

consolidate, conform, and update other rules relating to educational facilities in this State. The rules are adopted to ensure that the educational facilities in the State are safe, healthy, and educationally adequate to support the delivery of the thorough and efficient education to which all students are entitled, as defined by the Core Curriculum Content Standards. The rules apply to all district boards of education in the State. To the extent these rules are inconsistent with other rules in Titles 6 and 6A of the New Jersey Administrative Code, the rules in this chapter shall take precedence.

Amended by R.2007 d.81, effective March 19, 2007.

See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

Deleted second sentence.

Amended by R.2013 d.145, effective December 16, 2013.

See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

Rewrote the section.

#### Case Notes

In a school board's appeal of a city zoning board of adjustment's denial of its use variance application to convert an industrial building into a school, the denial was reversed because in matters of educational facility adequacy, student safety, and student transportation, the zoning board must defer to the findings and conditions imposed by the New Jersey State Board of Education, the agency delegated such responsibility. Further, the school board failed to make a formal application for the use variance. Board of Educ. of Clifton v. Zoning Bd. of Adjustment of Clifton, 409 N.J. Super. 515, 978 A.2d 325, 2006 N.J. Super. LEXIS 370 (L.Div. 2006); affirmed by 409 N.J. Super. 389, 977 A.2d 1050, 2009 N.J. Super. LEXIS 216 (App.Div. 2009).

New Jersey State Board of Education's findings pertaining to educational adequacy, student safety, and student transportation matters trump contradictory findings by a local zoning board and, instead, the zoning board's jurisdiction is limited to considerations of whether the use variance should be granted or denied premised on limited aspects of the negative criteria as they relate to the impact on the surrounding neighborhood and the negative impact on the zoning ordinance. Board of Educ. of Clifton v. Zoning Bd. of Adjustment of Clifton, 409 N.J. Super. 515, 978 A.2d 325, 2006 N.J. Super. LEXIS 370 (L.Div. 2006); affirmed by 409 N.J. Super. 389, 977 A.2d 1050, 2009 N.J. Super. LEXIS 216 (App.Div. 2009).

#### 6A:26-1.2 Definitions

The following words and terms shall have the following meanings when used in this chapter unless the context clearly indicates otherwise:

"Additional costs" means the additional construction costs beyond the area cost allowance for construction or the costs beyond reasonable estimated actual costs for rehabilitation if such costs are the result of factors outside the control of the school district, provided that either type of costs results from design factors that are required to meet the facilities efficiency standards and are approved or authorized pursuant to N.J.S.A. 18A:7G-5(g).

"Additional space" means space in excess of facilities efficiency standards.

"Adjusted gross square footage" means the gross square footage of a facility less excluded spaces.

"Annual maintenance budget amount" means the amount required to be included in the school district's annual budget

certified for taxes as a deposit into the maintenance reserve account or in the required maintenance line-item accounts.

"Application for State School Aid" or "ASSA" means the application filed pursuant to N.J.S.A. 18A:7F-33, on a form issued by the Commissioner, in which a school district sets forth student enrollment by category and other pertinent information.

"Approved area for unhoused students" means the product of the area allowance per FTE student times the number of unhoused students.

"Approved LRFP" or "approved plan" means an LRFP that conforms to the requirements of N.J.A.C. 6A:26-2 and that has been determined by a Commissioner's final determination to ensure the school facilities are educationally adequate to support over the next five years the achievement of the Core Curriculum Content Standards.

"Area allowance per FTE student" means 125 square feet for preschool through grade five, 134 square feet for grades six through eight, and 151 square feet for grades nine through 12.

"Area cost allowance" means as set forth in N.J.S.A. 18A:7G-3.

"Building system" means a set of related or similar building components that work together to perform a major function in a building or facility.

"Capital maintenance" means maintenance intended to extend the useful life of a school facility, including upgrades and replacements of building systems, such as structure, enclosure, mechanical, plumbing and electrical systems, and can be considered to constitute or be part of a school facilities project.

"Capital project" means a school facilities project, other capital project or land acquisition project.

"Capital reserve account" means as defined in N.J.A.C. 6A:23A-1.2.

"Certified laboratory" means a laboratory certified pursuant to the provisions of N.J.A.C. 7:18.

"Comprehensive Annual Financial Report" or "CAFR" means the official annual report of a governmental unit that includes all funds and account groups, as defined in N.J.A.C. 6A:23A-1.2.

"Comprehensive maintenance plan" means a school district's multi-year maintenance plan covering required maintenance activities for each school facility in the school district adopted pursuant to this chapter.

"Core Curriculum Content Standards" means the standards established pursuant to N.J.S.A. 18A:7F-4.a.

"Cost index" means the average annual increase, expressed as a decimal, in actual construction cost factors for the New York City and Philadelphia areas during the second fiscal year preceding the budget year as determined pursuant to rules promulgated by the Development Authority.

"County vocational school district" means a county vocational school district established pursuant to N.J.S.A. 18A:54-1 et seq.

"Debt service" means as set forth in N.J.S.A. 18A:7G-3.

"Development Authority" means the New Jersey Schools Development Authority established pursuant to N.J.S.A. 52:18A-237.

"District aid percentage" means the number, expressed as a percentage derived from dividing the school district's equalization aid calculated pursuant to N.J.S.A. 18A:7F-53 as of the date of the Commissioner's determination of preliminary eligible costs by the school district's adequacy budget calculated pursuant to N.J.S.A. 18A:7F-51 as of the date of the Commissioner's determination of preliminary eligible costs.

"District board of education" means the local board of education or State district superintendent in the case of a State-operated district.

"District factor group" means an index of socioeconomic status established by the Department of Education based upon indicators available in the decennial census. School districts are arranged in 10 groups, DFG A through DFG J, A being the group with the lowest socioeconomic status, J the highest.

"Division" means the Department's Division of Administration and Finance.

"Drinking water outlet" means any location at a school facility, other facility, or temporary facility, as those terms are defined in this section, where water is expected to be used for consumption or food preparation.

"Educational adequacy" means, for purposes of a school facilities project, the suitability of a facility to provide instruction that will enable students to achieve the Core Curriculum Content Standards and will encompass the facilities efficiency standards combined with the requirements of N.J.A.C. 6A:26-5.

"Educational space" means any space in a school facility for general instruction, specialized instruction, administration or student services and support.

"Emergency stabilization" means actions taken by a school district to correct and eliminate an actual or imminent peril to the health and safety of students or staff designed to render a school facility fit for occupancy by students or staff.

"Emergent condition" means a condition is so injurious or hazardous that it causes an imminent peril to the health and safety of students and staff.

"Emergent project" means a capital project necessitating expedited review and, if applicable, approval, in order to alleviate a condition that, if not corrected on an expedited basis, would render a building or facility so potentially injurious or hazardous that it causes an imminent peril to the health and safety of students or staff.

"Estimated actual costs" means costs as determined pursuant to N.J.A.C. 6A:26-2.3 or 3.4.

"Excess costs" means as set forth in N.J.S.A. 18A:7G-3.

"Excluded space" is an existing space that is not contained in the facilities efficiency standards but may be included in a school district's approved room inventory that would be structurally or fiscally impractical to convert to other uses in the facilities efficiency standards as demonstrated by the school district and that:

1. Delivers programs and services aligned to the Core Curriculum Content Standards; or
2. Provides support services directly to students.

"Facility" means a structure or building as further defined in this section by the terms school facility, temporary facility or other facilities.

"Facilities efficiency standards" means the standards developed by the Commissioner pursuant to N.J.S.A. 18A:7G-4.

"Feasibility study" means a study undertaken to determine whether a school facilities project is achievable in view of possible identified factors that may influence the project's design or construction, including, but not limited to, applicable Federal, State and local laws; physical site conditions; market conditions; and costs and benefits. For example, such a study may be a pre-construction evaluation undertaken by a school district to determine whether it would be more feasible to replace rather than renovate a school facility because of health and safety or efficiency. It may also consist of a pre-land acquisition evaluation to determine whether it would be more feasible to acquire land for a school facilities project because of health and safety, efficiency, environmental factors, physical site conditions, or cost.

"Filing year" means the year in which the comprehensive maintenance plan is filed with the executive county superintendent.

"Final eligible costs" means as set forth in N.J.S.A. 18A:7G-3.

"Final plans and specifications" means the plans and specifications utilized to bid a capital project and to undertake and complete its construction.

"FTE" means as set forth in N.J.S.A. 18A:7G-3.

"Functional capacity" means the number of students that can be housed in a building to provide sufficient space for the building to be educationally adequate for the delivery of programs and services necessary for student achievement of the Core Curriculum Content Standards. Functional capacity is determined by dividing the adjusted gross square footage of a school facility by the minimum area allowance per FTE student for the grade level students contained therein.

"Grant cycle" means the amount of annual funding available, as determined by the Commissioner, for section 15 grants for school facilities projects in RODs, other than county vocational school districts.

"Gross square footage" means the total square footage of a school facility.

"Inconsistent space" means spaces that differ from the facilities efficiency standards in number, configuration, size, location, or use.

"Land acquisition" means an acquisition of land, whether by purchase, condemnation, or by gift or grant, to be used as a school site. Land acquisition is either an eligible cost of a school facilities project or an other capital project not eligible for funding pursuant to EFCFA.

"Lead action level" means the lead action level established by the United States Environmental Protection Agency at 40 CFR 141.80 for lead in drinking water.

"Lease-purchase agreement" means any agreement under which the school district leases equipment or school facilities as the lessee, and gives the school district the option of purchasing the leased property during or upon termination of the lease with credit toward the purchase price for all or part of rental payments that have been made by the school district in accordance with the lease-purchase agreement.

"Lease-purchase payment" means as set forth in N.J.S.A. 18A:7G-3.

"Local funding" means the funds supplied by a school district to finance the total costs of an other capital project.

"Local portion" means the amount of school bonds issued for a school facilities project funded under N.J.S.A. 18A:7G-9 or 10.

"Local share" means as set forth in N.J.S.A. 18A:7G-3.

"Local support" means the local share or the local portion.

"Long-range facilities plan" or "LRFP" means the plan required to be submitted to the Commissioner by a school district pursuant to N.J.S.A. 18A:7G-4.

"Maintenance reserve fund" means the account established by a school district pursuant to N.J.S.A. 18A:7G-13 into

which it deposits monies to be used exclusively for required maintenance of school facilities.

"New construction" means a school facilities project that consists of either:

1. New school facilities; and/or
2. Additions to school facilities characterized by an increase in the gross square footage of the school facility and that is necessary due to unhoused students.

"Other allowable costs" means the cost of temporary facilities; site remediation; site development; acquisition of land/or other real property interest necessary to effectuate the school facilities project; fees for the services of design professionals, including architects, engineers, construction managers, and other design professionals; legal fees; permitting and plan review fees; financing costs; and the administrative costs of the Development Authority or the school district incurred in connection with the school facilities project.

"Other capital projects" means all projects, or portions thereof, that are 100 percent locally funded, including:

1. Capital projects for the construction or rehabilitation of other facilities;
2. Leased school facilities, other facilities or temporary school facilities, unless used as temporary space for a school facilities project in accordance with N.J.A.C. 6A:26-3.14, subject to Department review of the terms and conditions of the lease, in the case of school districts for which the State share of eligible costs for school facilities projects is 100 percent;
3. Eligible capital projects for which a school district is not seeking State support; and
4. Projects for which there are no costs eligible for State support.

"Other facilities" means athletic stadiums; swimming pools; any associated structures; or related equipment tied to such facilities, including, but not limited to, grandstands and night field lights, greenhouses, garages, facilities used for non-instructional or non-educational purposes, and any structure, building, or facility used solely for school administration.

"Preconstruction activities" means the activities that must be undertaken prior to completion and submission to the Department of a school facilities project application for approval and calculation of preliminary eligible costs. Such activities can include site analysis, acquisition of land, remediation, site development, feasibility studies, design work, and acquisition of and design work for temporary facilities.

"Preliminary eligible costs" means the initial eligible costs of a school facilities project, which shall be deemed to include the costs of construction and other allowable costs, as

calculated pursuant to the formulas set forth in N.J.S.A. 18A:7G-7 after the completion of preconstruction activities.

"Priority project categories" means the categories specified in N.J.A.C. 6A:26-3.9(a) and 18.1.

"Project documents" means educational specifications, schematic plans, detailed plans and specifications, final plans and specifications, and other documents required for capital project review and approval by the Division.

"Quality Single Accountability Continuum" or "QSAC" means the monitoring and evaluation process of school districts pursuant to N.J.S.A. 18A:7A-10 et seq.

"Redevelopment entity" means an entity authorized by a municipal governing body to implement plans and carry out redevelopment projects in the municipality pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.

"Regular operating school district" or "ROD" means a school district other than an SDA district.

"Rehabilitation" means a school facilities project consisting of the reconstruction, remodeling, alteration, modernization, or repair of a school facility to keep the school facility functional for its original purpose or for new purposes and that does not increase the gross square footage of the school facility.

"Replacement cost" means the area cost allowance multiplied by the gross square footage of the building for the year specified in this chapter.

"Required maintenance" means, for purposes of determining "M" in the formula in N.J.A.C. 6A:26-3.8, specific maintenance activities required for system warranty purposes that are approved for repairs and replacements to keep a school facility open and safe for use or in its original condition - including repairs and replacements to a school facility's heating, lighting, ventilation, security and other fixtures to keep the facility or fixtures in effective working condition - and that does not consist of routine or capital maintenance. Required maintenance is not an eligible cost of a school facilities project.

"Room inventory" means a list of each general instructional, specialized instructional, administrative, and support space, and the sizes and numbers that would constitute a school facility adequate to support the achievement of the Core Curriculum Content Standards by the projected student enrollment.

"Routine maintenance" means contracted custodial or janitorial services; expenditures for the cleaning of a school facility or its fixtures; the care and upkeep of grounds or parking lots; the cleaning of, or repairs and replacements to, movable furnishings or equipment; or other expenditures that are not required to maintain the original condition over the

school facility's useful life. Routine maintenance is not an eligible cost of a school facilities project.

"School bonds" means as set forth in N.J.S.A. 18A:7G-3.

"School district" means a district board of education, including a local or regional school district established pursuant to N.J.S.A. 18A:8-1 et seq. or 18A:13-1 et seq.; a county special services school district established pursuant to article 8 of N.J.S.A. 18A:46-1 et seq.; a county vocational school district established pursuant to article 3 of N.J.S.A. 18A:54-1 et seq.; and a school district under full State intervention pursuant to N.J.S.A. 18A:7A-34 et seq.

"School enrollment" means the number of FTE students who are recorded in the school registers on the last school day prior to October 16 of the current school year, except that it shall not include FTE students in evening programs, post-graduate students, and post-secondary vocational students.

"School facility" means and includes any structure, building, or facility used wholly or in part for educational purposes by a school district and facilities that physically support the structures, buildings, and facilities, such as school district wastewater treatment, power generating and steam generating, but excludes other facilities as defined in this section.

"School facilities project" means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction, or capital maintenance of all or any part of a school facility or any other personal property necessary for, or ancillary to, any school facility. School facilities project includes, but is not limited to, fixtures; furnishings and equipment; site acquisition; site development; services of design professionals such as engineers and architects; construction management; legal services; financing costs; and administrative costs and expenses incurred in connection with the project. To qualify as a school facilities project, the project must be new construction to meet the housing needs of unhoused students, or rehabilitation to keep a school facility functional for its original purpose or for a new purpose accomplished within the gross square footage of the original building. Maintenance projects intended solely to achieve the design life of a school facility and routine maintenance do not constitute school facilities projects.

"SDA district" means a school district that received education opportunity aid or preschool expansion aid in the 2007-2008 school year.

"Section 15 grant" means a grant of funds to be made pursuant to N.J.S.A. 18A:7G-15.

"Short-term notes" means temporary notes or loan bonds as described in N.J.S.A. 18A:24-3.

"Special education student" means a student receiving specific services pursuant to N.J.S.A. 18A:46-1 et seq. and N.J.A.C. 6A:14, Special Education.

"State debt service aid" means the amount of State aid determined pursuant to N.J.S.A. 18A:7G-9 for school bonds issued for school facilities projects approved by the Commissioner on or after July 18, 2000, in school districts that elect not to have the Development Authority or a redevelopment entity construct the project or that elect not to finance the project under N.J.S.A. 18A:7G-15; and the amount of State aid determined pursuant to N.J.S.A. 18A:7G-10 for school bonds or certificates of participation issued for school facilities projects approved by the Commissioner prior to July 18, 2000.

"State debt service aid percentage" means the district aid percentage or 40 percent, whichever is greater.

"State share" means as set forth in N.J.S.A. 18A:7G-3.

"State support" means the State share or State debt service aid.

"Temporary facility" means a facility used for educating students on a temporary basis while awaiting completion of a school facilities project that will permanently house students. It also means:

1. A facility reviewed and approved by the executive county superintendent and/or the Division as substandard prior to June 7, 2004, and a facility approved by the Division, as a temporary facility under the rules in effect on or after that date;
2. A facility not planned or constructed as a permanent school facility that is rented, leased, or otherwise acquired by a school district or a private school for the disabled for use by public school students; and
3. A temporary classroom unit, self-propelled van or other mobile unit, whether or not installed on a school district-owned school site.

"Total costs" means the final eligible costs plus excess costs, if any, for a school facilities project to be constructed by the Development Authority or a redevelopment entity or financed pursuant to N.J.S.A. 18A:7G-15; the total cost of the project as determined by the school district for a school facilities project not to be constructed by the Development Authority or a redevelopment entity or financed pursuant to N.J.S.A. 18A:7G-15, and the total costs of an other capital project as determined by the school district.

"Type I school district" means a school district established in a city, pursuant to N.J.S.A. 18A:9-2, where board members are appointed by the municipality, and where the governing body of the municipality issues school bonds for school district capital projects, pursuant to N.J.S.A. 18A:22-20 and 18A:24-11.

"Type II school district" means a school district established in a municipality other than a city, every consolidated school district, and every regional school district, pursuant to N.J.S.A. 18A:9-3, where board members are elected or appointed by the municipality, as applicable, and where the district board of education issues school bonds for school district capital projects in a school district without a board of school estimate, pursuant to N.J.S.A. 18A:24-12.

"Uniform Construction Code" or "UCC" means N.J.A.C. 5:23.

"Unhoused students" means the number of students in excess of the functional capacity of a school facility calculated pursuant to N.J.A.C. 6A:26-2.2(c).

"Useful life" means the applicable recovery period for depreciation purposes determined under Section 168 of the Internal Revenue Code of 1986, 26 U.S.C. § 168 as amended and supplemented, and the applicable regulations.

Amended by R.2004 d.214, effective June 7, 2004.  
See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

Rewrote the section.

Amended by R.2007 d.81, effective March 19, 2007.  
See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

Inserted "school" preceding "district" throughout; in definition "District", inserted "or 'school district'"; in definitions "District aid percentage" and "Excluded space", inserted "school" preceding "district's"; in definition "District factor grouping", substituted "School districts" for "Districts"; deleted definition "Early Childhood Education Program Expectations: Standards of Quality"; rewrote definitions "Facility" and "Facilities efficiency standards"; in definitions "Final eligible costs", "FTE", "Other capital projects" paragraph 2, "State debt service aid" and "State share", inserted "school" preceding "districts"; added definition "Preschool Teaching and Learning Expectations: Standards of Quality"; in definition "Temporary facility" paragraph 3, inserted "school" preceding "district-owned"; and in definition "Type II school district", inserted "of education".

Amended by R.2013 d.145, effective December 16, 2013.  
See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

Rewrote the introductory paragraph; rewrote definitions "Additional costs", "Additional space", "Application for State School Aid" or "ASSA", "Approved LRFP", "Area allowance per FTE student", "Area cost allowance", "Capital reserve account", "Cost index", "Debt service", "District aid percentage", "District board of education", "Division", "Educational adequacy", "Excess costs", "Excluded space", "Facilities efficiency standards", "Feasibility study", "Final eligible costs", "Final plans and specifications", "FTE", "Functional capacity", "Local funding", "Local share", "Long-range facilities plan" or "LRFP", "New construction", "Other allowable costs", "Other capital projects", "Other facilities", "Preliminary eligible costs", "Project documents", "Redevelopment entity", "Rehabilitation", "Required maintenance", "Routine maintenance", "School bonds", "School enrollment", "School facility", "School facilities project", "State debt service aid", "State share", "Temporary facility", "Total costs", "Type I school district", "Type II school district", "Unhoused students", and "Useful life"; deleted definitions "Abbott school district", "Authority", "Commissioner", "Community design feature", "Community provider", "Community provider early childhood education facilities project", "Demonstration project", "Department", "District" or "school district", "Early Childhood Program Aid" or "ECPA", "Early Childhood Program Aid district" or "ECPA school district", "Fall survey report", "Local unit", "Local unit obligations", "NJDEP", "Non-Abbott school district", "Non-authority project", "Preschool students", "Preschool Teaching and Learning Expectations: Standards of Quality", and "Programmatic model"; added definitions "Annual maintenance budget amount", "Building system", "Comprehensive Annual Financial Report" or "CAFR", "Comprehensive maintenance plan",



"County vocational school district", "Development Authority", "Grant cycle", "Maintenance reserve fund", "Priority project categories", "Quality single Accountability Continuum" or "QSAC", "Regular operating school district" or "ROD", "Replacement cost", "Room inventory", "School district", "SDA district", and "Section 15 grant"; substituted definition "Core Curriculum Content Standards" for definition "Core curriculum content standards", definition "District factor group" for definition "District factor grouping", definition "Land acquisition" for definition "Land acquisition project", definition "Lease-project agreement" for definition "Lease purchase agreement", and definition "Preconstruction activities" for definition "Pre-development activities"; and rewrote definitions "Core Curriculum Content Standards", "Land acquisition", "Lease-project agreement", and "Preconstruction activities".

Special amendment, R.2016 d.093, effective July 13, 2016 (to expire June 30, 2017).

See: 48 N.J.R. 1705(a).

Added definitions "Certified laboratory", "Drinking water outlet", and "Lead action level".

## SUBCHAPTER 2. LONG-RANGE FACILITIES PLANS

### 6A:26-2.1 Responsibilities of school district

(a) Following the approval of the 2005 LRFP, each school district shall amend its LRFP at least once every five years on software made available by the Department, and in accordance with the instructions for completing the software. For newly established school districts, the LRFP shall be submitted no later than one year following its formation or earlier if the school district seeks approval for a school facilities project. The LRFP shall detail the school district's school facilities, other facilities and temporary facilities and the school district's plan for meeting school facilities needs during the ensuing five years.

(b) Except as provided in N.J.A.C. 6A:26-3.14, no school facilities project shall be considered or approved unless the school district's LRFP has been submitted to the Department and approved by the Commissioner.

(c) Each school district shall submit its LRFP to the planning board(s) of the municipality(ies) in which the school district is situated, no later than the date the school district submits the LRFP to the Commissioner, to afford the planning board(s) the opportunity to prepare and submit findings to the school district. In the case of a regional school district, all municipalities comprising the regional school district shall be considered school districts in which the regional school district is situated for purposes of this subsection. A school district shall provide to the Division proof of the date the school district submits the LRFP to the Commissioner and to the planning board(s). The planning board(s) shall submit its findings, if any, to the Division of Administration and Finance, Office of School Facilities, PO Box 500, Trenton, New Jersey 08625-0500, within 45 days of its receipt of the LRFP. No LRFP shall be considered complete until comments have been received from the planning board(s) or until 45 days have passed from the planning boards' receipt of the LRFP. If the school district or its architect receives the

planning board findings, the findings shall be forwarded promptly to the Division at the above address.

(d) All school districts sending students to another school district to be educated pursuant to N.J.S.A. 18A:38-8 et seq. shall expeditiously provide all information necessary for the receiving school district to complete its LRFP, including, but not limited to, demographic information necessary to prepare enrollment projections. Both sending and receiving school districts must submit a LRFP. If a send-receive relationship is terminated pursuant to N.J.S.A. 18A:38-21, both the sending and receiving school district shall promptly submit an amended LRFP.

(e) If one or more member school districts withdraw from a regional school district operating pursuant to N.J.S.A. 18A:13-1 et seq., or the regional school district dissolves pursuant to N.J.S.A. 18A:13-51 et seq., all such withdrawing school districts and the regional school district, if applicable, shall submit an amended LRFP.

(f) At any time, a school district may submit an amendment to an approved LRFP for review and approval by the Commissioner.

(g) A school district's approved LRFP shall remain in effect until an amended LRFP is approved.

Amended by R.2001 d.367, effective October 1, 2001.

See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

Rewrote the section.

Amended by R.2004 d.214, effective June 7, 2004.

See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

In (a), substituted "Department" for "Commissioner" throughout; in (b), inserted "the Department" following "submitted to"; in (c), substituted "Division" for "Commissioner" throughout, rewrote the third sentence and added a fifth; rewrote (g).

Amended by R.2007 d.81, effective March 19, 2007.

See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

Section was "Responsibilities of district". Inserted "school" preceding "district", "districts" and "district's" throughout.

Amended by R.2013 d.145, effective December 16, 2013.

See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

Rewrote the section.

### 6A:26-2.2 Completion of long-range facilities plans

(a) Each LRFP shall include:

1. Enrollment projections for the school district for the five years covered by the plan, by grade level, as set forth in the Fall Survey Report for grades K through 12 and the ASSA for preschool programs, and utilizing enrollment figures as of October 15 of the previous year as the base enrollment figures. Students enrolled in the school district who are attending charter schools, students attending the schools of the school district pursuant to the school choice program, and students enrolled in the school district but attending private schools for the disabled shall be separately identified in enrollment projections, and shall be excluded from the calculation of the number of unhoused students pursuant to (b) below.

i. The enrollment figures shall be certified by a qualified demographer;

ii. The resume and any other professional credentials relied upon by the school district to demonstrate that the person who prepared the enrollment projection possesses adequate experience to be considered a qualified demographer shall be submitted as part of the school district's LRFP. Adequate experience shall include preparation of enrollment reports and projections on behalf of school districts, both in fulfillment of statutory or regulatory obligations and for other purposes. School district employees, such as the chief administrator and school business administrator, as well as persons hired by a school district may, if they possess the requisite experience, serve as a qualified demographer;

iii. Projections shall be for the five ensuing years utilizing a cohort survival method, shall utilize pertinent live births of residents of the community provided by the New Jersey Department of Health and Senior Services and shall include enrollment trends for the previous five years as set forth in the previous six Fall Survey Reports or ASSA, as appropriate;

iv. Where a school district does not believe a five-year projection utilizing a cohort survival method will

accurately predict future enrollment, the school district shall submit additional data and justification for consideration by the Commissioner;

v. A school district shall adjust enrollment projections to account for significant numbers of students who are attending charter schools; and

vi. ECPA school districts shall make appropriate adjustments to enrollment projections for preschool children based on the history of the actual enrollments in those programs and consistent with the school district's approved ECPA plan;

2. The functional capacity of every school facility in the school district, listed separately by facility and grade level, including an inventory of all spaces in each facility;

3. An inventory of every school facility, other facility and temporary facility in the school district.

i. If a school district shares or leases facilities or any portion thereof, either as a lessor or lessee, all such spaces shall be included in its LRFP.

ii. All facilities, or portions thereof, owned by a school district that are leased or otherwise conveyed to

1. In the case of an emergent project, the LRFP may be amended as provided in N.J.A.C. 6A:26-3.14(e).

2. In the case of a school facilities project requiring amendment to the school district's applicable approved room inventory in the approved LRFP, approval of the school facilities project shall require the prior approval of an amended room inventory. If amending the room inventory would affect the capacity of one or more of the school district's school facilities, the school district shall fully document the impact of amending the room inventory on each school facility in the school district, and Division review and approval of the LRFP amendment shall be required prior to Division approval of the school facilities project.

3. In the case of a school district seeking to amend its LRFP involving capital maintenance, the school district shall amend its LRFP by submitting an amendment request and updating the Department's software to:

- i. Identify the building system or systems affected by the project;
- ii. Revise building system conditions to reflect deficiencies;
- iii. Indicate the deficient quantity and unit costs for the deficient system; and
- iv. Commit the deficiency to a proposed project.

4. Prior to approval of a project that is inconsistent with a school district's approved LRFP and that affects the capacity of one or more of its school facilities, or the total number or grade alignment of school facilities in the school district, a school district shall amend its LRFP to fully document the project's impact on each facility. The Division shall review and approve the LRFP amendment according to this section prior to the Division's approval of the project.

(d) Notwithstanding any provision of this chapter to the contrary, if at any time the number of LRFPs pending before the Commissioner for review exceeds 20 percent of the total number of operating school districts in the State, the Commissioner may extend by 60 days the deadline for reviewing each plan then before him or her. The Commissioner shall notify in writing each affected school district of the extension. No LRFP shall be considered to be pending before the Commissioner for review until a school district is notified by the Commissioner that the plan is complete.

(e) Any school district that has an approved LRFP may begin undertaking feasibility studies for new construction identified pursuant to (b)6 above, site acquisition, development, remediation and design work, and acquire temporary facilities, provided that such activities are consistent with its approved LRFP and this chapter. For school districts required to use the Development Authority, the activities also shall be

undertaken under the auspices of the Development Authority and in accordance with N.J.S.A. 18A:7G-5 and this chapter.

Amended by R.2001 d.367, effective October 1, 2001.

See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

Rewrote the section.

Amended by R.2004 d.214, effective June 7, 2004.

See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

In (a), added a new 4 and recodified former 4 through 12 as 5 through 13, in new 8, substituted "which may not be eligible" for "and not eligible"; rewrote (c).

Amended by R.2007 d.81, effective March 19, 2007.

See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

Inserted "school" preceding "district" and "district's" throughout; in (d)1, substituted "programs required pursuant to State or Federal law or regulation" for "the required programs, including programs approved pursuant to N.J.A.C. 6:19-3, 6:19-4, 6A:24-3 and 6A:24-5,"; in (d)2i and (d)2ii, substituted "out-of-school-district" for "out-of-district"; and in (g) and (h), inserted "school" preceding "districts".

Amended by R.2013 d.145, effective December 16, 2013.

See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

Rewrote the section.

#### 6A:26-2.4 (Reserved)

Repealed by R.2001 d.367, effective October 1, 2001.

See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

Section was "Appeals of Commissioner's determinations".

### SUBCHAPTER 3. CAPITAL PROJECT REVIEW

#### 6A:26-3.1 Initiation of a capital project

(a) All capital projects shall be undertaken in accordance with this subchapter.

(b) School facilities projects shall be reviewed in accordance with N.J.A.C. 6A:26-3.2 and 3.3; land acquisition projects shall be reviewed in accordance with N.J.A.C. 6A:26-3.9 or 3.13 and 6A:26-7, as applicable; and other capital projects shall be reviewed in accordance with N.J.A.C. 6A:26-3.12.

(c) Project documents for school facilities projects and other capital projects shall be reviewed by the Division and approved for compliance with the requirements of N.J.A.C. 6A:26-5 as applicable.

(d) Project documents for school facilities projects and other capital projects that involve the acquisition of land shall be reviewed for compliance with the requirements of N.J.A.C. 6A:26-7.

(e) The Division shall review each capital project to determine whether the project is consistent with the school district's approved LRFP and whether it complies with the applicable room inventory in the approved LRFP, if any.

Amended by R.2001 d.367, effective October 1, 2001.

See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

In (b), updated N.J.A.C. references; and added (c) through (e).



Amended by R.2007 d.81, effective March 19, 2007.

See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

In (e), inserted "school".

Amended by R.2013 d.145, effective December 16, 2013.

See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

In (a), deleted the first sentence; in (c), deleted "may be" preceding "applicable"; in (d), substituted "of" for "at"; and in (e), substituted "room inventory" for "programmatic model".

### 6A:26-3.2 School facilities projects

(a) Any school district seeking to initiate a school facilities project shall apply to the Division on a Commissioner-provided form for approval of the school facilities project. School facilities projects include:

1. New construction;
2. Rehabilitation, provided that the rehabilitation or capital maintenance consists of the entire building system in the same school facility building section, as building section is defined in the approved LRFP, unless one or more of the components of a mechanical, electrical, or plumbing building system is required for the continued operation of such system;
3. Acquisition of existing buildings to accommodate unhoused students;
4. Furnishings, fixtures, and equipment, but they shall be eligible for State support only as follows:
  - i. Furnishings with a useful life of 10 years or greater when part of a school facilities project is either new construction or rehabilitation and also qualified as reconstruction. The cost of furnishings shall not exceed the cost of the item if purchased through a State contract, if applicable. For purposes of this subsection, reconstruction is to be defined in accordance with the UCC, N.J.A.C. 5:23-6.3;
  - ii. Fixtures when part of a school facilities project;
  - iii. Equipment with a useful life of 10 years or greater either consisting of a school facilities project when it is an integral and substantial part of a building system in a school facility or when part of a school facilities project. The cost of equipment shall not exceed the cost of the item if purchased through a State contract, if applicable. Operating equipment such as vacuums, snowblowers, and floor polishers, along with repairs to such items shall be ineligible for State support;
  - iv. Air conditioning equipment with a useful life of 10 years or greater either consisting of a school facilities project when it is an integral and substantial part of a building system or when part of a school facilities project. If the school facilities project consists of new construction, the air conditioning system shall be eligible for State support to the extent that it is included in the area cost allowance. If the school facilities project consists of rehabilitation that includes the replacement of an existing air conditioning system, the replacement shall

be eligible for State support provided that it is for the entire building air conditioning system in the same school facility building section, as building section is defined in the approved LRFP, unless one or more of the components of that building system are required for the continued operation of such system. If the school facilities project consists of rehabilitation that includes the installation of a new air conditioning system, the new system shall be eligible for State support if it is for the entire building air conditioning system in the same school facility building section and for instructional spaces (excluding industrial shops) and/or for occupied non-instructional spaces (excluding kitchens and locker rooms). To the extent that a new air conditioning system is for unoccupied non-instructional spaces, such as utility rooms and storage rooms, except for spaces that accommodate heat- and humidity-sensitive equipment, it will not be eligible for State support; and

v. Technology electronic systems recommended by the "Facilities Standards for Technology in New Jersey Schools" and the "Working Toward the Future With Our Children" educational technology plan for New Jersey, or subsequent State educational technology standards for New Jersey schools, when part of a school facilities project which is either new construction or rehabilitation that also qualifies as reconstruction as defined in the UCC, N.J.A.C. 5:23-6.3; and

5. The rehabilitation of a multi-purpose physical education field(s) and, for pre-school-through-grade-five school facilities, a playground with playground equipment when required to support the Core Curriculum Content Standards as defined by the number of physical education teaching stations applicable to the school facility pursuant to the facilities efficiency standards and the approved programmatic model. A new multi-purpose physical education field or playground, including playground equipment is eligible for State support, within the area cost allowance only when part of a school facilities project consisting of new construction for unhoused students.

(b) An application for a school facilities project shall contain the following information:

1. All information set forth in N.J.A.C. 6A:26-5.2 and 5.3 if the project is subject to educational adequacy review and, if not, any drawings or narrative relating to the project from a New Jersey licensed architect or professional engineer, if applicable, and, if the school facilities project includes the acquisition of land, N.J.A.C. 6A:26-7.1;
2. Necessary updates to the enrollment projections in the school district's approved LRFP to support the project;
3. A delineation and description of each of the functional components of the school facilities project;
4. The number of unhoused students to be housed in the school facilities project;

5. The minimum area allowances per FTE student as calculated pursuant to this chapter;

6. A narrative description of the school facilities project on a form prescribed by the Commissioner, including an itemized breakdown of estimated actual costs and quantities by area for new construction, rehabilitation and acquisition of existing buildings;

7. Identification of the site for new construction, if any;

8. Identification and description of any spaces that exceed the facilities efficiency standards for which the school district received approval pursuant to the approved LRFP or is seeking approval as additional space pursuant to N.J.A.C. 6A:26-3.3;

9. A complete room inventory of the spaces contained in the building;

10. A feasibility study for all new construction in lieu of rehabilitation;

11. Identification of the programmatic model from the school district's approved LRFP and supporting documentation to confirm that the school facilities project conforms to the programmatic model;

12. The tier the school district proposes for each school facilities project in accordance with N.J.S.A. 18A:7G-5(m);

13. A resolution of the district board of education authorizing the submission of the application to the Division;

14. A certification from the chief school administrator and the school business administrator that the school district has not advertised or awarded a construction or purchase contract for the school facilities project and that the school facilities project has not been completed; and

15. Any additional information that a school district deems relevant for the Commissioner's review of the school facilities project.

(c) Where required by N.J.S.A. 40:55D-31 and 18A:18A-16, each school district shall submit applications for school facilities projects to the planning board(s) of the municipality(ies) in which the school district is situated, no later than the date the school district submits to the Division each application to afford the planning board(s) the opportunity to prepare and submit findings to the Division of Administration and Finance, Office of School Facilities, PO Box 500, Trenton, New Jersey 08625-0500. A school district shall provide to the Division proof of the date that it submits each school facilities project application to the planning board(s). The planning board(s) shall submit to the Division findings, if any, within 45 days of its receipt of each project application from a school district required to use the Development Authority, and has an additional 10 days to file with the Division notice of recommendations against approval of the project. No school facilities project application shall be

considered complete until comments have been received from the planning board(s) or until either 45 days or 55 days, as applicable, have passed from the planning board's receipt of each school facilities project application, whichever is earlier. If the school district or its architect receives the planning board findings, it shall be forwarded promptly to the Division at the above address.

(d) A school district shall not initiate a school facilities project without an approved LRFP.

Amended by R.2001 d.367, effective October 1, 2001.

See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

In (a)4, rewrote i; in (b), rewrote 6 and inserted "district" preceding "board" in 13; in (c), inserted N.J.S.A. reference in the first sentence and inserted "or boards" in the second and third sentences; deleted (e); and updated N.J.A.C. references throughout.

Amended by R.2004 d.214, effective June 7, 2004.

See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

Rewrote the section.

Amended by R.2007 d.81, effective March 19, 2007.

See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

Inserted "school" preceding "district" throughout; in (b)2 and (b)11, inserted "school" preceding "district's"; and in (c), inserted "school" preceding "districts".

Amended by R.2013 d.145, effective December 16, 2013.

See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

In the introductory paragraph of (a), deleted "on a form provided by the Commissioner," following "shall", and inserted "on a Commissioner-provided form"; in the introductory paragraph of (a)4, inserted a comma following "fixtures"; in (a)4i, deleted "which" following "project", and substituted "and" for "that", "purchased" for "purchase", and "in accordance with" for "as defined in"; in (a)4iv, deleted "gymnasiums and" following "excluding", inserted "except for spaces that accommodate heat- and humidity-sensitive equipment, and substituted "State" for "state"; in (a)5, substituted "pre-school-through-grade-five" for "pre-school through grade five", inserted a comma following "field or playground", and deleted a comma following "allowance"; rewrote (c); and in (d), substituted "A" for "Except as provided in N.J.A.C. 6A:26-3.16, a".

### 6A:26-3.3 Review and approval of school facilities projects

(a) After receipt of a school facilities project application, the Division shall assess the application and determine whether it is fully and accurately completed and all necessary information has been filed by the school district or the Development Authority on behalf of the school district. All information in N.J.A.C. 6A:26-3.2(b) must be provided to the Division before a school facilities project application shall be considered fully and accurately completed and the application shall be reviewed to determine whether it conforms to the school district's approved LRFP and whether it complies with the applicable programmatic model in the approved LRFP, if any, or the facilities efficiency standards. If a school facilities project application is determined to be incomplete, the Division shall inform the school district by listing in writing all deficiencies in the application and missing required information. After all required information is received and a school facilities project application is determined complete, the Division shall notify in writing the school district that the school facilities project application is deemed complete. In the case of a Development authority schools facility project,

preconstruction activities shall be conducted prior to the application being deemed complete.

(b) After approval of the LRFP, within 90 days of receipt of a complete school facilities project application, or from the date of the school district's last revision to the project application, whichever is later, the Division shall review each application to determine whether the school facilities project is consistent with the school district's approved LRFP and whether it complies with the applicable room inventory in the approved LRFP, if any, or the facilities efficiency standards. If unable to make a decision within the 90 days, the Division shall notify the school district, explaining in writing the reason for the delay and indicating the date by which a decision shall be made. The decision date shall be no later than 60 days from the expiration of the original 90 days. If a decision is not made by the subsequent date established, the school facilities project shall be deemed approved.

(c) When the Division determines that a school facilities project complies with the requirements of N.J.A.C. 6A:26-5.1 through 5.3, and is consistent with the facilities efficiency standards or the applicable room inventory in the school district's approved LRFP, if any, and does not exceed the standards or the applicable room inventory approved in the LRFP, except for spaces for which the school district is not seeking State support, the Division shall approve the school facilities project, provide a final determination of the preliminary eligible costs pursuant to the formulas set forth in N.J.S.A. 18A:7G-1 et seq. and N.J.A.C. 6A:26-3.4, and shall notify in writing the school district of the approval and preliminary eligible costs.

(d) The Division shall notify the school district if it determines that a school facilities project is inconsistent with the facilities efficiency standards or the applicable room inventory in the approved LRFP. Within 30 days of the notification, the school district shall advise the Division of its determination to do one of the following:

1. Revise its school facilities project and re-submit it for review by the Division;
2. Make a request for additional space eligible for State support;
3. Locally fund any excess costs, or
4. Seek a waiver as set forth in (i) below.

(e) The Division shall approve requests for additional or inconsistent space eligible for State support if the school district demonstrates that:

1. School facility needs related to programs required pursuant to State or Federal law or regulation cannot be addressed within the facilities efficiency standards and that all other spaces are consistent with the standards;
2. Such spaces are necessary to comply with Federal or State laws concerning educating students with disabilities

to the greatest extent possible in the same building or classes with their non-disabled peers and the additional or inconsistent spaces will:

- i. Allow for the return of students with disabilities from out-of-school-district facilities;
- ii. Permit the retention of students with disabilities who would otherwise be placed in out of school district facilities;
- iii. Provide space for regional programs in a host school building that houses both disabled and non-disabled students; or
- iv. Provide space for the coordination of regional programs by a county special services school district, educational services commission, jointure commission or other agency authorized by law to provide regional special education services, in a school facility that houses both disabled and non-disabled students;

3. Such spaces are necessary to house the school district's central administration and:

- i. The proposed administrative offices will be housed in a school facility;
- ii. The existing central administrative offices are obsolete or it is more practical to convert those offices to instructional space; and
- iii. The space sought does not exceed an increase of the approved areas for unhoused students of 2.17 square feet for each FTE student in the projected total school district school enrollment.

(f) Spaces approved pursuant to (e) above shall be aided pursuant to N.J.S.A. 18A:7G-5(g)(4).

(g) When reviewing requests by SDA districts for additional space, the Commissioner shall, in accordance with *Abbott v. Burke*, 153 N.J. 480 (1998) (Abbott V), afford deference to a school district's determination that specialized instructional rooms are necessary based on the school district's particular needs.

(h) If a request for additional space is determined to be eligible for State support, the applicable room inventory in the school district's approved LRFP shall be deemed amended. If the Division does not approve a request for additional space, it shall be deemed ineligible for State support unless and until the Division's decision is reversed on appeal.

(i) The Division shall not approve any school facilities project for new construction or rehabilitation that is not consistent with the facilities efficiency standards or the applicable room inventory in the approved LRFP unless the school district demonstrates that waiver of the standard(s) will not adversely affect the facility's educational adequacy, including the ability to deliver the programs and services

necessary to enable all students to achieve the Core Curriculum Content Standards. If the Division approves a waiver, the applicable room inventory in the school district's approved LRFP shall be deemed amended. If the Division does not approve a waiver request, the school district shall conform the school facilities project to the facilities efficiency standards and resubmit the project.

(j) School facilities projects that comprise new construction shall receive approval for State support only if necessary for reasons of unhoused students.

(k) A school facilities project that consists of rehabilitation shall be approved only if it will keep the school facility functional for its original purpose or for a new purpose and if it can be accomplished without increasing the gross square footage of the original facility but shall not include any routine maintenance or required maintenance. The Division may approve rehabilitation projects that include elevators, egress, and other modifications to school facilities to render them compliant with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., the UCC, N.J.S.A. 52:27D-119 et seq. or other State and Federal requirements, even if the gross square footage of the building is thereby increased to complete the school facilities project.

(l) All school facilities shall be deemed suitable for rehabilitation unless a feasibility study undertaken by the school district demonstrates to the Division's satisfaction that the structure might pose a risk to the safety of the occupants even after rehabilitation, or that rehabilitation is not cost-effective. Whenever a school district initiates a school facilities project for new construction in lieu of rehabilitation, the school district shall submit a feasibility study as part of the school facilities project application supporting its determination that it would be more feasible to replace rather than rehabilitate the school facility because of health and safety or efficiency. The feasibility study shall consist of:

1. Estimated costs of repairing the existing school facility and providing upgrades and additions required to make the school facility educationally adequate. The estimated costs of a rehabilitation project shall contain only the costs necessary for compliance with the UCC, health and safety, and educational adequacy as determined pursuant to N.J.A.C. 6A:26-5 and N.J.S.A. 18A:7G-5.g(1);

2. Estimated costs of replacing the existing school facility, including site acquisition, if required, and disposal of the existing site and school facility; and

3. Estimated costs of all extraordinary factors, including off-site improvements, environmental remediation and temporary facilities.

(m) When a school district demonstrates to the Division's satisfaction that replacement is more feasible than rehabilitation and the proposed school facilities project is otherwise approvable, the Division shall approve the school

facility project for new construction in lieu of rehabilitation, and the preliminary eligible costs shall be determined pursuant to N.J.A.C. 6A:26-3.4(a).

(n) When a school district does not demonstrate to the Division's satisfaction that replacement is more feasible than rehabilitation, the Division may approve the school facilities project if all other requirements are met, but the preliminary eligible costs shall be determined in accordance with N.J.A.C. 6A:26-3.4(b).

(o) If the Division determines that the preliminary eligible costs of a rehabilitation project, as determined pursuant to N.J.A.C. 6A:26-3.4(b), appear so excessive as to make rehabilitation an unreasonable option, it may direct the school district to conduct a study comparing cost and other factors associated with the rehabilitation versus new construction. If the Division determines that rehabilitation is an unreasonable option based on the comparison, the school district shall either re-submit the project as new construction or preliminary and final eligible costs shall be determined pursuant to N.J.A.C. 6A:26-3.4(a) if the school district determines to continue with the rehabilitation project.

(p) Upon approval of a school facilities project and determination of the preliminary eligible costs pursuant to N.J.A.C. 6A:26-3.4, the Division shall notify the school district that the school facilities project has been approved and of the preliminary eligible costs, excess costs, and additional costs, if any.

Amended by R.2001 d.367, effective October 1, 2001.

See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

Rewrote the section.

Amended by R.2004 d.214, effective June 7, 2004.

See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

In (e)1, inserted N.J.A.C. reference; in (p), inserted "and additional costs" following "excess costs" and "via a resolution of the district board of education" following "shall notify the Division".

Amended by R.2007 d.81, effective March 19, 2007.

See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

Inserted "school" preceding "district" and "district's" throughout; in (e)1, substituted "programs required pursuant to State or Federal law or regulation" for "the required programs, including programs approved pursuant to N.J.A.C. 6:19-3, 6:19-4, 6A:24-3 and 6A:24-5, or equivalent rules in effect at N.J.A.C. 6A:10-3 and 4"; and in (g), inserted "school" preceding "districts".

Amended by R.2013 d.145, effective December 16, 2013.

See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

Rewrote the section.

#### **6A:26-3.4 Calculation of preliminary eligible costs for school facilities projects**

(a) Upon approval of a completed school facilities project application, preliminary eligible costs for new construction, new construction in lieu of rehabilitation approved pursuant to N.J.A.C. 6A:26-3.3, and purchase of an existing facility to be utilized as a school facility shall be calculated as follows:

Preliminary eligible costs = AU x C

Where

AU is the approved area for unhoused students; and

C is the area cost allowance.

(b) Preliminary eligible costs for rehabilitation or new construction in lieu of rehabilitation that is not approved pursuant to N.J.A.C. 6A:26-3.3 shall equal reasonable estimated actual costs as calculated on a form prescribed by the Commissioner, which shall include, but not be limited to:

1. Specific unit costs and quantities;
2. Other allowable costs;
3. The costs to render a school facility energy efficient;
4. The costs to render a school facility compliant with the UCC;
5. The costs to ensure that a school facility meets health and safety standards; and
6. The costs to ensure that the school facility meets educational adequacy as determined pursuant to the facilities efficiency standards and N.J.A.C. 6A:26-5.

(c) The reasonableness of estimated actual costs under (b) above shall be determined in accordance with industry standards.

(d) Notwithstanding (a) and (b) above, preliminary eligible costs for new construction and rehabilitation of a purchased facility within five years of purchase shall be determined as follows:

Preliminary eligible costs =  $(ACP - PC) \times (C \div CP)$

where

ACP is the preliminary eligible costs for the facilities purchased pursuant to (a) above;

PC is the purchase cost for the facility;

C is the area cost allowance at the time of application for the school facilities project; and

CP is the area cost allowance at the time of purchase of the facility.

Preliminary eligible costs so calculated shall not be less than zero.

(e) For school facilities projects deemed approved pursuant to N.J.A.C. 6A:26-3.3(b), preliminary eligible costs for new construction shall be calculated by using the proposed square footage of the school facility as the approved area for unhoused students, and for rehabilitation shall be the reasonable estimated costs of the rehabilitation.

(f) Notwithstanding anything to the contrary, preliminary eligible costs for school facilities projects of county vocational school districts and of special services school districts shall equal the amount determined by the board of school estimate and approved by the board of chosen freeholders pursuant to N.J.S.A. 18A:46-42 or 18A:54-31, as appropriate.

(g) Notwithstanding anything to the contrary, preliminary eligible costs for Development Authority school facilities projects shall equal the amount determined by the Development Authority pursuant to N.J.S.A. 18A:7G-5.

Amended by R.2001 d.367, effective October 1, 2001.

See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

Rewrote (b) as (b) and (c); recodified former (c) through (e) as (d) through (f); and updated N.J.A.C. references throughout.

Amended by R.2007 d.81, effective March 19, 2007.

See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

In (f), inserted "school" preceding "districts" two times.

Amended by R.2013 d.145, effective December 16, 2013.

See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

In (a), substituted "Upon approval of a completed school facilities project application, preliminary" for "Preliminary", and inserted a comma following "N.J.A.C. 6A:26-3.3"; in the introductory paragraph of (b), substituted "as" for a comma following "actual costs"; in (b)4, substituted "UCC" for "Uniform Construction Code"; in (e), substituted "deemed approved" for "deemed approved"; in (f), substituted "county vocational" for "vocational education", inserted "of" preceding "special", and deleted "N.J.S.A." preceding "18A:54-31"; and added (g).

### 6A:26-3.5 Determination of final eligible costs for Authority school facilities projects

(a) School facilities projects of SDA districts shall be constructed by the Development Authority.

(b) After approving a project that shall be constructed by the Development Authority and calculating the preliminary eligible costs, the Division shall promptly prepare and submit to the Development Authority a preliminary project report that shall consist, in addition to any other information deemed relevant by the Commissioner, of the following information:

1. A complete description of the school facilities project;
2. The actual location of the school facilities project;
3. The total square footage of the school facilities project together with a breakdown of total square footage by functional component;
4. The preliminary eligible costs of the school facilities project;
5. The project's priority ranking determined pursuant to N.J.S.A. 18A:7G-5(m);
6. Any other factors to be considered by the Development Authority in undertaking the school facilities project; and
7. The name, address, and phone number of the person from the school district to contact concerning the school facilities project.

(c) If the Development Authority determines that a school facilities project can be completed within the preliminary eligible costs based on detailed plans and specifications, the final eligible costs shall be deemed to equal the preliminary eligible costs pursuant to EFCFA and the preliminary project report shall be deemed to be the final project report delivered to the Development Authority pursuant to N.J.S.A. 18A:7G-5(j).

(d) In the event that the Development Authority determines that a school facilities project cannot be completed within the preliminary eligible costs, prior to the submission



of its recommendations to the Commissioner, the Development Authority shall consult with the school district and the Commissioner and determine whether changes can be made to the school facilities project that will result in a reduction in costs while meeting the requirements of educational adequacy.

1. When the Commissioner is notified by the Development Authority that the Development Authority has determined that changes in the school facilities project are possible so the project can be accomplished within the scope of the preliminary eligible costs while still conforming to the facilities efficiency standards, the Division shall:

- i. Calculate the final eligible costs to equal the preliminary eligible costs; and
- ii. Issue a final project report to the Development Authority in accordance with (h) below.

2. When the Development Authority has determined it is not possible to make changes in a school facilities project so it can be completed within the preliminary eligible costs either because the additional costs are the result of factors outside the control of the school district or because the additional costs are required to meet educational-adequacy requirements, the Development Authority will recommend to the Commissioner that the preliminary eligible costs be increased accordingly, whereupon the Division shall:

- i. Calculate the final eligible costs to equal the sum of the preliminary eligible costs plus the increase recommended by the Development Authority; and
- ii. Issue a final project report in accordance with (h) below.

3. When the Development Authority has determined the additional costs are the result of factors within the school district's control or of design factors that are not required to meet the facilities efficiency standards, the Development Authority shall recommend to the Commissioner that the preliminary eligible costs be accepted, whereupon the Division shall:

- i. Calculate the final eligible costs to equal the preliminary eligible costs unless the preliminary eligible costs are determined to be insufficient to meet the educational needs of the school district, in which case preliminary eligible costs shall be adjusted upward as appropriate, and specify the excess costs that shall be borne by the school district; and
- ii. Issue a final project report to the Development Authority in accordance with (h) below.

(e) For any school facility project to be constructed by the Development Authority in which the State share of final eligible costs is 100 percent, the Development Authority may delay the request for a determination of final eligible costs

until receipt of the construction bids by the Development Authority.

(f) After receipt by the Development Authority of a final project report, the school district shall be responsible only for the local share identified in the report, cost overruns relating to excess costs, if any, and the costs associated with changes, if any, made at the request of the school district to the scope of the school facilities project. If a school district fails to obtain approval of the local share within one year of the determination of the final eligible costs, the Development Authority may redetermine final eligible costs and forward them to the Commissioner for approval. If the Development Authority elects to re-determine final eligible costs, the school district shall not seek or obtain approval of the local share until the final eligible costs are re-determined.

(g) The Development Authority shall not commence the acquisition or construction of a school facilities project until the Division transmits to the Development Authority a final project report except as provided in N.J.A.C. 6A:26-3.9.

(h) The final project report shall contain all of the information contained in the preliminary project report and also shall contain:

1. The final eligible costs;
2. The excess costs, if any;
3. The total costs, which equal the final eligible costs plus excess costs, if any;
4. The State share of the final eligible costs; and
5. The local share of the total costs.

Amended by R.2001 d.367, effective October 1, 2001.

See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

In (b), inserted reference to State share; in (g), added last two sentences; in (i)4, substituted "final eligible" for "total"; and updated N.J.A.C. references throughout.

Amended by R.2004 d.214, effective June 7, 2004.

See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

In (d), deleted "the Commissioner shall be deemed to have given final approval to the project" following "eligible costs"; in (e), deleted ii and recodified former iii as ii in 1 through 3; in (g), inserted "cost overruns related to excess costs, if any," in the first sentence; added (j). Amended by R.2007 d.81, effective March 19, 2007.

See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

Inserted "school" preceding "district" throughout; in (a), inserted "school" preceding "districts" three times; in (h), deleted "and 3.10" from the end; and rewrote (j).

Amended by R.2013 d.145, effective December 16, 2013.

See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

Rewrote the section.

#### **6A:26-3.6 Determination of final eligible costs for ROD school facilities projects**

(a) Prior to a determination of final eligible costs, a school district that is not using the Development Authority for construction of a school facilities project may appeal to the Commissioner for an increase in the preliminary eligible costs that were approved pursuant to N.J.A.C. 6A:26-3.3 if the

detailed plans and specifications prepared in accordance with N.J.A.C. 6A:26-5.4 by a licensed architect or engineer for the school facilities project indicate that the cost of constructing the portion of the school facilities project approved for State support exceeds by 10 percent or more the preliminary eligible costs for the project as determined by the Commissioner. The school district shall file its appeal within 30 days of the preparation of the detailed plans and specifications.

(b) The appeal shall outline the reasons why the preliminary eligible costs calculated for the school facilities project are inadequate, provide documentation to support such reasons, and estimate the amount of the adjustment that needs to be made to the preliminary eligible costs. Upon a determination that the appeal information is complete, the Commissioner shall forward the appeal information to the Development Authority for its review and recommendation.

(c) The Commissioner shall make a determination on the appeal within 30 days after receipt of the Development Authority's recommendation. If the Commissioner does not approve the adjustment to the preliminary eligible costs sought by the school district, the Commissioner shall issue in writing his or her findings setting forth the reasons for the denial and why the preliminary eligible costs as originally calculated, or an adjustment to the preliminary eligible costs that is smaller than sought by the school district, is sufficient.

(d) A school district that decides not to appeal the determination of preliminary eligible costs may request, at any time after approval of the school facilities project and determination of preliminary eligible costs, that the Commissioner determine final eligible costs for the project.

(e) Final eligible costs for the school facilities project shall be determined as follows:

1. The preliminary eligible costs shall become the final eligible costs if a school district does not appeal or unsuccessfully appeals the determination of preliminary eligible costs.

2. The final eligible costs shall be the preliminary eligible costs as adjusted by the Commissioner if a school district successfully appeals the determination of preliminary eligible costs pursuant to (b) above. In no case shall the adjustment to preliminary eligible costs be more than 10 percent.

(f) Following the determination of final eligible costs, the Division shall notify in writing the school district of the following:

1. The final eligible costs;
2. The total costs;
3. The State share or State debt service aid percentage;
4. The local share, if applicable;
5. Excess costs, if any; and

6. Additional costs, if any.

(g) A school district shall not seek approval of the local share or the total costs of a school facilities project receiving State debt service aid through a bond referendum for the school facilities project until the Division has notified the school district of the final eligible costs for the project. A school district may seek approval of the estimated local share in its annual budget prior to a determination of final eligible costs. If the local share estimate in the annual budget is less than the actual local share, the school district shall proceed in accordance with N.J.A.C. 6A:26-4. A school district may seek approval of local share utilizing capital reserve pursuant to N.J.A.C. 6A:23A-14.

Amended by R.2001 d.367, effective October 1, 2001.

See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

In (a), updated N.J.A.C. references; in (c), added "after receipt of the Authority's recommendation" in the first sentence; and rewrote (f) and (g).

Amended by R.2004 d.214, effective June 7, 2004.

See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

In (f), inserted ", if any, and" at the end of 5 and added 6.

Amended by R.2007 d.81, effective March 19, 2007.

See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

Inserted "school" preceding "district" throughout.

Amended by R.2013 d.145, effective December 16, 2013.

See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

Section was "Determination of final eligible costs for nonauthority school facilities projects". Rewrote the section.

#### **6A:26-3.7 Local support of school facilities projects**

(a) No school facilities project shall be constructed unless local support, if any, plus other local revenue sources utilized to fund the total costs of a school facilities project receiving State debt service aid has received approval as set forth in this section. School districts shall notify the Commissioner and executive county superintendent when approval is obtained, and, if applicable, provide each the schedule for issuance of school bonds. School districts shall also notify the executive county superintendent of the issuance of school bonds within 30 days of their issuance.

(b) If the Development Authority is constructing the school facilities project, the school district shall provide to the Development Authority funds for 100 percent of the ineligible costs of the project in accordance with the rules of the Development Authority.

(c) If the school district determines to issue school bonds to fund all or any part of the local support, the school district shall proceed in accordance with (e), (f), or (g) below, as applicable. If the school district determines to fund the entire local support through a means other than school bonds, it shall obtain approval of necessary line-items in the budget, obtain separate voter or board-of-school-estimate approval of the expenditure of local support, make withdrawals from capital reserve in accordance with N.J.A.C. 6A:23A-14. A school district may fund the local support for additions or improvements to an existing school facility or equipment through a lease-purchase agreement not in excess of five

1. The Division shall approve a school facilities project for an emergent condition only after an on-site inspection, the county superintendent of schools, in consultation with the Division, certifies that an emergent condition exists.

2. If the existence of the emergent condition has been certified pursuant to (e)1 above, the school facilities project application shall be forwarded to the Division for review, pursuant to N.J.A.C. 6A:26-3.3(a) through (o), on an expedited basis. The expedited basis shall include Division acceptance of school district submission of the school facilities project application or a predevelopment request in the case of Authority managed projects, within 45 days of the date of such submission. If the emergent condition was not included in the school district's approved LRFP, the school district shall request an amendment to its LRFP as part of the project application and amend its LRFP within 45 days of such submission. The scope of work contained in the application shall be limited to those actions determined by the Division to be reasonable considering the emergent condition and the capital projects in the school district's approved LRFP.

3. Preliminary eligible costs and final eligible costs for the school facilities project shall be determined consistent with this chapter.

(f) If a school district determines that an emergent condition exists after undertaking an emergency stabilization, and the emergent project is an other capital project, the school district shall submit the information required by N.J.A.C. 6A:26-3.11, and the Division shall perform all required reviews on an expedited basis. The scope of work contained in the application shall be limited to those actions determined by the Division to be reasonable considering the emergent condition and the capital projects in the school district's approved LRFP.

New Rule, R.2001 d.367, effective October 1, 2001.

See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

Amended by R.2004 d.214, effective June 7, 2004.

See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

Rewrote (a), (c) and (e).

Amended by R.2007 d.81, effective March 19, 2007.

See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

Inserted "school" preceding "district" and "district's" throughout.

Recodified from N.J.A.C. 6A:26-3.16 and amended by R.2013 d.145, effective December 16, 2013.

See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

Section was "Emergency stabilization and emergent projects". In (b)1, deleted "and render the facility safe and fit for occupancy" following "emergency"; and in (c), substituted the third occurrence of "projects" for "project". Former N.J.A.C. 6A:26-3.14, Review, approval, and use of temporary facilities, recodified to N.J.A.C. 6A:26-3.13.

#### **6A:26-3.15 Insurance, damages awards, gifts, grants, other private sources of funds, and municipal surplus**

(a) School districts shall insure all insurable property, real or personal, in accordance with N.J.S.A. 18A:20-25.

(b) Insurance proceeds and damages awards received by a school district shall be applied as follows: if the school dis-

trict applies for approval of a school facilities project involving a facility for which there are insurance proceeds or a damages award, the insurance proceeds and/or damages award shall be applied to reduce the amount of State support as follows:

1. For locally constructed school facilities projects for which a school district elects to receive a State share pursuant to N.J.S.A. 18A:7G-15, the State share amount shall be reduced in the following manner:

i. Calculate the percentage of total project costs that would be funded by the State pursuant to N.J.A.C. 6A:26-3.8 if no insurance proceeds and/or damages award were received by the school district;

ii. Multiply the percentage by the amount of insurance proceeds and/or damages award to which the school district is entitled, minus any amount that would exceed the eligible costs of the project; and

iii. Reduce the State share by the amount determined in step ii.

2. For Development Authority-constructed school facilities projects with a local share, the local share shall be adjusted in the following manner:

i. Calculate the percentage of total costs that would be funded by local share if no insurance proceeds and/or damages award were received by the school district;

ii. Reduce the total costs by the amount of insurance proceeds and/or damages award to which the school district is entitled minus any amount that would exceed the eligible costs of the project;

iii. Multiply the local share percentage determined in (b)2i above by the amount determined in (b)2ii above; and

iv. Add the amount of insurance proceeds and/or damages award to the revised local share amount determined in (b)2iii above. The amount determined in this subparagraph shall be provided to the Development Authority before it undertakes a school facilities project.

3. For Development Authority-constructed school facilities projects without a local share, the State share shall be adjusted in the following manner:

i. Reduce the State share by the amount of insurance proceeds and/or damages award to which the school district is entitled; and

ii. The amount determined in (b)3i above shall be provided to the Development Authority before it undertakes a school facilities project.

4. For locally constructed school facilities projects for which a school district elects to receive State debt service aid pursuant to N.J.S.A. 18A:7G-9, the school district shall issue bonds only for the amount of the total projects costs minus the insurance proceeds and/or damages award.

i. If the bonds have already been issued, the insurance proceeds and/or damages award should be used to

reduce the outstanding principal amount at the earliest call date or to annually reduce the amount of debt service payment. The calculation of State debt service aid shall be made from the reduced amount.

(c) Gifts, grants, other private sources, and/or municipal surplus received by a school district shall be applied as follows: if the school district applies for approval of a school facilities project that will also receive funding through any of the above sources, such source of revenue shall be applied to the local share of the project, and may be applied to reduce the State support only if a Development Authority-constructed school facilities project does not have a local share, or for school facilities projects with a local share, the source of revenue exceeds the local share and, by its terms, may only be used for the school facilities project, in which case State share shall be reduced by the amount of the excess over local share.

1. For locally constructed school facilities projects for which a school district elects to receive a State share pursuant to N.J.S.A. 18A:7G-15, and the revenue source exceeds the local share and, by its terms, may only be used for the school facilities project, such excess shall be applied to the State share of the project and reduce the amount of the grant before a disbursement is made.

2. For locally constructed school facilities projects for which a school district elects to receive State debt service aid pursuant to N.J.S.A. 18A:7G-9, the school district shall issue bonds only for the amount of the total project costs, minus the revenue source.

3. For Development Authority-constructed school facilities projects with a local share, the revenue source shall be applied toward the local share, and that amount shall be provided to the Development Authority before it undertakes the school facilities project, along with any amount in excess of the local share that by the terms of the revenue source must be used for the school facilities project, which shall be applied to reduce the amount of State share.

4. For Development-Authority-constructed school facilities projects without a local share, the revenue source shall be applied to reduce the amount of State share only if the terms of the revenue source require that it be used for the school facilities project, in which case that amount shall be provided to the Development Authority before it undertakes the school facilities project.

*The following annotations apply to N.J.A.C. 6A:26-3.15 prior to its repeal by R.2013 d.145:*

Amended by R.2001 d.367, effective October 1, 2001.

See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

In (b), inserted "district" preceding "board"; in (e), substituted N.J.S.A. reference for EFCFA reference in the third sentence; and in (f), updated N.J.A.C. references and inserted reference to the Commissioner's rules to be adopted.

Amended by R.2004 d.214, effective June 7, 2004.

See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

Rewrote (b); in (f), amended the N.J.S.A. reference.

Amended by R.2007 d.81, effective March 19, 2007.

See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

Inserted "school" preceding "districts" and "district" throughout; and in (f), substituted "and" for a comma preceding "12".

*The following annotations apply to N.J.A.C. 6A:26-3.15 subsequent to its recodification from N.J.A.C. 6A:26-3.17 by R.2013 d.145:*

New Rule, R.2001 d.367, effective October 1, 2001.

See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

Amended by R.2004 d.214, effective June 7, 2004.

See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

Rewrote (b); added (c).

Amended by R.2007 d.81, effective March 19, 2007.

See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

Inserted "school" preceding "district" throughout; and in (a), substituted "School districts" for "Districts".

Recodified from N.J.A.C. 6A:26-3.17 and amended by R.2013 d.145, effective December 16, 2013.

See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

Rewrote the section. Former N.J.A.C. 6A:26-3.15, Demonstration projects, repealed.

#### **6A:26-3.16 (Reserved)**

Recodified to N.J.A.C. 6A:26-3.14 by R.2013 d.145, effective December 16, 2013.

See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

Section was "Emergency stabilization and emergent projects".

#### **6A:26-3.17 (Reserved)**

Recodified to N.J.A.C. 6A:26-3.15 by R.2013 d.145, effective December 16, 2013.

See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

Section was "Insurance, damages awards, gifts, grants, other private sources of funds, and municipal surplus".

### **SUBCHAPTER 4. MANAGEMENT OF CAPITAL PROJECTS**

#### **6A:26-4.1 Capital projects fund**

(a) All revenues and appropriations related to school facilities projects receiving funding pursuant to EFCFA and this chapter, and to other capital projects that utilize revenue sources identified in (b) below, shall be accounted for in the capital-projects fund defined in N.J.A.C. 6A:23A-1.2.

(b) The source of revenue in the capital-projects fund includes the:

1. Sale of school bonds;
2. Issuance of temporary notes or loan bonds pursuant to N.J.S.A. 18A:24-3;
3. Issuance of certificates of participation for a lease-purchase agreement greater than five years approved prior to EFCFA;
4. Grants received pursuant to N.J.S.A. 18A:7G-15; and
5. All revenue sources identified in the referendum or resolution authorizing the issuance of school bonds pursuant to N.J.A.C. 6A:26-3.7 and 3.12.

(c) The revenue source in the capital-projects fund also shall include capital-reserve withdrawals and other local revenues to fund the local share of a school facilities project not utilizing school bonds pursuant to N.J.A.C. 6A:26-3.7(c).

- i. The original contract amount and funds allocated to each contract in the overall project;
- ii. All payments made to date;
- iii. All change orders approved and pending to date;
- iv. The percentage of the project that is completed, and the percentage of the contract cost remaining; and
- v. The funds available to complete the project, including all change orders that were executed or are pending.

4. For change orders that must be approved by the Division pursuant to (a)2 above, the school district shall file with the Division the following:

- i. Two copies of the change-order request indicating in detail the scope of the change order and the basis upon which the proposed change order may be approved pursuant to this subchapter;
- ii. A certification of the availability of funds per (a)3 above; and
- iii. A certification that no other solution is possible when a proposed change order affects the final eligible costs of a school facilities project, and that no excess scopes are proposed for inclusion in the project in lieu of the final eligible costs.

(b) Upon receipt of all materials required in (a) above, the Division shall promptly undertake its review and determine whether a proposed change order is necessary. If approved, a copy of the change order request marked "Approved" by the Division shall be sent to the school district.

(c) When the aggregate value of change orders undertaken pursuant to (a)1 above exceeds 20 percent of the total contract-award amount or the total project cost, necessitating Division approval pursuant to (a)2iii above, the school district shall submit on a form prescribed by the Commissioner and certified by the district board of education secretary a summary of each change order approved, the justification for each change order, and the change in the contract amount.

Amended by R.2004 d.214, effective June 7, 2004.

See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

In (a), deleted the N.J.A.C. reference in the introductory paragraph.

Amended by R.2007 d.81, effective March 19, 2007.

See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

Inserted "school" preceding "district" throughout.

Amended by R.2013 d.145, effective December 16, 2013.

See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

Section was "Submission of change orders for non-Authority projects". Rewrote the section.

#### **6A:26-4.10 Change orders for Development Authority school facilities projects**

(a) For projects constructed by the Development Authority, only change orders that affect the approved number, size, configuration, location, or use of educational space shall be submitted to the Division for review and approval.

(b) The Development Authority shall submit to the Division periodic reports on each project being constructed under its auspices, indicating the contract-award amounts, the nature and scope of each approved change order, the revised project amounts, and the total costs of change orders approved to date.

Amended by R.2013 d.145, effective December 16, 2013.

See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

Section was "Change orders for Authority school facilities projects". In (a) and (b), inserted "Development"; in (a), inserted a comma following "location"; and in (b), substituted "shall" for "will" and "contract-award" for "contract award", and inserted a comma following "amounts".

### **SUBCHAPTER 5. REVIEW OF CAPITAL PROJECTS FOR EDUCATIONAL ADEQUACY**

#### **6A:26-5.1 General provisions**

(a) All capital projects that affect any of the following criteria for educational adequacy shall be reviewed and approved by the Division according to this subchapter. The criteria are the number, configuration, size, location, or use of educational spaces within a school facility. The review for educational adequacy shall take into consideration the suitability of the number, configuration, size, location, and use of educational spaces; built-in furniture and equipment; and provisions for the disabled. Capital projects that involve the following types of building construction work shall be approved for educational adequacy:

1. New school facilities including pre-fabricated facilities;
2. Additions to existing school facilities;
3. Alterations to the total number, dimension in volume and/or area, configuration or location of educational spaces or the number of any one kind of educational space; and
4. Installation of temporary facilities.

(b) Both Development Authority and ROD school facilities projects, along with other capital projects, shall be subject to educational adequacy reviews. The review process and types of documents subject to review will differ somewhat depending on whether the project is a school facilities project or other capital project, and, if a school facilities project, on whether it is a Development Authority project or a ROD project.

1. For a Development Authority school facilities project, the Development Authority on behalf of the school district shall apply for the review and approval for educational adequacy in conjunction with the application for approval of a school facilities project pursuant to N.J.A.C. 6A:26-3. The application shall be made prior to the review and approval of capital projects for compliance with the UCC, N.J.A.C. 5:23, by the Division of Codes and



Standards in the Department of Community Affairs, and prior to local share authorization. The educational-adequacy review shall cover the following types of project documents: educational specifications; schematic plans and related documents; detailed plans and specifications; and final plans and specifications. The educational specifications, schematic plans, and related documents shall be submitted by the Development Authority on behalf of the school district at the time of project application. Detailed and final plans and specifications shall be forwarded to the Division by the Development Authority after project approval but prior to the Division determination of final eligible costs and Department of Community Affairs review for UCC compliance.

2. For a ROD school facilities project, school districts shall apply for the review and approval for education adequacy in conjunction with the application for approval of a school facilities project. The educational-adequacy review shall cover the following types of documents: educational specifications, schematic plans and related documents, and final plans and specifications. The educational specifications, schematic plans, and related documents shall be submitted by the school district at the time of project application. Final plans and specifications shall be submitted by the school district after project approval but prior to the UCC-compliance review.

3. For an other capital project, school districts shall apply for the review and approval for educational adequacy in conjunction with the application for the Division review for consistency with the school district's approved LRFP. The educational adequacy review shall cover educational specifications, schematic plans and related documents, and final plans and specifications. The educational specifications, schematic plans, and related documents shall be submitted by the school district at the time the project is reviewed for consistency with the school district's approved LRFP. Final plans and specifications shall be submitted by the school district after the consistency review but prior to the UCC-compliance review.

(c) The executive county superintendent shall approve any change of use of instructional space that is not a capital project.

Amended by R.2004 d.214, effective June 7, 2004.

See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

In (a), deleted 4 and 6 and recodified former 5 as 4; rewrote (b).

Amended by R.2007 d.81, effective March 19, 2007.

See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

Inserted "school" preceding "district" throughout; in (b)2 and (b)3, inserted "school" preceding "districts"; and in (b)3, inserted "school" preceding "district's" two times.

Amended by R.2013 d.145, effective December 16, 2013.

See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

Rewrote the section.

## 6A:26-5.2 Educational specifications

(a) Submissions of educational specifications for educational-adequacy reviews shall include the following:

1. Details of the educational program activities and requirements for each space proposed in the capital project, and shall refer to the Core Curriculum Content Standards wherever appropriate;

2. An itemized list of furniture, equipment, and support spaces required to conduct the educational program specified for each space, together with their net areas in square feet, as well as the net of the total room area required for each space;

3. Specific technical and environmental criteria, adjacencies, and other requirements for the educational program; and

4. A building-space program that indicates the number and net area in square feet of each instructional, specialized instructional, administrative, and support space in each existing or proposed building included in the capital project and/or the temporary facility.

Amended by R.2004 d.214, effective June 7, 2004.

See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

In (a), substituted references to net for references to estimate in 2, and inserted "net" following "the number and" and "and/or the temporary facility" at the end of 4.

Amended by R.2013 d.145, effective December 16, 2013.

See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

In the introductory paragraph of (a), substituted "educational-adequacy" for "educational adequacy"; in (a)1, substituted "Details of" for "Educational specifications shall be prepared in writing describing in detail"; in (a)2, deleted "shall be included" following the first occurrence of "space"; in (a)3, inserted a comma following "adjacencies", and deleted "shall be noted" following "program"; and in (a)4, substituted "A building-space" for "Educational specifications shall contain a building space", and inserted a comma following "administrative".

## 6A:26-5.3 Schematic plans and other related project documents

(a) Submission of schematic plans for educational adequacy reviews shall include the following:

1. Four sets of schematic plans showing the entire existing and proposed building drawn to a scale of not less than 1/16 inch per foot. The approved use of each space, the proposed number of occupants, and the net square feet area, shall be clearly labeled on all existing and proposed spaces;

2. Layouts of the built-in and moveable furniture and equipment for examples of all occupied spaces drawn to a scale of not less than 1/8 inch per foot;

3. Information required to demonstrate compliance with the Facility Planning Standards at N.J.A.C. 6A:26-6, including dimensions, clearances, ceiling heights, and required equipment;

4. Paths of travel for disabled persons;

5. A completed plot plan when site work is required, including the intended location of the school and a layout of the locations of all other structures, multi-purpose physical education fields, playgrounds, walkways, road-

ii. A statement from a local or county sewerage agency certifying that:

(1) The land can be adequately provided with the necessary and acceptable sewage disposal system for the proposed maximum enrollment, as evidenced, for example, by consistency with the locally approved wastewater management plan; and

(2) Sewer infrastructure is, or is not, in place to service the site. If such infrastructure is not in place, adequate documentation from a professional engineer or licensed geologist to demonstrate that soil and groundwater conditions are suitable for a septic system or discharge to groundwater; and

iii. Recommendations from the New Jersey Department of Environmental Protection (NJDEP) that there are no substantial reasons why the land acquisition should not proceed within 45 days of its receipt of an environmental site report submitted by the school district or the Development Authority on behalf of the school district addressing the items below, or evidence that 45 days have passed since the NJDEP's receipt of the environmental site report, whichever is earlier:

- (1) A sewer service consistency determination;
- (2) Potable water supply;
- (3) Coastal and freshwater wetlands;
- (4) Green Acres land;
- (5) Stream encroachment;
- (6) Historical or archeological resources;
- (7) Endangered plant species;
- (8) Threatened or endangered animal species; and
- (9) An environmental site assessment to determine whether there is potential contamination on the land, submitted on a form provided by the Department.

4. The following shall be submitted by the school district:

i. Recommendations of the planning board of the municipality in which the land is situated, and that has an approved master plan as required by N.J.S.A. 40:55D-31 and 18A:18A-16, or evidence that the applicable 45 or 55 days have passed, whichever is earlier, from the planning board's receipt of the land acquisition application. The recommendations shall be sent to the Division of Administration and Finance, Office of School Facilities, PO Box 500, Trenton, NJ 08625-0500, and forwarded promptly to the Division at the above address if received by the school district or its architect;

ii. The recommendation of the executive county superintendent based on the requirements specified in this subchapter; and

iii. Prior approvals of other agencies, such as the New Jersey Department of Agriculture, NJDEP, and the Pinelands Commission, where such approval is reasonably obtainable prior to acquisition.

(c) A school district that intends to acquire land not in connection with a school facilities project shall submit all of the information required under (b) above except (b)1ii and iii, and shall further be excepted from the requirements of (d) and (e) below. If the school district later intends to change the use of the land and use as a school site, the school district shall be required to submit all of the information required under this section and the aforementioned exceptions shall no longer apply.

(d) School site sizes shall be directly related to the acreage required for the structures and activities to be situated thereon. Except where specifically noted for multiple or shared use, the acreage shall be considered for single use.

(e) All school sites shall have sufficient acreage for the following:

1. The placement of the school facility;
2. Expansion of the building to its maximum potential enrollment;
3. The placement of all other structures, such as greenhouses; storage buildings; school-bus maintenance buildings or garages; and any other above- or below-ground structure that is to be placed thereon;
4. Multi-purpose physical education field(s) and, for preschool-through-grade-five school facilities, a playground required to support the achievement of the Core Curriculum Content Standards as defined by the number of physical education teaching stations applicable to the school facility pursuant to the facilities efficiency standards and the approved programmatic model;
5. Disabled-accessible pedestrian walkways, roadways and parking areas on which people and vehicles access the building;
6. Public- and service-access roads onto the site including, where warranted, a one-way school-bus road of 30-foot width and a two-way road of 36-foot width; a school bus drop-off area; and 18-foot-wide posted fire lanes for fire apparatus; and
7. A 30-foot-wide access around the entire building.

(f) Land owned by a district board of education that does not meet the standards of this section may be supplemented by adjacent municipally-owned land if it is formally leased on a long-term basis to the district board of education for

exclusive use during school hours and there are no deed restrictions that prohibit school district use.

(g) The Division's approval shall remain effective for three years, after which time Division approval shall again be required to be obtained prior to acquiring the land.

Amended by R.2004 d.214, effective June 7, 2004.

See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

Rewrote the section.

Amended by R.2007 d.81, effective March 19, 2007.

See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

Inserted "school" preceding "district" throughout; in (b)1i, inserted "school" preceding "district's"; in (b)1vi, inserted "school" preceding "district-owned" two times; and in (f), inserted "board of" preceding "education".

Amended by R.2013 d.145, effective December 16, 2013.

See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

Rewrote the section.

### **6A:26-7.2 Approval of the acquisition of land in certain school districts under the Development Authority's auspices**

The Development Authority may acquire land on behalf of a school district eligible for 100 percent State support of final eligible costs for school facilities projects that are consistent with the school district's approved LRFP. For such school districts, the Department shall require submission of all information set forth in N.J.A.C. 6A:26-7.1(b) to demonstrate compliance with this subchapter. The Development Authority may submit the required information on behalf of such school districts.

Amended by R.2007 d.81, effective March 19, 2007.

See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

Section was "Approval of the acquisition of land in certain districts under the auspices of the Authority". Inserted "school" preceding "district", "districts" and "district's" throughout.

Amended by R.2013 d.145, effective December 16, 2013.

See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

Section was "Approval of the acquisition of land in certain school districts under the auspices of the Authority". Inserted "Development" twice, deleted a comma following "costs", and substituted "the" for "such" and "shall require" for "requires".

### **6A:26-7.3 Approval for the acquisition of existing facilities**

(a) A district board of education planning to acquire an existing facility through purchase, gift, lease, or otherwise shall comply with all procedures and rules pertaining to the appropriation and use of capital funds as required by N.J.S.A. 18A:20-4 and 4.2. The school district shall also have the facility approved in accordance with N.J.A.C. 6A:26-3, which applies to the acquisition of a school site and for the construction of a new facility.

(b) Facilities to be procured for temporary use shall comply with N.J.A.C. 6A:26-8 if subject to educational-adequacy review pursuant to N.J.A.C. 6A:26-5.4(c) because the facilities will house students.

Amended by R.2004 d.214, effective June 7, 2004.

See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

Rewrote (b).

Amended by R.2013 d.145, effective December 16, 2013.

See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

In (a), substituted "an" for "any" and ". The school district" for "and" following "4.2", and inserted a comma following "lease" and following "6A:26-3"; and in (b), deleted "which are" following "Facilities" and "Temporary School Facilities" following "6A:26-8", and substituted "shall" for "must" and "educational-adequacy" for "educational adequacy".

### **6A:26-7.4 Approval for the disposal of land, including rights or interest therein, or improvements thereon**

(a) The school district shall make to the Division a written request for school district-owned land to be altered or disposed of through sale, transfer, or exchange of all or part of the total acreage, including rights or interest therein and/or improvements thereon, such as facilities, if applicable.

1. A copy of the request shall be sent by the school district to the executive county superintendent, who shall make recommendations to the Division. The executive county superintendent shall provide to the district board of education a copy of the recommendations.

2. The request shall indicate whether the school district intends to convey the site, rights or interest therein, and/or improvements thereon under an exception to the public sale requirements per N.J.S.A. 18A:20-6.

3. The request shall indicate whether the school district intends to convey the site, rights, or interest therein, and/or improvements thereon that had been conveyed to the school district from the Development Authority or funded in whole or in part by State share under EFCFA.

4. If the land, rights, or interest therein, and/or improvements thereon have been conveyed to the school district from the Development Authority, the request shall provide evidence acceptable to the Department that the property has not reverted to the Development Authority as authorized under N.J.A.C. 19:34-3.6.

5. If a school district seeks to dispose of land, rights, or interest therein, and/or improvements thereon funded in part with debt service aid pursuant N.J.S.A. 18A:7G-9 or 10, and the land and/or improvements are either not needed or not being used for the purposes for which the bonds were issued, any proceeds from the disposal shall be used by the school district first to reduce the outstanding principal amount at the earliest call date or to annually reduce the debt-service principal payments. A district board of education may request approval from the Commissioner to apply the proceeds over the term of the outstanding debt or by some other distribution mechanism if, for example, it is beneficial to stabilizing the school district's debt-service tax levy.

(b) The Division shall determine whether the disposal is consistent with the school district's approved LRFP or has a negative impact on the educational adequacy of an individual site.

(c) The Division shall notify the school district of its approval or disapproval and send a copy to the executive county superintendent. If the disposal includes a site, rights, or interest therein and/or improvements thereon conveyed to the school district from the Development Authority, is funded in whole or in part by State share under EFCFA, or is in a school district that is required to use the Development Authority, the Division shall also notify the Development Authority.

(d) A school district may convey and transfer, without consideration, its right, title, and interest in and to any trunk or other sewer lines to a municipality, pursuant to N.J.S.A. 18A:20-9.1 without requiring approval from the Division.

Amended by R.2004 d.214, effective June 7, 2004.

See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

Rewrote the section.

Amended by R.2007 d.81, effective March 19, 2007.

See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

Inserted "school" preceding "district" throughout; in the introductory paragraph of (a), inserted "school" preceding "district-owned"; and in (a)5 and (b), inserted "school" preceding "district's".

Amended by R.2013 d.145, effective December 16, 2013.

See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

Rewrote (a) through (c); and in (d), deleted "of said conveyance" following "approval".

(d) The Division shall notify in writing the school district of its determination with respect to the requested school closing, with a copy provided to the executive county superintendent.

Amended by R.2004 d.214, effective June 7, 2004.

See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

Rewrote (a); added a new (b); recodified former (b) as (c); and added (d).

Amended by R.2007 d.81, effective March 19, 2007.

See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

Inserted "school" preceding "district" throughout; and in (a)1, inserted "school" preceding "district's".

Amended by R.2013 d.145, effective December 16, 2013.

See: 45 N.J.R. 1026(a), 45 N.J.R. 2557(a).

In the introductory paragraph of (a), inserted "executive"; rewrote (a)1i; in (a)1ii, deleted "through a feasibility study" preceding "has" and inserted "through a feasibility study" following "demonstrated"; in (a)3, substituted "or" for "nor"; in (b), substituted "school closing" for "closing of a school", "of" for "to", and inserted "executive"; in (c), deleted a comma following "Division", and substituted "shall be" for "is" and "school's closing" for "closing of a school"; and in (d), inserted "in writing" following "notify", deleted "in writing" following "determination", and inserted "provided" and "executive".

#### 6A:26-7.5 Approval for the closing of a school facility

(a) To receive approval for the closing of a school, the district board of education shall provide the Division and the executive county superintendent with the following assurances:

1. The proposed closing is consistent with the school district's approved LRFP because:

- i. The school district has demonstrated that sufficient school-building capacity exists to house students for the five years following the closing; or

- ii. The school district has demonstrated through a feasibility study that the benefits of undertaking new construction outweigh those of rehabilitating the school proposed for closure.

2. The use of temporary facilities in the remaining schools does not result or increase from an overall facilities shortage caused by the school closing; and

3. The re-assignment of students to other schools in the school district does not produce, sustain, or contribute to unlawful segregation, separation, or isolation of student populations on the basis of race or national origin.

(b) A request for approval from the Division for the school closing shall include the recommendation of the executive county superintendent.

(c) A letter of approval from the Division based on the information in (a) above shall be required before the school's closing.

### SUBCHAPTER 8. TEMPORARY SCHOOL FACILITIES

#### 6A:26-8.1 Temporary facilities standards

(a) This subchapter sets forth the standards that apply to temporary facilities, whether included as part of a school facilities project, funded as an other capital project, or provided by an approved private school for the disabled. It addresses the applicability of the facilities efficiency standards to temporary facilities, compliance monitoring by the county superintendent of schools, budgeting for deficiencies, and the construction and design standards for a variety of types of temporary facilities, such as leased buildings and pre-manufactured temporary classroom units. Any temporary facility to be used as a school shall comply with the applicable requirements of the UCC, evidenced by a valid certificate of occupancy for the use. If the building currently is not classified as Group E pursuant to the UCC, then it is to comply with the UCC requirements for a change of use at N.J.A.C. 5:23-6.31. If the building is a school that predates the UCC, then it shall comply with the applicable requirements of the Uniform Fire Code.

(b) When considering educational adequacy, the Division and the executive county superintendent shall apply the minimum-square-foot standards permitted under the facilities efficiency standards. If a district board of education or approved private school for the disabled seeks relief from the minimum-square-foot requirements of the facilities efficiency standards, relief shall be determined upon application to the Division under the procedures for requesting an exception set forth in N.J.A.C. 6A:26-6.2.

(c) Executive county superintendents shall annually monitor the temporary facilities of school districts and approved private schools for the disabled for compliance with the

standards in this subchapter. District boards of education or approved private schools for the disabled shall provide funds in the next immediate annual budget to correct deficiencies about which they are notified by the executive county superintendent on or before October 1 annually. If the correction of the deficiencies is part of a school facilities project and eligible for the State share, State share shall be applied to meet this budgetary requirement. Failure to budget for the correction of deficiencies and to implement the corrections by the next September 1 following the October 1 notice shall result in the executive county superintendent, in consultation with the Division, ordering that the facility be abandoned immediately.

(d) In making a determination about an application for the use of temporary facilities, the following factors shall be taken into account:

1. Accommodations of students in temporary spaces in an existing public school, in other school-district-owned facilities or in rented or leased buildings not on a school-district-owned site shall comply with the following:

i. Safety factors:

(1) The floors, walls, and ceilings of rooms used for instruction shall be free of moisture, peeling paint, and potentially hazardous materials;

(2) The hardware on doors of any space occupied by students shall permit egress from the room at all times. Key-operated locks, thumb-turn locks, hasps or similar types of locking devices shall not be permitted;

(3) Instructional room doors opening into the corridor shall have vision panels;

(4) Directions for exiting from the building in case of emergency shall be posted in each space by the exit;

(5) Concrete floors in all instructional areas, except shops, shall be covered with a resilient floor covering;

(6) All educational spaces shall be equipped with a telephone connected to the main office and capable of emergency communication to local authorities. Such communication system may be in the form of a telephone system capable of placing 9-1-1 calls; and

(7) Provision shall be made for storage of students' clothing in other than a corridor or exitway.

ii. The average ceiling height shall be at least eight feet for instructional spaces in temporary facilities in an existing public school, in a school-district-owned facility, and in rented or leased buildings not on school-district-owned sites.

iii. Heating and ventilation requirements shall be as set forth in N.J.A.C. 6A:26-6.3 and the UCC;

iv. Toilet facilities shall meet existing UCC requirements for the E Use Group as determined by the construction official. Toilet facilities shall be available within a reasonable distance not more than one floor away, and shall be equipped with an exterior operable window sash or mechanical exhaust ventilation. Toilet facilities shall be provided for students in preschool and kindergarten programs as per N.J.A.C. 6A:26-6.3 and/or 6.4;

v. Potable water shall be available and drinking fountains shall be provided for students in preschool and kindergarten programs in accordance with N.J.A.C. 5:23-7;

vi. At least 50 footcandles of uniformly distributed artificial illumination shall be provided in all instructional areas;

vii. Furniture and equipment that is in good condition and suitable for the age and size of the students and purposes of instruction shall be provided;

viii. Instruction:

(1) Chalkboard, or other appropriate writing surface, and a display board suitable for the instructional program shall be provided; and

(2) Sufficient electrical duplex outlets shall be provided to satisfy the program needs as provided in N.J.A.C. 6A:26-6.3; and

ix. The outside physical education area for students shall include, but not be limited to, sufficient space, equipment, and safe surfaces for the temporary facility enrollment and program needs and be protected from hazards or traffic conditions.

2. Pre-manufactured temporary classroom units, vans, and other mobile units shall comply with the following:

i. Pre-manufactured temporary classroom units shall be reviewed and approved by the Division for educational adequacy pursuant to N.J.A.C. 6A:26-5.4(c). The Department of Community Affairs or the local construction official shall review and approve the installation and shall issue the certificate of occupancy. Each pre-manufactured temporary classroom unit shall:

(1) Have a seal affixed by the manufacturer that indicates it meets the requirements for construction and certification of industrialized/modular buildings for educational use at N.J.A.C. 5:23-4A;

(2) Contain square footage appropriate to its use as specified in this chapter;

(3) Meet code requirements for educational facilities as specified in the UCC and in N.J.A.C. 6A:26-6.3 and 6.4, to the extent the latter code requirements are applicable to temporary facilities;