

Public Schools and Approved Private Schools for Students with Disabilities Now Authorized to Provide Remote or Virtual Instruction During Health Emergency

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In response to the COVID-19 pandemic, New Jersey now permits the use of remote or virtual instruction for all students, requires compensation for employees, and payment and renegotiation of contracts with service providers during the State-Ordered Closure of Public and Private Schools.

On April 14, 2020, in response to the COVID-19 health emergency, Governor Phil Murphy signed P.L. 2020, c. 27 (2020 A3904/S2337), which authorizes the provision of remote or virtual instruction by public schools, including charter and renaissance schools, and approved private schools for students with disabilities. The new law also clarifies the obligations of school districts, educational services commissions, special services districts and jointures with respect to employee compensation and contracts with one another and service providers.

Remote or Virtual Instruction During the COVID-19 School Closures

The new law allows public schools and approved private schools for students with disabilities that are required to close because of a declared state of emergency, declared public health emergency, or a directive by an appropriate health agency or officer, to apply days when virtual or remote instruction is provided to students as qualifying for meeting the requirement that the schools must be in session 180 school days each school year. Doing so is subject to the approval of the New Jersey Commissioner of Education. Virtual or remote instruction can substitute for a “live” school day only when the schools are closed for three or more consecutive days of the school year and only for the emergency reasons noted above.

The Superintendent of Schools of each school district and the Principal of each approved school for students with disabilities have the authority to make the decision to implement virtual or remote instruction. The Superintendent of Schools must consult with the school district’s board of education prior to making the decision, if practicable. The Superintendent also must promptly inform the students, parents, staff and the board of education of the decision.

The new law directs that the Commissioner of Education shall define remote and virtual instruction and establish guidance for its use. The Commissioner will provide guidance 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.

A public school district or an approved private school for students with disabilities that wants to use a program of virtual or remote instruction to meet the 180 school days requirement, must submit its program plan to the Commissioner of Education within 30 days of the effective date of the new law, that is, by May 14, 2020. If a school district or approved private school for students with disabilities is unable to timely submit its program of

virtual or remote instruction, the law allows the Commissioner to approve the program retroactively. Special education students, to the extent appropriate and practicable, must be provided with special education and related services as required by each disabled student's Individualized Education Program (IEP) through remote or virtual instruction.

School District Financial Obligations During the COVID-19 Closures

The new law also addresses the weighty financial issues school districts are facing while remote or virtual learning replaces classroom instruction in view of the COVID-19 pandemic.

Employees Covered by Collective Negotiations Agreements

Under the new law, public school employees covered by a collective negotiations agreement are 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. The school district may negotiate additional compensation, benefits, and emoluments for additional work performed.

Employees Not Covered by Collective Negotiations Agreements

During school closures, the new law also entitles public school employees who are not covered by a collective negotiations agreement 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. School districts also are required to pay benefits, compensation and emoluments pursuant to the terms of contracts entered into with an educational services commission, county special services school district or jointure commission, and under any shared services agreements and cooperative contracts.

Payments to Service Providers Under Contracts

School districts and these latter public entities must continue to make payments of benefits, compensation and emoluments pursuant to a contract to a service provider as if the school facilities remained open and the school district or other of the enumerated public education entities were receiving the services provided by the service provider. Payments received by a contracted service provider must be used to meet the payroll and fixed costs obligations of the contracted service provider.

Negotiations with Service Providers

Additionally, the law provides that a school district, an educational services commission, a county special services school district, a jointure commission, or any lead school district under a shared services agreement or cooperative contract must make all reasonable efforts to renegotiate contracts with service providers. Negotiations cannot include indirect costs such as fuel or tolls. As a condition of negotiations, a contracted service provider must inform the school district, or any of the other enumerated public entities with which it is negotiating as permitted by this law, that it has insurance coverage for business interruption that covers work stoppages. Any of those public entities also may direct a contracted service provider to provide services on the public entity's behalf that are within the general expertise or service provision of the original contract.

If you are a public or private school leader and need help navigating the New Jersey laws governing the operations of schools during this COVID-19 crisis, contact [Stephanie Gironda](#).

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