https://www.njleg.state.nj.us/bills/BillView.asp?BillNumber=A3904

◆2 -
C.18A:46-21.1
◆3 - Note to
18A:7F-9

P.L. 2020, CHAPTER 27, ***approved April 14, 2020***
Assembly, No. 3904 ***(First Reprint)***

AN ACT concerning flexible instruction days for public schools and approved private schools for students with disabilities, supplementing chapter 46 of Title 18A of the New Jersey Statutes, and amending P.L.1996, c.138.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 9 of P.L.1996, c.138 (C.18A:7F-9) is amended to read as follows:

9. a. In order to receive any State aid pursuant to P.L.2007, c.260 (C.18A:7F-43 et al.), a school district, charter school, [1]renaissance school project,[1] county vocational school district, or county special services school district shall comply with the rules and standards for the equalization of opportunity which have been or may hereafter be prescribed by law or formulated by the commissioner pursuant to law, including those implementing P.L.1996, c.138 (C.18A:7F-1 et al.) and P.L.2007, c.260 (C.18A:7F-43 et al.) or related to the core curriculum content standards required by P.L.2007, c.260 (C.18A:7F-43 et al.), and shall further comply with any directive issued by the commissioner pursuant to section 6 of P.L.1996, c.138 (C.18A:7F-6). The commissioner is hereby authorized to withhold all or part of a district's State aid for failure to comply with any rule, standard or directive. No State aid shall be paid to any district which has not provided public school facilities for at least 180 days during the preceding school year, but the commissioner, for good cause shown, may remit the penalty.

b. Notwithstanding the provisions of subsection a. of this section to the contrary, in the event that a school district is required to close the schools of the district for more than three consecutive school days due to a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure, the commissioner shall allow the district to apply to the 180-day requirement established pursuant to subsection a. of this section, one or more days of virtual or remote instruction provided to students on the day or days the schools of the district were closed if the program of virtual or remote instruction meets such criteria as may be established by the commissioner. A district that wants to use a program of virtual or remote instruction to meet the 180-day requirement in accordance with this subsection shall [1], with board of education approval,[1] submit its proposed program of virtual or remote instruction to the commissioner within 30 days of the effective date of P.L. , c. (pending before the Legislature as this bill) and annually thereafter, provided however that if the school district is unable to complete and submit its proposed program within the 30-day period and the district is required to close its schools for a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure, the commissioner may retroactively approve the program.

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

If a program of virtual or remote instruction is implemented for the general education students the same educational opportunities shall be provided to [1][the special education students, to the extent appropriate and practicable. Speech language services and counseling services may be delivered to special education students through the use of electronic communication or a virtual or online platform, as appropriate] students with disabilities. Special education and related services, including speech language services, counseling services, physical therapy, occupational therapy, and behavioral services, may be delivered to students with disabilities through the use of electronic communication or a virtual or online platform and as required by the student's Individualized Education Program (IEP), to the greatest extent practicable[1].

c. In the event that the State or local health department determines that it is advisable to close or mandates closure of the schools of a school district due to a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure, the superintendent of schools shall have the authority to implement the school district's program of virtual or remote instruction. [1]The superintendent shall consult with the board of education prior to such decision if practicable. The superintendent shall ensure that students, parents, staff, and the board of education or boards of education are informed promptly of the superintendent's decision.[1]

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

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

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

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

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

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

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

(2) In the event of the closure of the schools of a school district due to a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure for a period longer than three consecutive [1]school[1] days, public school employees who are not covered by a collective negotiations agreement shall be entitled to any benefits, compensation, and emoluments to which they otherwise would be entitled as if they had performed the work for such benefits, compensation, and emoluments as if the school facilities remained open for any purpose and for any time lost as a 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-related closure for a period longer than three consecutive school days, which is the result of a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer, then the school district shall continue to make payments of benefits, compensation, and emoluments pursuant to the terms of a contract with a contracted service provider in effect on the date of the closure as if the services for such benefits, compensation, and emoluments had been provided, and as if the school facilities had remained open. Payments received by a contracted service provider pursuant to this paragraph shall be used to meet the payroll and fixed costs obligations of the contracted service provider. A school district shall make all

reasonable efforts to renegotiate a contract in good faith subject to this paragraph and may direct contracted service providers, who are a party to a contract and receive payments from the school district under this paragraph, to provide services on behalf of the school district which may reasonably be provided and are within the general expertise or service provision of the original contract. Negotiations shall not include indirect costs such as fuel or tolls. As a condition of negotiations, a contracted service provider shall reveal to the school district whether the entity has insurance coverage for business interruption covering work stoppages. A school district shall not be liable for the payment of benefits, compensation, and emoluments pursuant to the terms of a contract with a contracted service provider under this paragraph for services which otherwise would not have been provided had the school facilities remained open. Nothing in this paragraph shall be construed to require a school district to make payments to a party in material breach of a contract with a contracted service provider if the breach was not due to a closure resulting from a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer.

(4) If the schools of a school district are subject to a health-related closure for a period longer than three consecutive school days, which is the result of a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer, the school district shall be obligated to make payments for benefits, compensation, and emoluments and all payments required pursuant to P.L.1968, c.243 (C.18A:6-51 et seq.), to an educational services commission, county special services school district, and a jointure commission, and under any shared services agreement and cooperative contract entered into with any other public entity. An educational services commission, county special services school district, and jointure commission shall continue to make payments of benefits, compensation, and emoluments pursuant to the terms of a contract with a contracted service provider or a shared services agreement in effect on the date of the closure as if the services for such benefits, compensation, and emoluments had been provided, and as if the school facilities had remained open. Payments received by a contracted service provider or public entity pursuant to this paragraph shall be used to meet the payroll and fixed costs obligations of the contracted service provider or public entity. An educational services commission, county special services school district, jointure commission or any lead school district under a shared services agreement or cooperative contract, shall make all reasonable efforts to renegotiate a contract in good faith subject to this paragraph and may direct contracted service providers or public entities, who are a party to a contract and receive payments under this paragraph, to provide services which may reasonably be provided and are within the general expertise or service provision of the original contract. Negotiations shall not include indirect costs such as fuel or tolls. As a condition of negotiations, a contracted service provider or public entity shall reveal whether the entity has insurance coverage for business interruption covering work stoppages.

f. For purposes of subsections b., c., d., and e. of this section, "school district" shall include a charter school and a renaissance school project.[1]

(cf: P.L.2007, c.260, s.32)

2. (New Section) a. In the event that an approved private school for students with disabilities is required to close the school for more than three consecutive school days due to a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure, the commissioner shall allow the school to apply one or more days of virtual or remote instruction provided to students on the day or days the school was closed to qualify as a day of instruction for the purposes of calculating tuition if the program of virtual or remote instruction meets such criteria as may be established by the commissioner. An approved private school for students with disabilities that wants to use a program of virtual or remote instruction to qualify as a day of instruction for the purposes of calculating tuition shall submit its proposed program of virtual or remote instruction to the commissioner within 30 days of the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) and annually thereafter, provided however that if the school is unable to complete its proposed program within the 30-day period and the school is required to close for a declared state of

emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure, the commissioner may retroactively approve the program.

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

[1]Special education and related services, including speech language services, counseling services, physical therapy, occupational therapy, and behavioral services, may be delivered to students with disabilities through the use of electronic communication or a virtual or online platform and as required by the student's Individualized Education Program (IEP), to the greatest extent practicable.[1]

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

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

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

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

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

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

[1]3. The State Board of Education shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the provisions of P.L. , c. (C.) (pending before the Legislature as this bill).[1]

[1][3.] 4.[1] This act shall take effect immediately.

Permits use of virtual or remote instruction to meet minimum 180-day school year requirement under certain circumstances.