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.
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 or by an
      approved private school for students with disabilities 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)
or any other law, 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.
4. 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:
   a. a substitute teacher;
   b. personnel providing instruction in financial, economic, business, and entrepreneurial literacy to satisfy graduation requirements pursuant to regulations promulgated by the State Board of Education;
   c. 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;
   d. personnel employed by other boards of education and providing services pursuant to a shared services or joint agreement;
   e. personnel providing individualized student learning opportunities; and
   f. personnel providing special education and related services to a student who is enrolled in an out-of-district placement.

5. a. 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:
   (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, child study team, or related services personnel shall hold an applicable certificate on a non-emergency basis.
   c. The services shall include:
      (1) independent child study team evaluations;
      (2) child study team services to supplement existing district services;
      (3) home instruction in accordance with regulations promulgated by the State Board of Education;
      (4) speech-language services provided by a speech-language specialist when a board of education is unable to hire sufficient staff to provide the service; and
      (5) 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.

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 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.

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

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.

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.

8. a. Except as otherwise expressly permitted pursuant to P.L. , c. (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.

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.

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

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

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 a specific student pursuant to this section.

c. The application shall:

(1) identify and attest to the specific, individualized reasons why equivalent instruction cannot be provided to the student 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 for whom the district is requesting individualized 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 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; 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 allow 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).

10. Notwithstanding the provisions of subsection a. of section 8 of P.L. , 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.

11. a. Notwithstanding the provisions of subsection a. of section 8 of P.L. , 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.

12. This act shall take effect on the first day of the fourth month
next 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.

STATEMENT

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

Under the bill, a board of education, generally defined as the
board of education of any local school district, consolidated school
district, regional school district, county vocational school, and any
other board of education or other similar body, the board of
directors of an educational services commission, and the
administrative board of a renaissance school project or any other
local education agency, is required to 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. Additionally, the bill
permits a board of education to contract with personnel to ensure
required programs and services are provided and are not required to
directly employ the personnel, provided that the personnel hold an
applicable certificate. Under the bill, the personnel include: (1) a
substitute teacher; (2) personnel providing instruction in financial,
economic, business, and entrepreneurial literacy to satisfy
graduation requirements; (3) personnel providing educational
services to a student who is enrolled in a school other than a public
school; (4) personnel employed by other boards of education and
providing services under a shared services or joint agreement; (5)
personnel providing individualized student learning opportunities;
and (6) personnel providing special education and related services
to a student who is enrolled in an out-of-district placement.

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

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

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

Additionally, the bill permits a school district to utilize
individualized virtual or remote instruction for a student when
equivalent instruction cannot be provided through in-person
instruction, subject to the approval of the Commissioner of
Education and establishes an application process for a school
district to apply for individualized virtual or remote instruction for a
student. Under the bill, the commissioner is required to establish a
process for notifying an 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 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. Additionally, the bill requires the commissioner to
establish a process to notify 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 a procedure for a
school district to them to appeal the determination.
The bill also permits a board of education, as part of the district’s implementation of school graduation requirements for a State-endorsed diploma to provide instruction in financial, economic, business, and entrepreneurial literacy by virtual or remote instruction, either in whole or in part.

Finally, the bill specifies that individualized student learning opportunities that meet or exceed the New Jersey Student Learning Standards for students in grades nine through 12 include (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.

Under the bill, the board is to determine if an individualized student learning opportunity may be completed by virtual or remote instruction, either in whole or in part. Pursuant to the bill, individualized student learning opportunities are required to apply toward the credit requirement for a State-endorsed diploma established under State Board of Education regulations.