close
37 for a declared state of emergency, declared public health
38 emergency, or a directive by the appropriate health agency or
39 officer to institute a public health-related closure, the commissioner
40 may retroactively approve the program.

41 (2) In the event that an approved private school for students with
42 disabilities determines to close the schools of the district for one or
43 more school days for any reason other than a declared state of
44 emergency, a declared public health emergency, or a directive by
45 the appropriate health agency or officer to institute a public health-
46 related closure, the commissioner shall allow the school to apply
47 one or more days of virtual or remote instruction provided to
48 students on the day or days the school was closed to qualify as a

1 day of instruction for the purposes of calculating tuition if the
2 program of virtual or remote instruction meets the criteria
3 established by the commissioner and if the school complies with the
4 following requirements:

5 (a) if the school determines to use a program of virtual or
6 remote instruction for one to 10 consecutive school days, the
7 director of the school shall have the authority to implement the
8 program of virtual or remote instruction; or

9 (b) if the school determines to use a program of virtual or
10 remote instruction for more than 10 consecutive school days, the
11 school shall petition the commissioner for approval to implement
12 the program of virtual or remote instruction.

13 The director of the school shall provide at least 18-hours' notice
14 to students, parents, and staff of a program of virtual or remote
15 instruction implemented pursuant to paragraph (2) of subsection a.
16 of this section.

17 A day of virtual or remote instruction, if instituted under a
18 program approved by the commissioner, shall be considered the
19 equivalent of a full day of school attendance for the purposes of
20 meeting State and local graduation requirements, the awarding of
21 course credit, and such other matters as determined by the
22 commissioner.

23 Special education and related services, including speech
24 language services, counseling services, physical therapy,
25 occupational therapy, In and behavioral services, may be delivered
26 to students with disabilities through the use of electronic
27 communication or a virtual or online platform and as required by
28 the student's Individualized Education Program (IEP), to the
29 greatest extent practicable.

30 b. In the event that the State or local health department
31 determines that it is advisable to close or mandates closure of an
32 approved private school for students with disabilities due to a
33 declared state of emergency, declared public health emergency, or a
34 directive by the appropriate health agency or officer to institute a
35 public health-related closure, the principal of the school shall have
36 the authority to implement the school's program of virtual or remote
37 instruction.

38 c. The commissioner shall define virtual and remote instruction
39 and establish guidance for its use. The guidance shall provide
40 schools with information on:

41 (1) providing instruction to students who may not have access to
42 a computer or to sufficient broadband, or to any technology
43 required for virtual or remote instruction;

44 (2) the required length of a virtual or remote instruction day;

45 (3) the impact of virtual or remote instruction on the schedule
46 for administering State assessments; and

47 (4) such other topics as the commissioner deems necessary.

48 (cf: P.L.2020, c.27, s.2)

1 3. This act shall take effect immediately.

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STATEMENT

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6 This bill permits a school district or an approved private school
7 for students with disabilities (APSSD) that determines to close for
8 one or more school days, for any reason other than a declared state
9 of emergency, a declared public health emergency, or a directive by
10 the appropriate health agency or officer to institute a public health-
11 related closure, to meet the 180-day school year requirement
12 through virtual or remote instruction in accordance with the
13 following requirements:

14 (1) in the case of a program of virtual or remote instruction for
15 one to 10 consecutive school days, the superintendent of the school
16 district or the director of the APSSD will have the authority to
17 implement the program; and

18 (2) in the case of a program of virtual or remote instruction for
19 more than 10 consecutive school days, the district or APSSD will
20 be required to petition the commissioner for approval to implement
21 the program.

22 The bill directs the school district superintendent or the director
23 of the APSSD to provide 18-hour notice to students, parents, and
24 staff of the program of virtual or remote instruction being
25 implemented pursuant to the provisions of the bill.

26 Under current law, a school district or APSSD may only meet the
27 180-day requirement through virtual or remote instruction if the
28 district or APSSD is required to close for more than three
29 consecutive school days due to a declared state of emergency, a
30 declared public health emergency, or a directive by the appropriate
31 health agency or officer to institute a public health-related closure.
32 This bill will provide a school district and an APSSD with the
33 flexibility and a process to meet the 180-day requirement through
34 virtual or remote instruction when the district or APSSD determines
35 that there is a need to close the schools for some other purpose.