



# New Law Addresses Public School Instruction and Business Operations

## Publication:

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On April 14, 2020, Governor Phil Murphy signed into law P.L. 2020, c. 27, which amends Title 18A to address many of the issues that school districts and charter schools are facing while schools in New Jersey are closed due to COVID-19. The law is effective immediately, and is available [here](#).

The new law addresses health-related closures of school districts, charter schools, and other public schools for longer than three consecutive school days as the result of a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer. Highlights are summarized below.

**Virtual instruction and 180-day school year.** Requires the Commissioner of Education to allow public schools to apply one or more days of virtual or remote instruction towards the 180-day school year requirement when a school district or charter school is required to close for more than three consecutive days due to a declared state of emergency or public health emergency.

When the State or a local health department mandates school closures, the superintendent or lead person has the authority to implement virtual or remote instruction, and shall consult with the board of education/trustees prior to that decision if practical.

Boards of education and charter school boards of trustees must approve and submit their proposed programs of virtual or remote instruction to the Commissioner within thirty days of April 14, 2020, or by May 14, 2020. Plans must be re-submitted annually.

The Commissioner of Education will develop guidance for virtual and remote learning that provides school districts with information on providing access to students who lack technology, the required length of an instructional day,

school meal programs, and the schedule for administering State assessments.

**Special education and related services.** Public schools must continue to provide the same educational opportunities to students with disabilities as are provided to students without disabilities. Special education services including speech language, counseling, physical therapy, occupational therapy, and behavioral services may be provided electronically or virtually as required by a student's Individualized Education Program, "to the greatest extent practicable."

**Approved private schools for students with disabilities.** The Act contains provisions for approved private schools similar to the provisions that apply to public schools regarding virtual instruction, the 180-day school year, provision of special education and related services, and reporting to the Commissioner.

**Employee rights.** Employees who are covered by a collective negotiations agreement are entitled to "compensation, benefits and emoluments" as provided in the collective negotiations agreement as if the schools remained open for any purpose, and for any time lost as a result of school closures or use of virtual or remote instruction. Additional compensation, benefits and emoluments may be negotiated for additional work performed. Employees who are not covered by a collective negotiations agreement are entitled to "compensation, benefits and emoluments" to which they otherwise would be entitled as if they had performed the work and the schools had remained open, and for the time lost as a result of school closures or use of virtual or remote instruction.

**Contracted service providers.** School districts and charter schools shall continue to make payments of benefits, compensation, and emoluments 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. Such payments must be used to meet the payroll and fixed costs obligations of the contracted service provider. A school district or charter school shall make all reasonable efforts to renegotiate a contract in good faith and may direct contracted service providers 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. A contracted service provider must inform the school district or charter school whether the entity has insurance coverage for business interruption covering work stoppages.

**Contracts with educational service commissions, other entities, and shared services.** School districts and charter schools must make payments for benefits, compensation, and emoluments and all payments required 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 pay 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 services had been provided, and as if the school facilities had remained open. Such payments shall be used to meet payroll and fixed costs obligations. 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 and may direct contracted service providers or public entities to provide services which may reasonably be provided and are within the general expertise or service provision of the original contract. A contracted service provider or public entity shall reveal whether the entity has insurance coverage for business interruption covering work stoppages.

The new law directs the State Board of Education to promulgate implementing regulations.

**Payments under Federal Grants.** The United States Department of Education issued an FAQ regarding making payments from federal grant funds during the COVID-19 pandemic for employee compensation, nonrefundable travel and registration costs, and future travel. The FAQ is available [here](#).

Riker Danzig is monitoring COVID-19 legal developments applicable to school districts and charter schools. Other COVID-19 information is available in the Riker Danzig [COVID-19 Resource Center](#). If you have any questions, please contact [Teresa Moore](#) or [Fiona Cousland](#) of our School Law Practice.

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