

SENATE, No. 4233

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED DECEMBER 14, 2023

Sponsored by:

Senator VIN GOPAL

District 11 (Monmouth)

Co-Sponsored by:

Senator Johnson

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 introduced.



(Sponsorship Updated As Of: 12/14/2023)

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

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

- 7 a. a substitute teacher;
- 8 b. personnel providing instruction in financial, economic,
9 business, and entrepreneurial literacy to satisfy graduation
10 requirements pursuant to regulations promulgated by the State
11 Board of Education;
- 12 c. personnel providing educational services to a student who is
13 enrolled in a school other than a public school pursuant to
14 regulations promulgated by the State Board of Education;
- 15 d. personnel employed by other boards of education and
16 providing services pursuant to a shared services or joint agreement;
- 17 e. personnel providing individualized student learning
18 opportunities; and
- 19 f. personnel providing special education and related services to
20 a student who is enrolled in an out-of-district placement.

21
22 5. a. Notwithstanding the provisions of section 3 of P.L. ,
23 c. (C.) (pending before the Legislature as this bill) to the
24 contrary, a board of education may contract for the services listed in
25 subsection c. of this section for public school students with:

- 26 (1) a private clinic or agency approved by the Department of
27 Education;
- 28 (2) a private professional practitioner who is certified and
29 licensed in accordance with State law; or
- 30 (3) an agency or program that is certified, approved, or licensed
31 by the Department of Human Services or the Department of Health
32 to provide counseling or mental health services.

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

36 c. The services shall include:

- 37 (1) independent child study team evaluations;
- 38 (2) child study team services to supplement existing district
39 services;
- 40 (3) home instruction in accordance with regulations promulgated
41 by the State Board of Education;
- 42 (4) speech-language services provided by a speech-language
43 specialist when a board of education is unable to hire sufficient staff
44 to provide the service; and
- 45 (5) related services except that for the following related services:
46 (a) certified occupational therapy assistants, and others employed
47 in a supportive role to licensed and, where applicable, certified
48 providers of related services, shall work under the supervision of an

1 appropriately licensed and, where applicable, certified provider of
2 the services;

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

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

10

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

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

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

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

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

25 c. The services shall include:

26 (1) speech-language services provided by a speech-language
27 specialist when an approved private school for students with
28 disabilities is unable to hire sufficient staff to provide the service;
29 and

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

31 (a) certified occupational therapy assistants, and others employed
32 in a supportive role to licensed and, where applicable, certified
33 providers of related services, shall work under the supervision of an
34 appropriately licensed and, where applicable, certified provider of
35 the services;

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

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

43

44 7. The Legislature finds and declares that:

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

1 b. There are very limited educationally appropriate
2 circumstances where the availability of virtual or remote instruction
3 serves as a benefit for students.

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

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

11

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

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

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

27

28 9. a. Notwithstanding the provisions of subsection a. of section
29 8 of P.L. , c. (C.) (pending before the Legislature as this bill)
30 to the contrary, a school district may utilize individualized virtual or
31 remote instruction for a student when equivalent instruction cannot
32 be provided through in-person instruction, subject to the approval of
33 the Commissioner of Education.

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

37 c. The application shall:

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

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

43 d. A school district shall apply separately to the commissioner
44 for each student for whom the district is requesting individualized
45 virtual or remote instruction.

46 e. The commissioner shall not make a determination on an
47 application until the notification and comment procedures

1 established pursuant to paragraph (1) of subsection f. of this section
2 are completed.

3 f. The commissioner shall establish:

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

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

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

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

25

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

35

36 11. a. Notwithstanding the provisions of subsection a. of section
37 8 of P.L. , c. (C.) (pending before the Legislature as this bill)
38 to the contrary, individualized student learning opportunities may
39 include, but are not limited to:

40 (1) independent study;

41 (2) study abroad programs;

42 (3) student exchange programs;

43 (4) credit recovery programs; and

44 (5) structured learning experiences including, but not limited to,
45 work-based programs, internships, apprenticeships, and service-
46 learning experiences.

47 b. A board of education approving an individualized student
48 learning opportunity may determine if the individualized student

1 learning opportunity may be completed by virtual or remote
2 instruction, either in whole or in part.

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

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

12

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

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STATEMENT

21

22 This bill requires a board of education to directly employ
23 certain professionals and permits a board of education to contract
24 for certain personnel. This bill also permits the use of virtual or
25 remote instruction for public school students in certain
26 circumstances.

27 Under the bill, a board of education, generally defined as the
28 board of education of any local school district, consolidated school
29 district, regional school district, county vocational school, and any
30 other board of education or other similar body, the board of
31 directors of an educational services commission, and the
32 administrative board of a renaissance school project or any other
33 local education agency, is required to directly employ all persons
34 performing any duty, function, service, assignment, or job requiring
35 an appropriate certificate issued by the State Board of Examiners
36 for, or on behalf of, a board of education. Additionally, the bill
37 permits a board of education to contract with personnel to ensure
38 required programs and services are provided and are not required to
39 directly employ the personnel, provided that the personnel hold an
40 applicable certificate. Under the bill, the personnel include: (1) a
41 substitute teacher; (2) personnel providing instruction in financial,
42 economic, business, and entrepreneurial literacy to satisfy
43 graduation requirements; (3) personnel providing educational
44 services to a student who is enrolled in a school other than a public
45 school; (4) personnel employed by other boards of education and
46 providing services under a shared services or joint agreement; (5)
47 personnel providing individualized student learning opportunities;

1 and (6) personnel providing special education and related services
2 to a student who is enrolled in an out-of-district placement.

3 Additionally, the bill permits a board of education to contract for
4 additional services provided that the personnel holds an applicable
5 certificate on a non-emergency basis and the board contracts with
6 specific entities. Under the bill, these services include (1)
7 independent child study team evaluations; (2) child study team
8 services to supplement existing district services; (3) home
9 instruction; (4) speech-language services in certain circumstances;
10 and (5) related services, provided that certified occupational therapy
11 assistants, others employed in a supportive role to licensed certified
12 providers of related services, physical therapy assistants, and
13 specialists in behavior modification meet additional requirements,
14 as specified in the bill.

15 The bill also permits an approved private school for students
16 with disabilities to contract for certain services, provided that the
17 personnel holds an applicable certificate on a non-emergency basis
18 and the approved private school for students with disabilities
19 contracts with specific entities. Under the bill, these services
20 include speech-language services and related services, provided that
21 certified occupational therapy assistants, others employed in a
22 supportive role to licensed certified providers of related services,
23 physical therapy assistants, and specialists in behavior modification
24 meet additional requirements, as specified in the bill.

25 The bill also requires instructional services provided by a school
26 district, including a charter school or a renaissance school project,
27 to be delivered through in-person methods unless otherwise
28 permitted by State law.

29 Additionally, the bill permits a school district to utilize
30 individualized virtual or remote instruction for a student when
31 equivalent instruction cannot be provided through in-person
32 instruction, subject to the approval of the Commissioner of
33 Education and establishes an application process for a school
34 district to apply for individualized virtual or remote instruction for a
35 student. Under the bill, the commissioner is required to establish a
36 process for notifying an individual currently providing the
37 instructional services which are being sought to be implemented
38 virtually or remotely, and the majority representative of the
39 district's employees of the submission of an application and provide
40 them with a copy of the application and notice of the right to object
41 to, or comment on, the application prior to the commissioner's
42 determination. Additionally, the bill requires the commissioner to
43 establish a process to notify a school district, any individual
44 currently providing the instructional services which are being
45 sought to be implemented virtually or remotely, and the majority
46 representative of the district's employees regarding a determination
47 on the request for virtual or remote instruction and a procedure for a
48 school district to them to appeal the determination.

1 The bill also permits a board of education, as part of the district's
2 implementation of school graduation requirements for a State-
3 endorsed diploma to provide instruction in financial, economic,
4 business, and entrepreneurial literacy by virtual or remote
5 instruction, either in whole or in part.

6 Finally, the bill specifies that individualized student learning
7 opportunities that meet or exceed the New Jersey Student Learning
8 Standards for students in grades nine through 12 include (1)
9 independent study, (2) study abroad programs, (3) student exchange
10 programs, (4) credit recovery programs; and (5) structured learning
11 experiences, including, but not limited to, work-based programs,
12 internships, apprenticeships, and service-learning experiences.
13 Under the bill, the board is to determine if an individualized student
14 learning opportunity may be completed by virtual or remote
15 instruction, either in whole or in part. Pursuant to the bill,
16 individualized student learning opportunities are required to apply
17 toward the credit requirement for a State-endorsed diploma
18 established under State Board of Education regulations.