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"STATE BILL MAY HELP GET PAY TO SPRING COACHES." The Record (Hackensack, NJ), April 15, 2020: S5.

Rwh/cl

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

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

5  
6 **BE IT ENACTED** by the Senate and General Assembly of the State  
7 of New Jersey:

8  
9 1. Section 9 of P.L.1996, c.138 (C.18A:7F-9) is amended to  
10 read as follows:

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

29 b. Notwithstanding the provisions of subsection a. of this  
30 section to the contrary, in the event that a school district is required  
31 to close the schools of the district for more than three consecutive  
32 school days due to a declared state of emergency, declared public  
33 health emergency, or a directive by the appropriate health agency or  
34 officer to institute a public health-related closure, the commissioner  
35 shall allow the district to apply to the 180-day requirement  
36 established pursuant to subsection a. of this section, one or more  
37 days of virtual or remote instruction provided to students on the day  
38 or days the schools of the district were closed if the program of  
39 virtual or remote instruction meets such criteria as may be

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate floor amendments adopted April 13, 2020.

1 established by the commissioner. A district that wants to use a  
2 program of virtual or remote instruction to meet the 180-day  
3 requirement in accordance with this subsection shall <sup>1</sup>, with board  
4 of education approval,<sup>1</sup> submit its proposed program of virtual or  
5 remote instruction to the commissioner within 30 days of the  
6 effective date of P.L. , c. (pending before the Legislature as this  
7 bill) and annually thereafter, provided however that if the school  
8 district is unable to complete and submit its proposed program  
9 within the 30-day period and the district is required to close its  
10 schools for a declared state of emergency, declared public health  
11 emergency, or a directive by the appropriate health agency or  
12 officer to institute a public health-related closure, the commissioner  
13 may retroactively approve the program.

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

20 If a program of virtual or remote instruction is implemented for  
21 the general education students the same educational opportunities  
22 shall be provided to <sup>1</sup>the special education students, to the extent  
23 appropriate and practicable. Speech language services and  
24 counseling services may be delivered to special education students  
25 through the use of electronic communication or a virtual or online  
26 platform, as appropriate] students with disabilities. Special  
27 education and related services, including speech language services,  
28 counseling services, physical therapy, occupational therapy, and  
29 behavioral services, may be delivered to students with disabilities  
30 through the use of electronic communication or a virtual or online  
31 platform and as required by the student's Individualized Education  
32 Program (IEP), to the greatest extent practicable<sup>1</sup>.

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

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

- 1       (1) providing instruction to students who may not have access to  
2 a computer or to sufficient broadband, or to any technology  
3 required for virtual or remote instruction;  
4       (2) the required length of a virtual or remote instruction day;  
5       (3) the impact of virtual or remote instruction on the school  
6 lunch and school breakfast programs;  
7       (4) the impact of virtual or remote instruction on the schedule  
8 for administering State assessments; and  
9       (5) such other topics as the commissioner deems necessary.  
10      e. (1) Nothing in subsection b., c., or d. of this section shall be  
11 construed to limit, supersede or preempt the rights, privileges,  
12 compensation, remedies, and procedures afforded to public school  
13 employees or a collective bargaining unit under federal or State law  
14 or any provision of a collective bargaining agreement entered into  
15 by the school district. In the event of the closure of the schools of a  
16 school district due to a declared state of emergency, declared public  
17 health emergency, or a directive by the appropriate health agency or  
18 officer to institute a public health-related closure for a period longer  
19 than three consecutive <sup>1</sup>school<sup>1</sup> days, public school employees  
20 covered by a collective negotiations agreement shall be entitled to  
21 compensation, benefits, and emoluments as provided in the  
22 collective negotiations agreement as if the school facilities  
23 remained open for any purpose and for any time lost as a result of  
24 school closures or use of virtual or remote instruction, except that  
25 additional compensation, benefits, and emoluments may be  
26 negotiated for additional work performed.  
27      (2) In the event of the closure of the schools of a school district  
28 due to a declared state of emergency, declared public health  
29 emergency, or a directive by the appropriate health agency or  
30 officer to institute a public health-related closure for a period longer  
31 than three consecutive <sup>1</sup>school<sup>1</sup> days, public school employees who  
32 are not covered by a collective negotiations agreement shall be  
33 entitled to any benefits, compensation, and emoluments to which  
34 they otherwise would be entitled as if they had performed the work  
35 for such benefits, compensation, and emoluments as if the school  
36 facilities remained open for any purpose and for any time lost as a  
37 result of school closures or use of virtual or remote instruction.  
38      <sup>1</sup>(3) If the schools of a school district are subject to a health-  
39 related closure for a period longer than three consecutive school  
40 days, which is the result of a declared state of emergency, declared  
41 public health emergency, or a directive by the appropriate health  
42 agency or officer, then the school district shall continue to make  
43 payments of benefits, compensation, and emoluments pursuant to  
44 the terms of a contract with a contracted service provider in effect  
45 on the date of the closure as if the services for such benefits,  
46 compensation, and emoluments had been provided, and as if the  
47 school facilities had remained open. Payments received by a  
48 contracted service provider pursuant to this paragraph shall be used

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

23 (4) If the schools of a school district are subject to a health-  
24 related closure for a period longer than three consecutive school  
25 days, which is the result of a declared state of emergency, declared  
26 public health emergency, or a directive by the appropriate health  
27 agency or officer, the school district shall be obligated to make  
28 payments for benefits, compensation, and emoluments and all  
29 payments required pursuant to P.L.1968, c.243 (C.18A:6-51 et  
30 seq.), to an educational services commission, county special  
31 services school district, and a jointure commission, and under any  
32 shared services agreement and cooperative contract entered into  
33 with any other public entity. An educational services commission,  
34 county special services school district, and jointure commission  
35 shall continue to make payments of benefits, compensation, and  
36 emoluments pursuant to the terms of a contract with a contracted  
37 service provider or a shared services agreement in effect on the date  
38 of the closure as if the services for such benefits, compensation, and  
39 emoluments had been provided, and as if the school facilities had  
40 remained open. Payments received by a contracted service provider  
41 or public entity pursuant to this paragraph shall be used to meet the  
42 payroll and fixed costs obligations of the contracted service  
43 provider or public entity. An educational services commission,  
44 county special services school district, jointure commission or any  
45 lead school district under a shared services agreement or  
46 cooperative contract, shall make all reasonable efforts to renegotiate  
47 a contract in good faith subject to this paragraph and may direct  
48 contracted service providers or public entities, who are a party to a

1 contract and receive payments under this paragraph, to provide  
2 services which may reasonably be provided and are within the  
3 general expertise or service provision of the original contract.  
4 Negotiations shall not include indirect costs such as fuel or tolls.  
5 As a condition of negotiations, a contracted service provider or  
6 public entity shall reveal whether the entity has insurance coverage  
7 for business interruption covering work stoppages.

8 f. For purposes of subsections b., c., d., and e. of this section,  
9 “school district” shall include a charter school and a renaissance  
10 school project.<sup>1</sup>

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

12

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

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

42 <sup>1</sup>Special education and related services, including speech  
43 language services, counseling services, physical therapy,  
44 occupational therapy, and behavioral services, may be delivered to  
45 students with disabilities through the use of electronic  
46 communication or a virtual or online platform and as required by  
47 the student’s Individualized Education Program (IEP), to the  
48 greatest extent practicable.<sup>1</sup>

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

9       c. The commissioner shall define virtual and remote instruction  
10 and establish guidance for its use. The guidance shall provide  
11 schools 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 schedule  
17 for administering State assessments; and

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

19

20       <sup>1</sup>3. The State Board of Education shall promulgate regulations  
21 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
22 (C.52:14B-1 et seq.), to effectuate the provisions of P.L. \_\_\_\_\_,  
23 c. (C. ) (pending before the Legislature as this bill).<sup>1</sup>

24

25       <sup>1</sup>[3.] 4.<sup>1</sup> This act shall take effect immediately.

26

27

28

29

30       Permits use of virtual or remote instruction to meet minimum  
31 180-day school year requirement under certain circumstances.



# ASSEMBLY, No. 3904

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 23, 2020

**Sponsored by:**

**Assemblyman JOHN J. BURZICHELLI**  
**District 3 (Cumberland, Gloucester and Salem)**  
**Assemblywoman HOLLY T. SCHEPISI**  
**District 39 (Bergen and Passaic)**  
**Assemblywoman PAMELA R. LAMPITT**  
**District 6 (Burlington and Camden)**  
**Assemblywoman MILA M. JASEY**  
**District 27 (Essex and Morris)**  
**Assemblywoman JEAN STANFIELD**  
**District 8 (Atlantic, Burlington and Camden)**  
**Senator GERALD CARDINALE**  
**District 39 (Bergen and Passaic)**  
**Senator JAMES BEACH**  
**District 6 (Burlington and Camden)**  
**Senator THOMAS H. KEAN, JR.**  
**District 21 (Morris, Somerset and Union)**

**Co-Sponsored by:**

**Assemblymen Verrelli, Zwicker, Assemblywomen McKnight, Reynolds-Jackson, Senators Addiego, Singleton, Bateman, Brown, Oroho, O'Scanlon, Pennacchio, Singer and Testa**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.

(Sponsorship Updated As Of: 4/13/2020)

A3904 BURZICHELLI, SCHEPISI

2

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

5

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

8

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

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

27 b. Notwithstanding the provisions of subsection a. of this section  
28 to the contrary, in the event that a school district is required to close the  
29 schools of the district for more than three consecutive school days due  
30 to a declared state of emergency, declared public health emergency, or  
31 a directive by the appropriate health agency or officer to institute a  
32 public health-related closure, the commissioner shall allow the district  
33 to apply to the 180-day requirement established pursuant to subsection  
34 a. of this section, one or more days of virtual or remote instruction  
35 provided to students on the day or days the schools of the district were  
36 closed if the program of virtual or remote instruction meets such criteria  
37 as may be established by the commissioner. A district that wants to use  
38 a program of virtual or remote instruction to meet the 180-day  
39 requirement in accordance with this subsection shall submit its proposed  
40 program of virtual or remote instruction to the commissioner within 30  
41 days of the effective date of P.L. , c. (pending before the Legislature  
42 as this bill) and annually thereafter, provided however that if the school  
43 district is unable to complete and submit its proposed program within  
44 the 30-day period and the district is required to close its schools for a  
45 declared state of emergency, declared public health emergency, or a

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

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

9 If a program of virtual or remote instruction is implemented for the  
10 general education students the same educational opportunities shall be  
11 provided to the special education students, to the extent appropriate and  
12 practicable. Speech language services and counseling services may be  
13 delivered to special education students through the use of electronic  
14 communication or a virtual or online platform, as appropriate.

15 c. In the event that the State or local health department determines  
16 that it is advisable to close or mandates closure of the schools of a school  
17 district due to a declared state of emergency, declared public health  
18 emergency, or a directive by the appropriate health agency or officer to  
19 institute a public health-related closure, the superintendent of schools  
20 shall have the authority to implement the school district's program of  
21 virtual or remote instruction.

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

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

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

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

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

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

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

1 except that additional compensation, benefits, and emoluments may be  
2 negotiated for additional work performed.

3 (2) In the event of the closure of the schools of a school district due  
4 to a declared state of emergency, declared public health emergency, or  
5 a directive by the appropriate health agency or officer to institute a  
6 public health-related closure for a period longer than three consecutive  
7 days, public school employees who are not covered by a collective  
8 negotiations agreement shall be entitled to any benefits, compensation,  
9 and emoluments to which they otherwise would be entitled as if they  
10 had performed the work for such benefits, compensation, and  
11 emoluments as if the school facilities remained open for any purpose  
12 and for any time lost as a result of school closures or use of virtual or  
13 remote instruction.

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

15

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

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

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

- 1 c. The commissioner shall define virtual and remote instruction  
2 and establish guidance for its use. The guidance shall provide schools  
3 with information on:
- 4 (1) providing instruction to students who may not have access to a  
5 computer or to sufficient broadband, or to any technology required for  
6 virtual or remote instruction;
  - 7 (2) the required length of a virtual or remote instruction day;
  - 8 (3) the impact of virtual or remote instruction on the schedule for  
9 administering State assessments; and
  - 10 (4) such other topics as the commissioner deems necessary.
- 11
- 12 3. This act shall take effect immediately.
- 13
- 14

15 STATEMENT

16

17 Under current law, a school district, county vocational school  
18 district, or county special services school district must be open for  
19 180 days each school year in order to qualify for State aid. In the  
20 event that a school district does not meet this requirement, the  
21 Commissioner of Education will withhold State aid in the succeeding  
22 year. While the law does allow the commissioner to remit the penalty  
23 for good cause shown, the exemption has been rarely applied. Current  
24 regulations require that an approved private school for students with  
25 disabilities (APSSD) calculate its tuition based on a minimum of 180  
26 days of instruction. For programs in operation for less than the  
27 minimum 180 days of instruction, tuition is reduced accordingly.

28 This bill would allow a school district, renaissance school project,  
29 charter school, county vocational school district, county special  
30 services school district, or APSSD to meet the 180-day requirement  
31 in a year with an excessive number of unexpected school closures  
32 due to a declared state of emergency, declared public health  
33 emergency, or a directive by the appropriate health agency or officer  
34 to institute a public health-related closure through the use of virtual  
35 or remote instruction. Specifically, in the event that a district or  
36 APSSD is required to close its schools for more than three  
37 consecutive school days due to a declared state of emergency,  
38 declared public health emergency, or a directive by the appropriate  
39 health agency or officer to institute a public health-related closure,  
40 the commissioner will allow the district or APSSD to apply to the  
41 180-day requirement one or more days of virtual or remote  
42 instruction provided to students on the day or days the schools of the  
43 district or APSSD were closed if the program meets such criteria as  
44 may be established by the commissioner. A district or APSSD that  
45 wants to use a program of virtual or remote instruction to meet the  
46 180-day requirement must submit its proposed program of virtual  
47 instruction to the commissioner within 30 days of the effective date  
48 of the bill and annually thereafter. The bill provides, however, that if

1 a district or APSSD is unable to meet the initial 30-day period and  
2 the schools of a district or APSSD must close for a declared state of  
3 emergency, declared public health emergency, or a directive by the  
4 appropriate health agency or officer to institute a public health-  
5 related closure, the commissioner is permitted to retroactively  
6 approve the program. If the State or local health department  
7 determines that it is advisable the schools be closed or mandates  
8 closure, the superintendent of schools or principal of an APSSD, as  
9 applicable, will have the authority to implement the district or  
10 APSSD's program of virtual or remote learning. The bill provides  
11 that a day of virtual or remote instruction, if instituted under a  
12 program approved by the commissioner, will be considered the  
13 equivalent of a full day of school attendance for the purposes of  
14 meeting State and local graduation requirements, the awarding of  
15 course credit, and for such other matters as the commissioner  
16 determines.

17 The bill directs the commissioner to define virtual and remote  
18 instruction and provide guidance for its use. The guidance will also  
19 provide districts information on: providing instruction to students  
20 who may not have access to a computer or to sufficient broadband,  
21 or to any technology required for virtual or remote instruction; the  
22 required length of a virtual or remote instruction day; the impact of  
23 virtual or remote instruction on the school lunch and school breakfast  
24 programs; the impact of virtual or remote instruction on the schedule  
25 for administering State assessments; and such other topics as the  
26 commissioner deems necessary.

27 Nothing in the bill may be construed to limit, supersede or preempt  
28 the rights, privileges, compensation, remedies, and procedures  
29 afforded to public school employees or a collective bargaining unit  
30 under federal or State law or any provision of a collective bargaining  
31 agreement entered into by the school district. The bill also provides  
32 that public school employees covered by a collective negotiations  
33 agreement will be entitled to compensation, benefits, and  
34 emoluments as provided in the collective negotiations agreement as  
35 if the school facilities remained open for any purpose and for any  
36 time lost as a result of school closures or use of virtual or remote  
37 instruction, except that additional compensation, benefits, and  
38 emoluments may be negotiated for additional work performed. In  
39 addition, the bill provides that public school employees who are not  
40 covered by a collective negotiations agreement will be entitled to  
41 compensation, benefits, and emoluments as if the school facilities  
42 remained open.

STATEMENT TO  
**ASSEMBLY, No. 3904**

with Senate Floor Amendments  
(Proposed by Senator SWEENEY)

ADOPTED: APRIL 13, 2020

This floor amendment:

- Clarifies the provision of the bill regarding special education and related services when a program of virtual or remote instruction is implemented for the general education students;
- Requires the superintendent to consult with the board of education prior to implementing the district's program of virtual or remote instruction and to ensure that students, parents, and staff are informed promptly of the decision;
- Makes provisions for the 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 health-related school closure;
- Makes provisions for the payment of benefits, compensation, and emoluments pursuant to the terms of a contract entered into with an educational services commission, county special services school district, jointure commission, and under any shared services agreements and cooperative contracts;
- Clarifies that the provisions of the bill regarding health-related school closures apply to charter schools and renaissance school projects; and
- Adds a rulemaking provision.

# SENATE, No. 2337

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED APRIL 9, 2020

**Sponsored by:**

**Senator GERALD CARDINALE**

**District 39 (Bergen and Passaic)**

**Senator JAMES BEACH**

**District 6 (Burlington and Camden)**

**Senator THOMAS H. KEAN, JR.**

**District 21 (Morris, Somerset and Union)**

**Co-Sponsored by:**

**Senators Addiego and Singleton**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 4/13/2020)**



S2337 CARDINALE, BEACH

2

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

5

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

8

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

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

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

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

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

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

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

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

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

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

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

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

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

45 e. (1) Nothing in subsection b., c., or d. of this section shall be  
46 construed to limit, supersede or preempt the rights, privileges,  
47 compensation, remedies, and procedures afforded to public school

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1 employees or a collective bargaining unit under federal or State law  
2 or any provision of a collective bargaining agreement entered into by  
3 the school district. In the event of the closure of the schools of a  
4 school district due to a declared state of emergency, declared public  
5 health emergency, or a directive by the appropriate health agency or  
6 officer to institute a public health-related closure for a period longer  
7 than three consecutive school days, public school employees covered  
8 by a collective negotiations agreement shall be entitled to  
9 compensation, benefits, and emoluments as provided in the collective  
10 negotiations agreement as if the school facilities remained open for  
11 any purpose and for any time lost as a result of school closures or use  
12 of virtual or remote instruction, except that additional compensation,  
13 benefits, and emoluments may be negotiated for additional work  
14 performed.

15 (2) In the event of the closure of the schools of a school district  
16 due to a declared state of emergency, declared public health  
17 emergency, or a directive by the appropriate health agency or officer  
18 to institute a public health-related closure for a period longer than  
19 three consecutive school days, public school employees who are not  
20 covered by a collective negotiations agreement shall be entitled to  
21 any benefits, compensation, and emoluments to which they otherwise  
22 would be entitled as if they had performed the work for such benefits,  
23 compensation, and emoluments as if the school facilities remained  
24 open for any purpose and for any time lost as a result of school  
25 closures or use of virtual or remote instruction.

26 (3) If the schools of a school district are subject to a health-related  
27 closure for a period longer than three consecutive school days, which  
28 is the result of a declared state of emergency, declared public health  
29 emergency, or a directive by the appropriate health agency or officer,  
30 then the school district shall continue to make payments of benefits,  
31 compensation, and emoluments pursuant to the terms of a contract  
32 with a contracted service provider in effect on the date of the closure  
33 as if the services for such benefits, compensation, and emoluments  
34 had been provided, and as if the school facilities had remained open.  
35 Payments received by a contracted service provider pursuant to this  
36 paragraph shall be used to meet the payroll and fixed costs  
37 obligations of the contracted service provider. A school district shall  
38 make all reasonable efforts to renegotiate a contract in good faith  
39 subject to this paragraph and may direct contracted service providers,  
40 who are a party to a contract and receive payments from the school  
41 district under this paragraph, to provide services on behalf of the  
42 school district which may reasonably be provided and are within the  
43 general expertise or service provision of the original contract.  
44 Negotiations shall not include indirect costs such as fuel or tolls. As  
45 a condition of negotiations, a contracted service provider shall reveal  
46 to the school district whether the entity has insurance coverage for  
47 business interruption covering work stoppages. A school district shall

1 not be liable for the payment of benefits, compensation, and  
2 emoluments pursuant to the terms of a contract with a contracted  
3 service provider under this paragraph for services which otherwise  
4 would not have been provided had the school facilities remained  
5 open. Nothing in this paragraph shall be construed to require a school  
6 district to make payments to a party in material breach of a contract  
7 with a contracted service provider if the breach was not due to a  
8 closure resulting from a declared state of emergency, declared public  
9 health emergency, or a directive by the appropriate health agency or  
10 officer.

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

43 f. For purposes of subsections b., c., d., and e. of this section,  
44 “school district” shall include a charter school and a renaissance  
45 school project.

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

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

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

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

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

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

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

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

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

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

5 3. The State Board of Education shall promulgate regulations  
6 pursuant to the “Administrative Procedure Act,” P.L.1968, c.410  
7 (C.52:14B-1 et seq.), to effectuate the provisions of  
8 P.L. , c. (C. ) (pending before the Legislature as this bill).  
9

10 4. This act shall take effect immediately.  
11  
12

13 STATEMENT  
14

15 Under current law, a school district, county vocational school  
16 district, or county special services school district must be open for  
17 180 days each school year in order to qualify for State aid. In the  
18 event that a school district does not meet this requirement, the  
19 Commissioner of Education will withhold State aid in the succeeding  
20 year. While the law does allow the commissioner to remit the penalty  
21 for good cause shown, the exemption has been rarely applied. Current  
22 regulations require that an approved private school for students with  
23 disabilities (APSSD) calculate its tuition based on a minimum of 180  
24 days of instruction. For programs in operation for less than the  
25 minimum 180 days of instruction, tuition is reduced accordingly.

26 This bill would allow a school district, renaissance school project,  
27 charter school, county vocational school district, county special  
28 services school district, or APSSD to meet the 180-day requirement  
29 in a year with an excessive number of unexpected school closures  
30 due to a declared state of emergency, declared public health  
31 emergency, or a directive by the appropriate health agency or officer  
32 to institute a public health-related closure through the use of virtual  
33 or remote instruction. Specifically, in the event that a district or  
34 APSSD is required to close its schools for more than three  
35 consecutive school days due to a declared state of emergency,  
36 declared public health emergency, or a directive by the appropriate  
37 health agency or officer to institute a public health-related closure,  
38 the commissioner will allow the district or APSSD to apply to the  
39 180-day requirement one or more days of virtual or remote  
40 instruction provided to students on the day or days the schools of the  
41 district or APSSD were closed if the program meets such criteria as  
42 may be established by the commissioner. A district or APSSD that  
43 wants to use a program of virtual or remote instruction to meet the  
44 180-day requirement must submit its proposed program of virtual  
45 instruction to the commissioner within 30 days of the effective date  
46 of the bill and annually thereafter. The bill provides, however, that if  
47 a district or APSSD is unable to meet the initial 30-day period and

1 the schools of a district or APSSD must close for a declared state of  
2 emergency, declared public health emergency, or a directive by the  
3 appropriate health agency or officer to institute a public health-  
4 related closure, the commissioner is permitted to retroactively  
5 approve the program. If the State or local health department  
6 determines that it is advisable the schools be closed or mandates  
7 closure, the superintendent of schools or principal of an APSSD, as  
8 applicable, will have the authority to implement the district or  
9 APSSD's program of virtual or remote learning. The bill provides  
10 that a day of virtual or remote instruction, if instituted under a  
11 program approved by the commissioner, will be considered the  
12 equivalent of a full day of school attendance for the purposes of  
13 meeting State and local graduation requirements, the awarding of  
14 course credit, and for such other matters as the commissioner  
15 determines.

16 The bill directs the commissioner to define virtual and remote  
17 instruction and provide guidance for its use. The guidance will also  
18 provide districts information on: providing instruction to students  
19 who may not have access to a computer or to sufficient broadband,  
20 or to any technology required for virtual or remote instruction; the  
21 required length of a virtual or remote instruction day; the impact of  
22 virtual or remote instruction on the school lunch and school breakfast  
23 programs; the impact of virtual or remote instruction on the schedule  
24 for administering State assessments; and such other topics as the  
25 commissioner deems necessary.

26 Nothing in the bill may be construed to limit, supersede or preempt  
27 the rights, privileges, compensation, remedies, and procedures  
28 afforded to public school employees or a collective bargaining unit  
29 under federal or State law or any provision of a collective bargaining  
30 agreement entered into by the school district. The bill also provides  
31 that public school employees covered by a collective negotiations  
32 agreement will be entitled to compensation, benefits, and  
33 emoluments as provided in the collective negotiations agreement as  
34 if the school facilities remained open for any purpose and for any  
35 time lost as a result of school closures or use of virtual or remote  
36 instruction, except that additional compensation, benefits, and  
37 emoluments may be negotiated for additional work performed. In  
38 addition, the bill provides that public school employees who are not  
39 covered by a collective negotiations agreement will be entitled to  
40 compensation, benefits, and emoluments as if the school facilities  
41 remained open. The bill makes provisions for the payments of  
42 benefits, compensation, and emoluments pursuant to the terms of a  
43 contract with a contracted service provider in effect on the date of the  
44 health-related school closure. The bill also makes provisions for the  
45 payments of benefits, compensation, and emoluments by a school  
46 district to an educational services commission, county special  
47 services school district, and a jointure commission and under any

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9

1 shared services agreement and cooperative contract entered into with  
2 any other public entity. Payments by educational services  
3 commissions, county special services school districts, and jointure  
4 commissions to contracted service providers and under shared  
5 services agreements are also addressed.



# Governor Murphy Takes Action on Legislation

04/14/2020

**TRENTON** – Today, Governor Murphy signed the following bills into law:

**A-2371/S-865 (Kennedy, Pinkin, Zwicker/Smith, Bateman)** - Requires large food waste generators to separate and recycle food waste and amends definition of "Class I renewable energy"

**A-3901/S-2334 (Chiaravalloti, Kennedy, Speight, Dunn/Pou, Vitale, Greenstein, Brown)** - Permits professional and occupational licensing boards to reactivate licensure of certain individuals during state of emergency or public health emergency

**A-3903/S-2336 (Downey, Houghtaling, Swain/Greenstein, Gopal, Singleton, O'Scanlon)** - Allows remote notarial acts during Public Health Emergency and State of Emergency declared by Governor in Executive Order 103 of 2020

**A-3904/S-2337 (Burzichelli, Schepisi, Lampitt, Jasey, Stanfield/Cardinale, Beach, Kean)** - Permits use of virtual or remote instruction to meet minimum 180-day school year requirement under certain circumstances

**S-2333/A-3910 (Kean, Sweeney, Smith, O'Scanlon/Kennedy, Burzichelli, DiMaio, Greenwald)** - Provides civil and criminal immunity to certain health care professionals and health care facilities during public health emergency and state of emergency; facilitates issuance of certain temporary licenses and certifications during public health emergency and state of emergency

**S-2338/A-3918 (Sarlo, Oroho, Bucco/Pintor Marin, Wirths, Burzichelli)** - "COVID-19 Fiscal Mitigation Act"; clarifies filing and payment deadline for CBT and GIT taxpayers, modifies duration of State Fiscal Years 2020 and 2021, requires certain updates and presentation for State Fiscal Years 2020 and 2021

**S-2342/A-3915 (Bucco, Greenstein/Dunn, Bergen)** - Permits nonprofit corporations to allow members to participate in meetings by means of remote communication, and permits nonprofit corporations to hold meetings in part or solely by means of remote communication during state of emergency

**S-2349/A-3922 (Beach/Coughlin, Jimenez, Swain)** - Changes date of 2020 primary election from June 2 to July 7

**S-2353/A-3938 (Cryan/Quijano)** - Excludes from severance requirements under "Millville Dallas Airmotive Plant Job Loss Notification Act" mass layoffs resulting from coronavirus disease 2019 pandemic