

From: Office of Legal Services/Member Rights, Aileen M. O’Driscoll, Esq.

Re: New Law Allows Virtual Instruction to Meet the 180 Day School Year Requirement

Date: April 16, 2020

On April 14, 2020, the governor signed into law amendments that allow remote instruction to be counted towards the required 180 school days under certain circumstances. A summary of these amendments follow.

Virtual or remote instruction can be used to satisfy the 180-day requirement when:

- School is closed for more than three consecutive school days;
- School is closed due to a declared state of emergency, declared public health emergency, or a directive to close for health-related reasons by the appropriate health agency or officer; AND
- When the virtual or remote instruction plan is approved by the Commissioner of Education.

If all the requirements are met, the superintendent, with board of education approval, can implement virtual or remote instruction and those days will count as full school days towards the 180-day requirement. They will also count for purposes of meeting State and local graduation requirements and the awarding of course credit.

What is required for the virtual or remote instruction?

- The district’s program must be approved by the Commissioner of Education within 30 days of April 14, 2020; the plan may be approved retroactively if this 30-day deadline is not met.
- If virtual or remote instruction is implemented for general education students, the same educational opportunities must be provided to students with disabilities.
- Special education and related services, including speech language services, counseling services, physical therapy, occupational therapy, and behavioral services may be delivered virtually and to the greatest extent practicable as required by the student’s IEP.
- Remote instruction can be delivered electronically, or it can be paper-based, so long as the plan is approved by the Commissioner.
- The superintendent must promptly inform students, parents, staff and the board(s) of education of his or her decision to implement remote instruction.
- The Commissioner has stated that school districts must make their plans available on their websites.

What protections, particularly for compensation and benefits, does this law provide for workers?

- The law does not preempt any of public school employees’ rights that exist in federal or state law or in collective bargaining agreements (“CBA”).
- NJEA worked to secure amendments that, we believe, will help ensure that all public school employees, salaried, hourly, or stipend, get paid during remote instruction days. The law provides that public school employees are entitled to receive compensation and benefits as if

the school facilities remained open and for any time lost as a result of school closures or use of remote instruction. Compensation and benefits will be as provided by the CBA, or if the worker is not covered by a CBA, compensation and benefits will be provided as if they had performed the work.

- The law requires school districts to make payments to educational services commissions, county special services school districts, and jointure commissions. Those payments shall be used to meet payroll obligations. Contracted service providers shall receive compensation and benefits as if services had been provided and as if schools had remained open.
- It provides that additional compensation may be negotiated for additional work performed.

Who does the law apply to?

All public school districts, charter schools, renaissance schools, county vocational school districts, county special services school districts, approved private schools for students with disabilities, except that the worker protections do not apply to employees of approved private schools for students with disabilities. Certain provisions apply to educational services commissions, county special services school districts, jointure commissions, and to shared services agreements and cooperative contracts with other public entities.

Will there be further guidance on virtual or remote instruction?

The Commissioner will issue guidance that accounts for and speaks to the following:

- Providing instruction to students who may not have access to technology;
- The required length of a virtual or remote instruction day;
- The impact on school meal programs;
- The impact of State assessment schedules; and
- Any other considerations the Commissioner deems necessary.

The law permits the State Board of Education to adopt regulations implementing the law. The new law does not provide for any timelines as to when guidelines or regulations will be issued.

P.L. 2020, c. 27 – Amending N.J.S.A. 18A:7F-9

Signed April 14, 2020; Effective immediately.

Full text here: https://www.njleg.state.nj.us/2020/Bills/A4000/3904_R1.PDF