

NJ School Board Association
December 19, 2023
Lame Duck Session Continued

Several legislative committees , including the Senate and Assembly Education committees, met and advanced various measures over the past week that could land on the governor’s desk before the current session ends next month. Below is a summary of recent bills pertaining to local school districts.

Assembly Education Committee (Thursday 10/14)

Postsecondary Transition Year Pilot Program A-3319 would establish a three-year “Twelfth Grade Postsecondary Transition Year Pilot Program” in the New Jersey Department of Education. The program would provide grants to participating districts to offer 12th grade students a guided start to postsecondary coursework.

Districts interested in participating would submit applications to the New Jersey Department of Education, which would select a total of six districts, two in each of the southern, central and northern regions of the state. The bill would require NJDOE to select districts “impacted substantially by the COVID-19 public health crisis, which have a high proportion of economically disadvantaged students and low rates of college enrollment among recent high school graduates.”

Under the program, participating districts would be required to:

- Enter into a partnership agreement with an institution of higher education.
- Enroll students in 6-15 academic credits at the postsecondary level each semester.
- Provide students with support and the counseling services necessary to ensure their academic success.
- Provide program and student data disaggregated by demographic subgroups to the NJDOE.

The 6-15 postsecondary credits that a participating 12th grader takes under this program must include a coherent sequence of courses applicable toward a postsecondary degree or credential and the student’s high school diploma requirements. The partner institution of higher education would be required to waive student fees and charge no more than \$100 per credit. Participating students would be required to maintain a 2.0 GPA to stay in the program. The bill also provides that public institutions of higher education must accept these credits and apply them toward an applicable degree program, in accordance with the institution’s credit transfer policies.

The bill next heads to the Assembly Appropriations Committee for further consideration. Its Senate counterpart, S-2076, was approved by the Senate Education Committee in December 2022 and referred to the Senate Budget and Appropriations Committee.

VETeach Pilot Program S-2764/A-4361 would establish the “VETeach Pilot Program” in the NJDOE designed to help address the educator shortage by helping facilitate teacher certification for the state’s veterans. Under the pilot program, up to four four-year public institutions of higher education selected by the commissioner of education would enroll, in a 36-month teacher preparation program, veterans who served in the armed forces on or after Sept. 11, 2001. The program would lead to a baccalaureate degree and completion of the requirements necessary to apply to the NJDOE for a certificate of eligibility with advanced standing in certain endorsement areas. The bill is modeled on legislation that established a similar program at Stockton University in 2012 (*P.L.*2012, c.2). NJSBA supports the bills, which were also approved by the Assembly Appropriations Committee on Dec. 18. The legislation appears to be headed to the governor’s desk.

Grief Instruction S-3330/A-5015 would require the State Board of Education to adopt, and districts to implement, New Jersey Student Learning Standards pertaining to grief in the Comprehensive Health and Physical Education content area at its next required update of the standards. The standards would be included in grades 8 to 12 and would address the physical, emotional, and behavioral symptoms of grief; coping mechanisms; and resources available to students. The New Jersey Department of Education would be required to provide districts with age-appropriate resources to support implementation of the standards. S-3330 was passed by the Senate in May and is scheduled for its final legislative vote before heading to the governor’s desk Dec. 21.

Mental Health Service Guidelines A-5307 would require the NJDOE, in partnership with the New Jersey Department of Human Services and the Department of Children and Families, to develop school district guidelines for providing mental health services to students. The guidelines would reflect the findings of the NJDOE’s “[Comprehensive School-Based Mental Health Resource Guide](#)” published in February 2022. In developing the guidelines, NJDOE would be required to seek the input of school district administrators, educators, mental health professionals and other stakeholders. The guidelines would address such topics as establishing sustainable partnerships with community providers, providing culturally sensitive mental health services, and incorporating new technology including, but not limited to, providing mental health services through virtual or remote means. The NJDOE would also be required to create a database of available mental health resource providers throughout the state. Its Senate counterpart, S-3543, was approved by the Senate Education Committee in February 2023. A-5307 is scheduled for a vote in the full Assembly Dec. 21; S-3543 awaits further consideration on the Senate floor.

State Database of Newly Certified Teachers A-5741 would require the New Jersey Department of Labor and Workforce Development, in collaboration with the NJDOE, to create a database of “novice teachers.” The bill defines novice teachers as those holding their initial Certificate of Eligibility or Certificate of Eligibility with Advance Standing but who have not yet been issued a provisional certificate (i.e. not yet been hired by a school district) available to school districts (but not to the general public). The database would include, among other information, contact information for the

novice teacher and their certification area(s). Novice teachers would be able to opt out of inclusion in the database. The bill would also require the NJDOE to host three job fairs per year – one in each of the northern, central and southern regions of the state – to assist districts in filling staffing vacancies.

Limitations on Contracted Personnel and Virtual or Remote Instruction A-5874 would make significant changes to both (1) school districts’ flexibility to contract for certain personnel, and (2) parameters for the use of virtual or remote instruction.

Contracting: Regarding contracting for personnel, the bill would require boards of education to directly employ any person performing a duty that requires a certificate issued by the State Board of Examiners on or behalf of the board of education, except for certain exceptions outlined in the bill. Exceptions include contracting with the following personnel “to ensure that required programs and services are provided”:

- Substitute teachers.
- Personnel providing instruction in financial, economic, business and entrepreneurial literacy to satisfy graduation requirements.
- Personnel providing educational services to a student who is enrolled in a school other than a public school pursuant to NJDOE regulations.
- Personnel employed by other boards of education providing services under a shared services or joint agreement.
- Personnel providing “Option 2” services.
- Personnel providing special education and related services to a student who is enrolled in an out-of-district placement.

The bill also includes exceptions for certain special education and related service providers, as long as the contracted providers of those services meet certain requirements outlined in the bill. Approved Private Schools for Students with Disabilities would also be subject to those requirements for contracted providers of the enumerated special education and related services.

Virtual Instruction: Regarding virtual instruction, the bill would establish limits on the circumstances under which a school district could use virtual or remote instruction. In any scenario for which virtual or remote instruction is *not* expressly permitted by another law, the bill would require that instructional services provided by a school district “shall be delivered through in-person methods.” In other words, the bill’s prohibition on virtual instruction would apply only to those circumstances not contemplated by current virtual instruction laws, such as a teacher appearing virtually to deliver world language instruction to general education students located in their school building. But this would *not* affect, for example, providing virtual instruction pursuant to a district’s Virtual or Remote Instruction Plan during a public health emergency pursuant to *N.J.S.A. 18A:7F-9*, since such virtual instruction is “expressly permitted” by another law.

The bill would require such instruction be delivered in-person, with individual student-by-student level exceptions permitted with the approval of the commissioner of education. The bill specifies that a district would be required to apply separately to the commissioner for each student for whom the district is requesting individualized virtual or remote instruction.

The commissioner, as part of the application process, would be required to provide “any individual currently providing the instructional service sought to be implemented virtually or remotely, and the majority representative of the district’s employees” with a copy of the application; the right to object to or comment on the application; the commissioner’s determination on the application; and the right to appeal the determination.

In addition to exemptions for virtual instruction expressly permitted by other laws, the bill would provide a general exception for financial, economic, business and entrepreneurial literacy implemented as a graduation requirement, and would allow districts to continue providing virtual “Option 2” experiences.

The NJSBA, alongside other education and business stakeholder groups, testified in both the Assembly and Senate education committees in opposition to the bill. The NJSBA cited, among other concerns, that “local boards of education should have a nonnegotiable, managerial prerogative to enter into subcontracting agreements” and that the bill’s exceptions to its in-person instruction requirements “may not be broad enough to address all of the positions districts have a difficult time filling.” While the Assembly Education Committee approved the bill, the Senate Education Committee held its vote, while indicating that the bill will likely be considered again before the current session ends.

Revised Evaluation Schedule for Tenured Staff A-5877 would establish a revised summative evaluation schedule for tenured teachers, principals, assistant principals and vice-principals. Under the revised schedule, the staff member would not receive a summative evaluation the year following their acquisition of tenure; the first summative evaluation would occur two years following tenure. Thereafter, the staff member’s evaluation schedule would depend on their previous evaluation:

- If an employee receives a rating of highly effective in any summative evaluation, the next summative evaluation would occur three years later.
- If an employee receives a rating of effective, the next summative evaluation would occur either two or three years later, at the discretion of the employee’s supervisor.
- If an employee receives a rating of ineffective or partially effective in any summative evaluation, the employee would receive annual summative evaluations in each of the following two years.
 - The bill would also modify current requirements for filing of inefficiency tenure charges. Under the circumstances for which a superintendent has the option to file a charge of inefficiency – that is, two consecutive partially effective ratings or an

ineffective rating followed by a partially effective rating – the bill would provide two additional summative evaluations, rather than one additional summative evaluation, to determine whether a charge of inefficiency must be filed. If the employee is rated partially effective or ineffective in both of the following two years, then the superintendent would be required to file a charge of inefficiency. Current requirements for immediate filing of charges of inefficiency if the employee is rated ineffective or partially effective and then ineffective would remain in place.

- If the employee is rated ineffective or partially effective, and then effective or highly effective, the employee would continue to receive annual summative evaluations until the employee acquires two consecutive ratings of effective or highly effective, at which point the employee would return to the revised schedules detailed above.

The NJSBA, alongside several other education stakeholder groups, testified in opposition to the bill, citing the importance of the annual summative evaluation process to the quality and support of the teacher workforce, particularly following recent changes to certification requirements such as eliminating edTPA, approval of an alternate CE without a basic skills requirement, and the limited CE/CEAS pilot program.

Senate Education Committee (Thursday 10/14)

Mentoring Teachers of Color A-3945/S-1660 would establish a three-year, \$95,000 “Male Teachers of Color Mentorship Pilot Program.” Under the program, the New Jersey commissioner of education would select 19 male students of color from state public higher education institutions to work with 19 male teachers of color from participating schools. In that way, each student would be paired with a current teacher who would serve as the student’s mentor through the candidate’s last year of his educator preparation program and the first two years of the student’s teaching career. The teacher would receive a stipend of \$5,000, funded by the state, for each year of participation in the program. A-3945 now heads to the Senate floor for further consideration.

Filling Vacancies on Regional BOEs S-2158 would modify how vacancies on regional school district boards of education are filled under certain circumstances. Specifically, the bill would provide that, in instances where current law requires the filling of a BOE vacancy by a majority vote of the remaining members of the board, for a regional school district the vacancy would instead be filled by a majority vote of the members of the board of education of the constituent district represented by the former board member. The bill next heads to the Senate floor for further consideration. Its Assembly counterpart, A-261, has not yet moved.

Eliminating Census-based Funding of Special Education Aid in SFRA The committee discussed, but did not vote on, S-2425, which would amend the School Funding Reform Act to eliminate the census-based method of estimating special education costs and providing special education aid.

Under the current SFRA, the component of a district's adequacy budget corresponding to special education costs – and the calculation of a district's special education categorical aid – are calculated using a census-based method. That method resembles a per-pupil funding approach in that it is based on a per-pupil excess cost figure. However, instead of applying that per-pupil excess cost figure to a district's actual special education enrollment, it applies the figure to the product of the district's total enrollment and state average classification rate. In other words, the method provides funding on a “per-pupil” basis, but the number of students it funds is the number that the district “would have” if the district's classification rate matched the state average classification rate – not the district's actual special education enrollment. The NJDOE reviews and establishes the per-pupil excess costs and the state average classification rate every three years in its Educational Adequacy Report. Under the current EAR, applicable to fiscal year 2023-2025, the average classification rate is 15.9% and the per-pupil excess cost is \$19,524. SFRA funds costs, and the NJDOE calculates these rates, separately for general special education students and speech-only special education students.

S-2425 would amend SFRA to estimate special education costs and calculate special education categorical aid based on a district's actual special education enrollment, rather than the census-method. Under the bill, the special education formulas would be based on the product of the district's actual special education enrollment and the same per-pupil excess cost figure used in the current formula.

The NJSBA testified, outlining the potential benefits and challenges of moving toward a special education funding system based on a district's actual special education enrollment, while noting the limits of providing the same per-pupil amount for each special education student.

Eliminating April Budget Vote S-4209 would eliminate the required public vote on school budgets below the tax levy growth cap for Type II April districts. The bill would also allow November districts to ask a second question at the April election and create start and end dates for board member terms of 1/1-12/31 for November districts and 5/1-4/30 for April districts, rather than terms starting and ending at an organization meeting. The NJSBA supports the bill but is seeking amendments to address concerns that defining specific start and end dates for board member terms could create a gap between term end dates and organization meetings during which a board would not have a full complement of members. The bill now heads to the Senate floor for further consideration; its Assembly counterpart, A-5879, was approved by the Assembly State and Local Government committee Dec. 14 and now awaits further action by the full Assembly.

Assembly State and Local Government Committee (Thursday 12/14 and Monday 12/18)

Emergency Bonding Authority A-4501/S-1892 authorizes Type II school districts without boards of school estimate, excluding those districts that are classified as SDA districts, to issue bonds to finance costs relating to repairs to school facilities and other furnishings and equipment that were damaged due to a natural disaster. Under the bill, the bonds may be issued without the approval of the voters of the district of a Type II school district without a board of school estimate. The bill requires that a district

may only issue bonds if the repairs are deemed to be necessary to provide a thorough and efficient system of education.

This legislation was originally introduced in response to the increased incidents of extreme weather, such as Hurricane Ida, to streamline the financing process for school repairs related to natural disasters by permitting the issuance of bonds by school districts, without the need for a referendum. The bill is scheduled for final legislative approval later this week.

Anti-Privatization Initiative A-5430 would establish various procedures and standards regarding the privatization of public services contracts, including those entered into by local boards of education.

Among other provisions, the bill would:

- Allow union representatives of public employees to review privatization proposals prior to the solicitation of bids.
- Require private contractors to pay wages and benefits to their employees that are equal to or exceed wages and benefits paid to their public sector counterparts.
- Require contractors to hire public employees who are displaced from their employment due to the privatization of services.

The NJSBA opposes the legislation and has [publicly testified](#) against it on several occasions, along with the New Jersey State League of Municipalities, New Jersey Association of Counties and New Jersey Business and Industry Association. NJSBA argued that this bill will impose costly and burdensome requirements on school districts seeking to get the most efficient use of their finite resources. NJSBA further argued that a 2020 law (*P.L.2020, c.79*) already establishes various requirements boards of education must follow before entering into subcontracting agreements, while including several protections for district employees, thus making this legislation unnecessary.

This bill was also advanced by the Assembly Appropriations Committee on Monday, Dec. 18 and may now be posted for a Senate floor vote. Its Senate counterpart, S-1350, was approved by the Senate Labor Committee this past June and referred to the Senate Budget and Appropriations Committee, where it awaits further consideration.

Student Civic Engagement S-2304/A-1271 permits, beginning with the 2023-2024 school year, excused absences for students who attend civic events. This bill would permit public school pupils in grades six through 12 one excused absence to attend a civic event each school year. School districts would also be permitted to provide additional excused absences for such purposes. Excused absences taken under this bill would not be reflected on student attendance records. Parents or guardians of pupils who wish to use an excused absence under this bill would be required to provide signed written notice at least five school days in advance of the intended excused absence and such other documentation as the school district deems necessary to prove that the pupil meets the requirements for

an excused absence. The bill would require the commissioner of education to provide guidance to districts regarding excused absences for civic events, and the State Board of Education would adopt implementing regulations. The bill may now be posted for an Assembly floor vote before returning to the Senate, which passed a previous version of the bill. NJSBA supports the legislation.

Senate Labor Committee (Thursday 12/14)

Increasing Workers Comp Fees S-4059 establishes the “21st Century Injured Workers’ Access to Justice Act.” This bill revises the workers’ compensation law to revise the cap on contingency fees to a prevailing party in workers’ compensation matters from 20% to 25%, and it expands the application of the fee to orders for payment of medical and temporary disability benefits on motion and orders approving settlement of any kind. The NJSBA opposes this bill and has joined a broad coalition of business and government groups led by the Insurance Council of New Jersey that is advocating against its passage.

Assembly Appropriations Committee (Monday 12/18)

Administering Seizure Medication A-5336 requires a board of education to develop a policy in accordance with the guidelines established by the Department of Education for the emergency administration of nasal seizure rescue medication and the emergency use of a manual vagus nerve stimulator on a student with a seizure disorder. Pursuant to the policy, the school nurse is to have the primary responsibility for the administration of nasal seizure rescue medication. The certified school nurse is required to designate at least two additional employees of the school district who volunteer to administer the nasal seizure rescue medication and use a manual vagus nerve stimulator on a student when the school nurse is not physically present at the scene. The NJSBA is working with the sponsor of the legislation on amendments to ensure that any new requirements regarding care for students with seizure disorders are embedded as smoothly as possible within the framework of existing seizure care requirements, particularly the seizure action plan development process required by “Paul’s Law” (P.L.2019, c.290).