

SENATE, No. 2333

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED JANUARY 25, 2024

Sponsored by:

Senator VIN GOPAL

District 11 (Monmouth)

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.



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 in the State
11 provide the highest quality of education for New Jersey students.

12 b. Every effort should be made to have the personnel of a public
13 school be directly employed by the board of education.

14 c. In certain cases, it is necessary for a board of education to
15 contract certain services from qualified and certified individuals in
16 order to the serve the students of the State.

17 d. It is altogether necessary and proper for the Legislature to
18 establish requirements for boards of education to directly employ
19 certain individuals and ensure services contracted by boards of
20 education are of the highest quality.

21
22 2. As used in sections 1 through 6 of P.L. , c. (C.)
23 (pending before the Legislature as this bill):

24 “Board of education” means and includes a board of education as
25 defined in N.J.S.18A:18A-2, the board of directors of an
26 educational services commission, and the administrative board of a
27 renaissance school project or any other local education agency.

28 “Individualized student learning opportunities” means student
29 experiences, including independent study, study abroad programs,
30 student exchange programs, and structured learning experiences,
31 including, but not limited to: work-based programs; internships;
32 apprenticeships; and service-learning experiences; based on specific
33 instructional objectives that meet or exceed the New Jersey Student
34 Learning Standards for students in grades nine through 12 pursuant
35 to regulations promulgated by the State Board of Education.

36 “Public school” means and includes a school, under college
37 grade, which derives its support entirely or in part from public
38 funds, a school district, a charter school, a renaissance school
39 project, an educational services commission, or any other local
40 education agency.

41
42 3. Except as otherwise expressly permitted pursuant to
43 P.L. , c. (C.) (pending before the Legislature as this bill) ,
44 any other law, or by an exemption provided by the Commissioner of
45 Education pursuant to section 4 or section 5 of P.L. , c. (C.)
46 (pending before the Legislature as this bill), a board of education
47 shall directly employ all persons performing any duty, function,
48 service, assignment, or job requiring an appropriate certificate

1 issued by the State Board of Examiners for, or on behalf of, a board
2 of education.

3

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

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

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

20

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

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

29

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

36 a. a substitute teacher;

37 b. personnel providing instruction in financial, economic,
38 business, and entrepreneurial literacy to satisfy graduation
39 requirements pursuant to regulations promulgated by the State
40 Board of Education;

41 c. personnel providing educational services to a student who is
42 enrolled in a school other than a public school pursuant to
43 regulations promulgated by the State Board of Education;

44 d. personnel employed by other boards of education and
45 providing services pursuant to a shared services or joint agreement;

46 e. personnel providing individualized student learning
47 opportunities;

- 1 f. personnel providing special education and related services to a
2 student who is enrolled in an out-of-district placement;
- 3 g. faculty of a public institution of higher education providing
4 instruction under a dual enrollment agreement established pursuant to
5 section 1 of P.L.2014, c.74 (C.18A:61C-10);
- 6 h. a business administrator who oversees the fiscal operations of a
7 charter school or a renaissance school project and is employed by the
8 board of trustees of the charter school or the administrative board of
9 the renaissance school project;
- 10 i. personnel providing instruction during a summer school session
11 of a charter school or a renaissance school project; and
- 12 j. personnel employed by a charter management organization who
13 provide operation, management, or curriculum services to a charter
14 school in this State including, but not limited to, instructional directors
15 and school administrators.
- 16
- 17 7. a. Notwithstanding the provisions of section 3 of
18 P.L. , c. (C.) (pending before the Legislature as this bill) to
19 the contrary, a board of education may contract for the services
20 listed in subsection c. of this section for public school students
21 with:
- 22 (1) a private clinic or agency approved by the Department of
23 Education;
- 24 (2) a private professional practitioner who is certified and
25 licensed in accordance with State law; or
- 26 (3) an agency or program that is certified, approved, or licensed
27 by the Department of Human Services or the Department of Health
28 to provide counseling or mental health services.
- 29 b. All instructional, child study team, or related services
30 personnel shall hold an applicable certificate on a non-emergency
31 basis.
- 32 c. The services shall include:
- 33 (1) independent child study team evaluations;
- 34 (2) child study team services to supplement existing district
35 services;
- 36 (3) home instruction in accordance with regulations promulgated
37 by the State Board of Education;
- 38 (4) speech-language services provided by a speech-language
39 specialist in a temporary position that supplements existing district
40 staff when a board of education is unable to hire sufficient staff to
41 provide the service; and
- 42 (5) related services, except that for the following related
43 services:
- 44 (a) certified occupational therapy assistants, and others employed
45 in a supportive role to licensed and, where applicable, certified
46 providers of related services, shall work under the supervision of an
47 appropriately licensed and, where applicable, certified provider of
48 the services;

1 (b) physical therapy assistants shall work under the supervision
2 of a certified physical therapist; and

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

8

9 8. The Legislature finds and declares that:

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

13 b. There are very limited educationally appropriate
14 circumstances where the availability of virtual or remote instruction
15 serves as a benefit for students.

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

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

23

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

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

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

39

40 10. a. Notwithstanding the provisions of subsection a. of section
41 8 of P.L. , c. (C.) (pending before the Legislature as this bill)
42 to the contrary, a school district may utilize virtual or remote
43 instruction for an individual student or a class of students when
44 equivalent instruction cannot be provided through in-person
45 instruction, subject to the approval of the Commissioner of
46 Education.

47 b. A school district shall apply to the commissioner, in a form
48 and manner prescribed by the commissioner, to utilize virtual or

1 remote instruction for an individual student or a class of students
2 pursuant to this section.

3 c. The application shall:

4 (1) identify and attest to the specific reasons why equivalent
5 instruction cannot be provided through in-person instruction; and

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

8 d. A school district shall apply separately to the commissioner
9 for each individual student or class of students for whom the district
10 is requesting virtual or remote 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 permit a board of education that provides virtual or remote
34 instruction approved pursuant to this section to apply the instruction
35 to the 180-day requirement established pursuant to subsection a. of
36 section 9 of P.L.1996, c.138 (C.18A:7F-9).

37

38 11. a. Notwithstanding the provisions of subsection a. of section 9
39 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
47 district's submission of the application and the district's receipt of the
48 commissioner's determination on the application.

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

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

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

16
17 13. Notwithstanding the provisions of subsection a. of section 9.
18 of P.L. , c. (C.) (pending before the Legislature as this bill) or
19 any other section of law to the contrary, a board of education, as
20 part of the district's implementation of school graduation
21 requirements for a State-endorsed diploma, may provide instruction
22 in financial, economic, business, and entrepreneurial literacy, as
23 required by regulations promulgated by the State Board of
24 Education, by virtual or remote instruction, either in whole or in
25 part.

26
27 14. a. Notwithstanding the provisions of subsection a. of section
28 9. of P.L. , c. (C.) (pending before the Legislature as this bill)
29 to the contrary, individualized student learning opportunities may
30 include, but are not limited to:

31 (1) independent study;

32 (2) study abroad programs;

33 (3) student exchange programs;

34 (4) credit recovery programs; and

35 (5) structured learning experiences including, but not limited to,
36 work-based programs, internships, apprenticeships, and service-
37 learning experiences.

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

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

46 d. As used in this section, "individualized student learning
47 opportunities" means student experiences based upon specific
48 instructional objectives that meet or exceed the New Jersey Student

1 Learning Standards for students in grades nine through 12 pursuant
2 to regulations promulgated by the State Board of Education.

3

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

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

13

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

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21

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STATEMENT

23

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

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

1 (6) personnel providing special education and related services to a
2 student who is enrolled in an out-of-district placement; (7) faculty of
3 a public institution of higher education providing instruction under a
4 dual enrollment agreement; (8) a business administrator who oversees
5 the fiscal operations of a charter school or a renaissance school project
6 and is employed by the board of trustees of the charter school or the
7 administrative board of the renaissance school project; (9) personnel
8 providing instruction during a summer school session of a charter
9 school or a renaissance school project; and (10) personnel employed
10 by a charter management organization who provide operation,
11 management, or curriculum services to a charter school in this State
12 including, but not limited to, instructional directors and school
13 administrators.

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

26 Under the bill, the Commissioner of Education is required to
27 establish a process for case-by-case exemptions to the provisions of
28 the bill that require a school district to directly employ certain
29 professionals.

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

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

1 currently providing the instructional services which are being
2 sought to be implemented virtually or remotely, and the majority
3 representative of the district's employees regarding a determination
4 on the request for virtual or remote instruction and a procedure for a
5 school district to them to appeal the determination.

6 The bill permits a school district that has applied to utilize virtual
7 or remote instruction pursuant to the provisions of the bill to utilize
8 virtual or remote instruction on a temporary basis without the approval
9 of the Commissioner of Education when equivalent instruction cannot
10 be provided through in-person instruction during the period between
11 the district's submission of the application and the district's receipt of
12 the commissioner's determination on the application.

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

18 Additionally, the bill permits charter schools and renaissance
19 school projects to provide virtual or remote instruction, either in
20 whole or in part, for summer school sessions.

21 Finally, the bill specifies that individualized student learning
22 opportunities that meet or exceed the New Jersey Student Learning
23 Standards for students in grades nine through 12 include (1)
24 independent study, (2) study abroad programs, (3) student exchange
25 programs, (4) credit recovery programs; and (5) structured learning
26 experiences, including, but not limited to, work-based programs,
27 internships, apprenticeships, and service-learning experiences.
28 Under the bill, the board is to determine if an individualized student
29 learning opportunity may be completed by virtual or remote
30 instruction, either in whole or in part. Pursuant to the bill,
31 individualized student learning opportunities are required to apply
32 toward the credit requirement for a State-endorsed diploma
33 established under State Board of Education regulations.