

Legal Corner

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Commissioner of Education Rules that Subcontracted Virtual Teachers are Teaching Staff Members Employed by a School District

North Plainfield Education Assoc. v. Board. of Educ. of Borough of North Plainfield
Commissioner of Education, C. #147-26 (April 28, 2026)

If your district has ever considered — or quietly already pursued — contracting with a company to supply remote teachers for hard-to-fill positions, the New Jersey Commissioner of Education's April 2026 decision in the *North Plainfield* case is required reading. It is the most comprehensive administrative ruling to date on the legal obligations that attach to virtual, third-party instruction in New Jersey public schools.

The Background

Facing a genuine inability to recruit qualified candidates for Spanish, French, American Sign Language, and Biology positions during the 2022-23 and 2023-24 school years, North Plainfield contracted with Elevate K-12, a private company that supplies instructors who teach live via video while students are physically assembled in a classroom. A North Plainfield non-teaching staff member was present in each room to maintain order, but all instructional responsibility — lesson delivery, grading, assignments — rested with the remote Elevate instructor. The district provided the curriculum framework; Elevate provided the teachers. Those teachers were not all New Jersey-certified, were not all fingerprinted through the New Jersey State Police, were never individually approved by a Board vote, and were evaluated solely by Elevate using Elevate's internal standards. The teachers' association and a district teacher/association officer challenged the arrangement.

The Board Had Authority to Enter into the Subcontractor Agreement for Teachers

The first question the Commissioner addressed was whether the Board had any legal authority to enter this kind of contract. The answer was yes. *N.J.S.A. 18A:11-1(d)* grants boards of education broad authority to do all things necessary for the lawful operation of their schools. The Board was legally required to offer the courses in question. When conventional hiring proved unsuccessful, contracting with a vendor was a reasonable response to an impossible situation. The Commissioner declined to treat it as beyond the Board's power, but noted that the Board's general authority to enter into the contract cannot override specific statutory requirements governing teachers.

The Remote Instructors Are Subject to NJ Law Governing Teaching Staff Members

The most consequential legal finding in the decision was the Commissioner's holding that the Elevate instructors — who never set foot in a New Jersey classroom, were paid by a private company, and had no employment relationship with the district — were nevertheless "teaching staff members" under New Jersey law.

New Jersey law defines a teaching staff member as any person holding a "position or employment" whose role requires a valid New Jersey teaching certificate. The Commissioner read the word "position" broadly and deliberately. The Elevate instructors controlled every aspect of instruction: they wrote assessments, graded student work, led class sessions, and determined course pacing. The only thing they did not do was stand in the room. As a result, the Commissioner concluded that anyone who assumes full instructional responsibility for a class of students is a teaching staff member — regardless of how they are paid or who pays them. The Commissioner ruled in essence that if they are teaching your students, they are your teaching staff, at least for purposes of New Jersey school law.

Violations Found by the Commissioner

Once the Commissioner established that the Elevate instructors were teaching staff members, the violations were largely automatic consequences of that determination.

- 1. New Jersey Certification (*N.J.S.A. 18A:26-2*).** Teaching staff members must hold valid New Jersey certificates appropriate to the courses they teach. The Board argued that the Elevate instructors held out-of-state certifications in the relevant subjects. The Commissioner was unmoved. New Jersey has charged its own Board of Examiners with setting certification standards for those who teach New Jersey children, and no other state's determination substitutes for that judgment. If a district uses a vendor's teachers, those teachers must hold valid New Jersey teaching certificates.
- 2. Individual Board Approval (*N.J.S.A. 18A:27-1*).** Every teaching staff member must be individually appointed by a recorded roll call majority vote of the full

Board. North Plainfield voted to contract with Elevate, but never voted on any individual instructor. The Commissioner rejected the argument that this was equivalent to vendor approval, such as hiring a food service company. But here, the instructors were not delivering lunches; they were delivering education. Each one required a Board vote. As a practical matter, any district contracting with an instructional vendor needs to build an individual approval process into the contract, including the ability to review credentials and conduct at least a virtual interview before a name appears on the board agenda.

- 3. Background Checks (N.J.S.A. 18A:6-7.1).** New Jersey law requires criminal history background checks — specifically through the New Jersey State Police or the FBI — not just for teaching staff members but for any person having “regular contact with pupils.” The Commissioner held that virtual instruction constitutes regular contact with pupils. More significantly, the Commissioner noted that the disqualifying offenses under the statute are not limited to crimes of physical violence — they include threats, perjury, and bias intimidation. A district cannot assume that a vendor’s own background check process, or a check conducted by another state’s agency, satisfies New Jersey’s specific statutory requirements. It does not.
- 4. Evaluations — Two Different Requirements.** The Commissioner found two separate evaluation violations. First, the TEACHNJ Act requires that all teaching staff members be evaluated using a rubric approved by the Commissioner of Education for the purpose of improving instruction. This applied clearly once the Elevate instructors were classified as teaching staff, and the Board’s failure to use an approved rubric was a straightforward violation. Second, N.J.S.A. 18A:27-3.1, requires at least three formal observations per school year. The Administrative Law Judge (ALJ) determined that this did not apply because the Elevate instructors were not eligible for tenure, and tenure assessment has traditionally been understood as the primary purpose of that statute. The Commissioner disagreed, and she reversed the ALJ’s initial ruling on this point.

What This Means Going Forward

The *North Plainfield* decision does not prohibit districts from contracting with companies like Elevate K-12. Districts facing genuine, documented staffing gaps retain the authority to seek creative solutions, including third-party remote instruction. But the decision establishes that doing so is not a shortcut around New Jersey’s teacher-quality framework. It is an alternative delivery mechanism that must operate within that framework.

However, by ruling that each school district must individually appoint every remote teacher and must control and evaluate every remote teacher, those teachers may no longer meet the definition of “subcontractor” under the New Jersey Department of Labor “ABC

Test” for subcontractors. In order to qualify as a subcontractor under that test an individual must: (a) be free from control or direction of the performance of work; (b) perform work outside the usual course of business, or perform the work outside the place of business where such service is performed; and (c) be engaged in an independently established trade, occupation, profession, or business. As a result, individuals performing teaching services through a subcontracting company may be considered school district employees and be subject to the benefits provided to other district employees. It is strongly recommended that school officials consult with board counsel and/or labor counsel to discuss the legal implications of this decision.