Last-Second Complications Caused By Executive Order #175

August 13, 2020

Porzio Client Alert

Executive Order #175 requires non-public and public schools to file re-opening plans and a certification that the school meets all of the health and safety standards in NJDOE's "Checklist for the Re-Opening of School 2020-2021."[1] Public school districts (including renaissance and charter schools) must have submitted their re-opening plans within thirty (30) days prior to the first day of school. Curiously, Executive Order #175 is silent on whether a school can re-submit its plans to begin the year on full-time remote instruction. However, when asked if schools would be permitted to re-submit plans to go all-remote, Governor Murphy stated during his August 12th press conference: "[t]he answer is yes."[2] Public and non-public schools will need to file a certification with the DOE that the schools have implemented policies and procedures to meet the health and safety standards contained in the DOE's checklist. Schools offering hybrid or full in-person instruction are reminded that all students retain the right to engage in full-time learning upon the request of a parent or guardian.

In the event a school is unable to meet one or more of the health and safety standards (e.g., inadequate ventilation systems, back-ordered masks and PPE, a delay in the delivery of physical barriers, etc.), the school must submit documentation to the DOE identifying:

1) the standards the school cannot meet;

2) the efforts the school is taking to eventually satisfy all the standards;

3) the anticipated date the school will begin in-person instruction; and

4) whether the entire school, or only certain buildings/grade levels, will be full-time remote.

This request must be submitted to the DOE no later than seven (7) days before the first day of school. The Executive Order does not indicate what will occur if a school's request is not granted prior to the first day of school or whether a school can transition from in-person instruction to full-time remote after the school year begins. All schools will be required to provide at least four (4) hours of active instruction (except for kindergarten classes), and must offer required meals to children if the school is participating in the National School Lunch and Breakfast program. One final note of importance is that student growth data shall be waived for the 2020-2021 evaluations of teachers.

Executive Order #175 raises many questions, but it is clear that if schools wish to transition to full-time remote instruction, the school must take immediate action to comply with this Order. Should you require any assistance drafting the certification to the DOE, or reviewing of an full-time remote instruction plan, the Porzio Education Law team would be happy to assist.

[1] https://nj.gov/education/reopening/DOE_HealthandSafety.pdf

[2] https://youtu.be/Y7xfMHSeiig?t=4965