

CHAPTER 23A**EDUCATIONAL FACILITIES: CAPITAL PROJECT REVIEW; APPLICATIONS FOR RETROACTIVE FUNDING OF PROJECTS; COUNTY VOCATIONAL SCHOOL DISTRICT FACILITIES REHABILITATION FUND; CAPITAL RESERVE ACCOUNTS; STATE SCHOOL FACILITIES DOCUMENTS; APPEALS****Authority**

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Chapter 23A, Educational Facilities: Capital Project Review; Applications for Retroactive Funding of Projects; County Vocational School District Facilities Rehabilitation Fund; Capital Reserve Accounts; State School Facilities Documents; Appeals, was adopted as new rules by R.2001 d.70, effective January 26, 2001. See: Source and Effective Date.

CHAPTER TABLE OF CONTENTS**SUBCHAPTER 1. GENERAL PROVISIONS**

- 6:23A-1.1 Purpose and applicability
- 6:23A-1.2 Definitions

SUBCHAPTER 2. CAPITAL PROJECT REVIEW

- 6:23A-2.1 Initiation of a capital project
- 6:23A-2.2 School facilities projects
- 6:23A-2.3 Review and approval of school facilities projects
- 6:23A-2.4 Calculation of preliminary eligible costs for school facilities projects
- 6:23A-2.5 Determination of final eligible costs for authority school facilities projects
- 6:23A-2.6 Determination of final eligible costs for non-authority school facilities projects
- 6:23A-2.7 Local support of school facilities projects
- 6:23A-2.8 Determination of State support for school facilities projects
- 6:23A-2.9 Design and construction of Authority school facilities projects
- 6:23A-2.10 Design and construction of non-authority school facilities projects
- 6:23A-2.11 ECPA district community early childhood education facilities projects
- 6:23A-2.12 Initiation of other capital projects
- 6:23A-2.13 Acquisition of land by districts for non-authority school facilities projects
- 6:23A-2.14 Use of temporary facilities
- 6:23A-2.15 Demonstration projects

SUBCHAPTER 3. APPLICATIONS FOR RETROACTIVE FUNDING OF PROJECTS

- 6:23A-3.1 General provisions

SUBCHAPTER 4. COUNTY VOCATIONAL SCHOOL DISTRICT FACILITIES REHABILITATION FUND

- 6:23A-4.1 County vocational school district facilities rehabilitation fund
- 6:23A-4.2 Application for funds

SUBCHAPTER 5. CAPITAL RESERVE ACCOUNTS

- 6:23A-5.1 Capital reserve accounts
- 6:23A-5.2 Quality Assurance Annual Report

SUBCHAPTER 6. STATE SCHOOL FACILITIES DOCUMENTS

- 6:23A-6.1 Documents excluded from right-to-know requests

SUBCHAPTER 7. APPEALS

- 6:23A-7.1 Appeals of Commissioner's determinations

SUBCHAPTER 1. GENERAL PROVISIONS**6:23A-1.1 Purpose and applicability**

These rules are adopted by the Commissioner of the New Jersey Department of Education to implement Sections 1 through 3, 5 through 12, 57 and 58 of the Educational Facilities Construction and Financing Act (EFCFA), P.L. 2000, c.72. These rules are adopted in order 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. These rules apply to all school districts in the State, including Abbott districts. To the extent these rules are inconsistent with any other rules in Titles 6 and 6A of the New Jersey Administrative Code, these rules shall take precedence.

6:23A-1.2 Definitions

As used in this chapter, unless the context clearly indicates otherwise, the following words and terms shall have these meanings:

"Abbott district" means an Abbott district as defined in N.J.S.A. 18A:7F-3.

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

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

"Application for State School Aid (ASSA)" means the application filed by a district pursuant to N.J.S.A. 18A:7F-33, on a form issued by the Commissioner, pursuant to which the 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. 6:23 and that has been determined by the Commissioner to ensure that, over the next five years, the school facilities are educationally adequate to support 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 \$138.00 per square foot for the school year 2000-2001 and shall be inflated by an appropriate cost index for the 2001-2002 school year. The area cost allowance used in determining preliminary eligible costs of school facilities projects shall be that of the year of application for approval of the school facilities project.

"Authority" means the New Jersey Economic Development Authority established pursuant to N.J.S.A. 34:1B-1 et seq.

"Capital maintenance" means maintenance intended to extend the useful life of a school facility, including upgrades and replacements of systems, such as structure, enclosure, mechanical, plumbing and electrical systems, and can be considered to 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 the account established pursuant to N.J.A.C. 6:23A-5.

"Commissioner" means the Commissioner of Education or his or her designee.

"Community design feature" means any area, rooms, equipment, recreational area or playground included in a demonstration project which are to be used in common by students of the district and by residents of the community.

"Community provider" means a private entity which has contracted to provide early childhood education programs for an early childhood program aid (ECPA) district and which is licensed by the Department of Human Services to provide day care services pursuant to N.J.S.A. 30:5B-1 et seq. and is a tax exempt nonprofit organization.

"Community provider early childhood education facilities project" means a school facilities project consisting of one or more facilities in which early childhood education programs are provided to preschool students under contract with the ECPA district but which are owned and operated by a community provider.

"Core curriculum content standards" means the standards established pursuant to the provisions of subsection a of N.J.S.A. 18A:7F-4.

"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 regulations promulgated by the authority.

"Debt service" means and includes payments of principal and interest upon school bonds issued to finance the acquisition of school sites and the purchase or construction of school facilities, additions to school facilities, or the reconstruction, remodeling, alteration, modernization, renovation or repair of school facilities, including furnishings, equipment, architect fees and the costs of issuance of such obligations and shall include payments of principal and interest upon school bonds heretofore issued to fund or refund such obligations, and upon municipal bonds and other obligations which the Commissioner approves as having been issued for such purposes. Debt service pursuant to the provisions of N.J.S.A. 18A:58-33.22 et seq., 18A:58-33.6 et seq. and 18A:58-33.2 et seq. is excluded.

"Demonstration project" means a school facilities project selected by the State Treasurer for construction by a redevelopment entity pursuant to N.J.S.A. 18A:7G-6.

"Department" means the New Jersey Department of Education.

"District" means a local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes, a county special services school district established pursuant to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a county vocational school district established pursuant to article 3 of chapter 54 of Title 18A of the New Jersey Statutes, and a State-operated school district established pursuant to N.J.S.A. 18A:7A-34 et seq.

"District aid percentage" means the number, expressed as a percentage derived from dividing the district's actual core curriculum standards aid calculated pursuant to N.J.S.A. 18A:7F-15 available as of the date of the Commissioner's determination of preliminary eligible costs by the district's actual Thorough and Efficient (T & E) budget calculated pursuant to N.J.S.A. 18A:7F-13(d) available as of the date of the Commissioner's determination of preliminary eligible cost.

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

"District factor grouping" means an index of socioeconomic status established by the Department of Education based upon indicators available in the decennial census. 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 Division of Facilities and Transportation in the Department of Education.

"Early Childhood Education Expectations" means the Early Childhood Education Program Expectations: Standards of Quality established by the Department for early childhood education programs designed to support and prepare preschool students to meet the Core Curriculum Content Standards.

"Early Childhood Program Aid" or "ECPA" means aid provided pursuant to N.J.S.A. 18A:7F-16.

"Early Childhood Program Aid district" or "ECPA district" means a district that qualifies for early childhood program aid pursuant to N.J.S.A. 18A:7F-16.

"Educational adequacy" means an educationally adequate school facility encompassed within the facilities efficiency standards established by the Commissioner and N.J.A.C. 6:22.

"Estimated actual costs" means costs as determined pursuant to N.J.A.C. 6:23A-2.4.

"Excess costs" means the additional costs, if any, which shall be borne by the district, of a school facilities project which result from design factors that are not required to meet the facilities efficiency standards and not approved pursuant to N.J.S.A. 18A:7G-5(g) or are not authorized as community design features included in final eligible costs pursuant to N.J.S.A. 18A:7G-6(c).

"Excluded space" is an existing space not contained in the facilities efficiency standards that:

1. Delivers programs and services aligned to the Core Curriculum Content Standards;
2. Provides support services directly to students; or
3. Would, as demonstrated by the district, be structurally or fiscally impractical to convert to other uses contained in the facilities efficiency standards.

"Facility" means a school facility, temporary facility or other facility.

"Facilities efficiency standards" means the standards developed by the Commissioner pursuant to N.J.S.A. 18A:7G-4(h) and published in the New Jersey Register.

"Fall survey report" means a report prepared by each district on a form provided by the Commissioner in accordance with N.J.S.A. 18A:7A-11 setting forth enrollment and other information concerning the district.

"Feasibility study" means, for purposes of an LRFP or school facilities project, a preconstruction evaluation undertaken by a district to determine whether, because of health and safety or efficiency, it would be more feasible to replace rather than renovate a school facility.

"Final eligible costs" means, for a school facilities project to be constructed by the authority, the final eligible costs of the school facilities project as determined by the Commissioner, in consultation with the authority, pursuant to N.J.S.A. 18A:7G-5; for a demonstration project, the final eligible costs of the project as determined by the Commissioner and reviewed by the authority which may include the cost of community design features which were reviewed by the authority and approved by the State Treasurer pursuant to N.J.S.A. 18A:7G-6; and for districts whose district aid percentage is less than 55 percent and which elect not to have the authority construct a school facilities project, final eligible costs as determined pursuant to N.J.S.A. 18A:7G-5(h)(1).

"FTE" means, for purposes of a LRFP or school facilities project, a full-time equivalent student which is calculated as follows: in ECPA districts, each students in grades kindergarten through 12 shall be counted at 100 percent of the actual count of students, and each preschool student approved by the Commissioner to be served in the district shall be counted at 50 percent or 100 percent of the actual count of preschool students for an approved half-day or full-day program, respectively. In all other districts, each student in grades one through 12 shall be counted at 100 percent of the actual count of students; in the case of such districts which operate a half-day kindergarten program, each kindergarten students shall be counted at 50 percent of the actual count of kindergarten students; in the case of districts which operate a full-day kindergarten program or which currently operate a half-day kindergarten program but propose in the LRFP to build facilities to house a full-day kindergarten program, each kindergarten student shall be counted at 100 percent of the actual count of kindergarten students, and preschool students shall not be counted. In addition, each preschool handicapped child who is entitled to receive a full-time program pursuant to N.J.S.A. 18A:46-6 shall be counted at 100 percent of the actual count of these students in the district.

"Functional capacity" means the number of students that can be housed in a building in order to have a 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 building by the minimum area allowance per FTE student for the grade level students contained therein.

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

"Land acquisition project" means a project to acquire land which at the time of the Department's review is not part of a school facilities project or another capital project.

"Lease purchase payment" means and includes payment of principal and interest for lease purchase agreements in excess of five years approved pursuant to N.J.S.A. 18A:20-4.2(f) prior to the effective date of N.J.S.A. 18A:7G-1 et seq. (July 18, 2000) to finance the purchase or construction of school facilities, additions to school facilities, or the reconstruction, remodeling, alteration, modernization, renovation or repair of school facilities, including furnishings, equipment, architect fees and issuance costs. Approved lease purchase agreements in excess of five years shall be accorded the same accounting treatment as school bonds.

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

"Local share" means, in the case of a school facilities project to be constructed by the authority, the total costs less the State share as determined pursuant to N.J.S.A. 18A:7G-5; in the case of a demonstration project, the total costs less the State share as determined pursuant to N.J.S.A. 18A:7G-5 and 18A:7G-6; and in the case of a school facilities project not to be constructed by the authority, but which shall be financed pursuant to N.J.S.A. 18A:7G-15, the total costs less the State share as determined pursuant to that section.

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

"Local unit" means a county, municipality, district board of education or any other political subdivision or instrumentality authorized to construct, operate and maintain a school facilities project and to borrow money for those purposes pursuant to law.

"Local unit obligations" means school bonds, notes, re-funding bonds, refunding notes, lease obligations and all other obligations of a local unit which are issued or entered into for the purpose of paying for all or a portion of the costs of a school facilities project, including money payable to the authority.

"Long-range facilities plan" or "LRFP" means the plan required to be submitted to the Commissioner by a district pursuant to N.J.S.A. 18A:7G-4 and N.J.A.C. 6:23.

"New construction" means a school facilities project which 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 which is necessary for reasons of unhoused students.

"Non-Abbott district" means all districts not included in the definition of an Abbott district in N.J.S.A. 18A:7F-3.

"Non-authority project" means a school facilities project of a district with a district aid percentage less than 55 percent that elects not to have the authority undertake the project.

"Other allowable costs" means the cost of temporary facilities, site remediation, site development, acquisition of land or other real property interests 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, financing costs and the administrative costs of the authority or the district incurred in connection with the school facilities project.

"Other capital projects" means all projects, or portions thereof, that are not eligible for State support under EFCFA, including:

1. Capital projects for the construction or rehabilitation of other facilities;
2. Projects funded through lease purchase agreements not in excess of five years duration which are not for additions or improvements to an existing school facility;
3. Leases of school facilities;
4. Capital projects for which a district is not seeking State funds; and
5. Projects for which there are no costs eligible for State support.

"Other facilities" means athletic stadiums, grandstands, greenhouses, garages, facilities used for non-instructional or non-educational purposes, and any structure, building or facility used solely for school administration.

"Preliminary eligible costs" means the initial eligible costs of a school facilities project as calculated pursuant to the formulas set forth in N.J.S.A. 18A:7G-7, which shall be deemed to include the costs of construction and other allowable costs.

"Preschool students" means three and/or four year old children.

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

“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.

“Rehabilitation” means a school facilities project consisting of the reconstruction, remodeling, alteration, modernization or repair of a school facility, but only for the purpose of keeping the school facility functional for its original purpose or for new purposes, and which does not increase the gross square footage of the school facility.

“Required maintenance” means, for purposes of determining “M” in the formula in N.J.A.C. 6:23A-2.8, specific maintenance activities required for system warranty purposes which are approved for repairs and replacements for the purpose of keeping 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 which does not consist of routine maintenance or capital maintenance. Required maintenance is not an eligible cost of a school facilities project.

“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, and the cleaning of, or repairs and replacements to, movable furnishings or equipment. Routine maintenance is not an eligible cost of a school facilities project.

“School bonds” means, the case of a school facilities project which is to be constructed by the authority, a redevelopment entity, or a district under N.J.S.A. 18A:7G-15, bonds, notes or other obligations issued pursuant to N.J.S.A. 18A:24-1 et seq. to finance the local share; and, in the case of a school facilities project which is not to be constructed by the authority or a redevelopment entity, or financed under N.J.S.A. 18A:7G-15, bonds, notes or other obligations issued by a district to finance the total costs.

“School enrollment” means the number of FTE students who, on the last school day prior to October 16 of the current school year, are recorded in the registers of the school 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 academic purposes by a district or community provider, and facilities that physically support such structures, buildings and facilities, such as wastewater treatment facilities, power generating facilities, steam generating facilities and other central service facilities, but shall exclude other facilities as defined herein.

“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 of any other personal property necessary for, or ancillary to, any school facility, and shall include fixtures, furnishings and equipment, and shall also include, but is not limited to, site acquisition, site development, the 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 in order to meet the housing needs of unhoused students, or rehabilitation for the purpose of keeping 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 project.

“Special education services student” means a student receiving specific services pursuant to chapter 46 of Title 18A of the New Jersey Statutes and N.J.A.C. 6A:14.

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

“State share” means the State’s proportionate share of the final eligible costs of a school facilities project to be constructed by the authority as determined pursuant to N.J.S.A. 18A:7G-5; in the case of a demonstration project, the State’s proportionate share of the final eligible costs of the project as determined pursuant to N.J.S.A. 18A:7G-5 and 18A:7G-6; and in the case of a school facilities project to be financed pursuant to N.J.S.A. 18A:7G-15, the State share as determined pursuant to that section. For Abbott districts, the State share shall be 100 percent.

“State support” is the State share or State debt service aid.

"Temporary facility" means a facility used for educating students on a temporary basis.

"Total costs" means, in the case of a school facilities project which is to be constructed by the authority or a redevelopment entity or finance pursuant to N.J.S.A. 18A:7G-15, the final eligible costs plus excess costs if any; and in the case of a school facilities project which is not to be constructed by the 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 district.

"Uniform Construction Code" or "UCC" means N.J.A.C. 5:23-6.

"Unhoused students" means the number of students in excess of the functional capacity of a school facility calculated pursuant to N.J.A.C. 6:23-2.2(c).

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

SUBCHAPTER 2. CAPITAL PROJECT REVIEW

6:23A-2.1 Initiation of a capital project

(a) Capital projects include school facilities projects, other capital projects and land acquisition projects. 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. 6:23A-2.2 and 2.3; land acquisition projects shall be reviewed in accordance with N.J.A.C. 6:23A-2.9 or 2.13, as applicable; and other capital projects shall be reviewed in accordance with N.J.A.C. 6:23A-2.12.

6:23A-2.2 School facilities projects

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

1. New construction;
2. Rehabilitation;
3. Acquisition of existing buildings to accommodate unhoused students; and
4. Furnishings, fixtures and equipment, when they are included in a school facilities project, but they shall be eligible for State support only as follows:

- i. Furnishings and equipment which meet all of the criteria for capitalization as defined pursuant to N.J.A.C. 6:20-2A.5(a), when part of a school facilities project which is either new construction or "major rehabilitation." The cost of furnishings and equipment shall not exceed the cost of the item if purchased through a State contract, if applicable. For purposes of this subsection, "major rehabilitation" shall have its meaning as set forth in the UCC, N.J.A.C. 5:23-6; and
- ii. Fixtures when part of a school facilities project.

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

1. All information set forth in N.J.A.C. 6:22-1.2 and 1.4, and, if the school facilities project includes the acquisition of land, N.J.A.C. 6:22-2.1;
2. Necessary updates to the enrollment projections in the 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 a cost breakdown 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 all spaces that exceed the facilities efficiency standards for which the district received approval pursuant to the approved LRFP or is seeking approval as additional space pursuant to N.J.A.C. 6:23A-2.3;
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 district's approved LRFP and supporting documentation to confirm that the school facilities project conforms to the programmatic model;
12. The tier the district proposes for each school facilities project in accordance with N.J.S.A. 18A:7G-5(m);
13. A resolution of the board of education approving the application; and
14. Any additional information that a district deems relevant for the Commissioner's review of the school facilities project.

(c) Each district shall submit all applications for school facilities projects to the local planning board or boards of the municipality or municipalities in which the district is situated, no later than the date the district submits each school facilities project application to the Commissioner, to afford the local planning board or boards the opportunity to prepare and submit findings to the Department. A district shall provide to the Commissioner proof of the date that it submits each school facilities project application to the local planning board. The local planning board shall submit its findings, if any, to the Division, within 45 days of its receipt of each project application. No school facilities project application will be considered complete until comments have been received from the local planning board(s) or until 45 days have passed from the planning boards' receipt of each school facilities project application, whichever is earlier.

(d) Except as provided in (e) below, a district shall not initiate a school facilities project without an approved LRFP.

(e) Prior to the approval of a district's LRFP, a district may, on a form provided by the Commissioner, apply directly to the Commissioner for approval of a school facilities project when an emergent condition exists. An emergent condition exists when a condition is so injurious or hazardous that it causes an imminent peril to the health and safety of students and staff.

1. The Commissioner shall only approve a school facilities project for an emergent condition if, after an on-site inspection, the county superintendent of schools certifies that an emergent condition exists as defined in (e) above.

2. If a school facilities project for an emergent condition is approved by the Commissioner, the school facilities project application shall be forwarded to the Division for review, pursuant to N.J.A.C. 6:23A-2.3(a) through (n), on an expedited basis. The scope of work contained in the application shall be limited to action required to rectify the emergent condition.

3. Notwithstanding the approval of a school facilities project for an emergent condition prior to approval of a district's LRFP, pursuant to this section, preliminary eligible costs and final eligible costs for the school facilities project shall be determined consistent with this chapter.

6:23A-2.3 Review and approval of school facilities projects

(a) After the Division receives a school facilities project application, it shall assess the application and determine whether it is fully and accurately completed and all necessary information has been filed by the district. All information in N.J.A.C. 6:23A-2.2(b) must be provided to the Division before a school facilities project application shall be considered fully and accurately completed for purposes of obtaining review of the school facilities project to determine whether it is consistent with the district's approved LRFP, whether it complies with the applicable programmatic model in the approved LRFP, if any, or the facilities

efficiency standards and the area allowances per FTE student. If a school facilities project application is determined to be incomplete, the Division shall inform the district in writing, listing all deficiencies in the application. After all required information is received and a school facilities project application is determined complete, the Division shall notify the district in writing that the school facilities project application is deemed complete.

(b) Within 90 days of receipt of a complete school facilities project application, or from the date of the last revision made by the district, whichever is later, the Division shall review each application to determine whether the school facilities project is consistent with the district's approved LRFP and whether it complies with the applicable programmatic model in the approved LRFP, if any, or the facilities efficiency standards and the area allowances per FTE student. If the Division is unable to make a decision within the 90 days, the Division shall notify the district in writing, explaining the reason for the delay and indicating the date by which a decision shall be made, which shall be no later than 60 days from the expiration of the original 90 days. In the event 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 facilities efficiency standards, N.J.A.C. 6:22 or the applicable programmatic model in the district's approved LRFP, if any, and does not exceed those standards except for spaces for which the 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. 6:23A-2.4 and shall notify the district in writing of the approval and preliminary eligible costs.

(d) If the Division determines that a school facilities project is inconsistent with the facilities efficiency standards or the applicable programmatic model in the approved LRFP, the Division shall notify the district. The district, within 30 days of the notification, shall advise the Division of its determination to either revise its school facilities project and re-submit it for review by the Division, make a request for additional space or seek a waiver as set forth in this section, or locally fund any excess costs.

(e) The Division shall approve requests for additional space eligible for State support if the district can demonstrate that:

1. School facility needs related to 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, cannot be addressed within the facilities efficiency standards and that all other spaces are consistent with those 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 spaces will:

i. Allow for the return of students with disabilities from out of district facilities;

ii. Permit the retention of students with disabilities who would otherwise be placed in out of 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 building that houses both disabled and non-disabled students;

3. Such spaces are necessary to house the 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 district school enrollment.

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

(g) If a request for additional space is determined to be eligible for State support, the applicable programmatic model in the district's approved LRFP shall be deemed amended. If the Division does not approve a request for additional space, such space shall be deemed ineligible for State support unless and until reversed on appeal.

(h) The Division shall not approve any school facilities project for new construction or rehabilitation that does not meet the facilities efficiency standards or the applicable programmatic model in the approved LRFP unless the district demonstrates that waiver of the standard or standards will not adversely affect the educational adequacy of the school facility, 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 programmatic model in the district's approved LRFP shall be deemed amended. If the Division does not approve a waiver request, the district shall conform the school facilities project to the facilities efficiency standards and resubmit the school facilities project.

(i) School facilities projects which are new construction shall receive approval only if necessary for reasons of unhoused students.

(j) A school facilities project which 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 school facility but shall not include any routine maintenance or required maintenance. A district seeking to rehabilitate a school facility for purposes of keeping it functional for its original purpose or for a new purpose shall demonstrate to the satisfaction of the Division that the gross square footage of the school facility will not be increased; except that rehabilitation projects may be approved that include elevators, egress and other modifications to school facilities in order to render them compliant with 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 a school facility is increased to complete the school facilities project.

(k) All school facilities shall be deemed suitable for rehabilitation unless a feasibility study undertaken by the district demonstrates to the satisfaction of the Division 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 district initiates a school facilities project for new construction in lieu of rehabilitation, the district shall submit a feasibility study as part of the school facilities project application which supports its determination that, because of health and safety or efficiency, it would be more feasible to replace rather than rehabilitate the school facility. This 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 those costs necessary for compliance with the Uniform Construction Code, health and safety, and educational adequacy as determined pursuant to the facilities efficiency standards, N.J.A.C. 6:22 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.

(l) When a district demonstrates to the satisfaction of the Division that replacement is more feasible than rehabilitation and the proposed school facilities project is otherwise approvable, the Division shall approve the school facilities project for new construction in lieu of rehabilitation, and the preliminary eligible costs shall be determined pursuant to N.J.A.C. 6:23A-2.4(a).

(m) When a district does not demonstrate to the satisfaction of the Division 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. 6:23A-2.4(b).

(n) Upon approval of a school facilities project and determination of the preliminary eligible costs pursuant to N.J.A.C. 6:23A-2.4, the Division shall notify the district that the school facilities project has been approved and of the preliminary eligible costs and the excess costs, if any. A district that is not required to have the authority construct the school facilities project shall notify the Division as to whether it elects to have the authority construct the project or, if the district shall construct the project, whether the district will seek a grant pursuant to N.J.S.A. 18A:7G-15 or debt service aid pursuant to N.J.S.A. 18A:7G-9.

6:23A-2.4 Calculation of preliminary eligible costs for school facilities projects

(a) Preliminary eligible costs for new construction, new construction in lieu of rehabilitation approved pursuant to N.J.A.C. 6:23A-2.3 and purchase of an existing facility to be utilized as a school facility shall be calculated as follows:

$$\text{Preliminary eligible costs} = AU \times C$$

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. 6:23A-2.3(i) shall equal reasonable estimated actual costs, calculated on a form prescribed by the Commissioner, which shall include, but not be limited to, specific unit costs and quantities and soft costs and the costs to render a school facility energy efficient or compliant with the Uniform Construction Code, health and safety and educational adequacy as determined pursuant to the facilities efficiency standards and N.J.A.C. 6:22. The reasonableness of estimated actual costs shall be determined in accordance with industry standards.

(c) 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:

$$\text{Preliminary eligible costs} = (ACP - PC) \times (C/CP)$$

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.

(d) For school facilities projects "deemed approved" pursuant to N.J.A.C. 6:23A-2.3(a), 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.

(e) Notwithstanding anything to the contrary, preliminary eligible costs for school facilities projects of special services school districts and vocational education 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.

6:23A-2.5 Determination of final eligible costs for authority school facilities projects

(a) School facilities projects of Abbott districts, level II districts and districts with a district aid percentage equal to or greater than 55 percent shall be constructed by the Authority.

(b) Any district that is not required to use the Authority pursuant to (a) above may elect to have the Authority undertake the construction of a school facilities project in the district.

(c) After approving a project that shall be constructed by the Authority, or being notified that the district has elected to use the Authority pursuant to (b) above, the Division shall promptly prepare and submit to the Authority a preliminary project report which 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 Authority in undertaking the school facilities project; and
7. The name, address and phone number of the person from the district to contact concerning the school facilities project.

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

(e) In the event that the Authority determines that a school facilities project cannot be completed within the preliminary eligible costs, prior to the submission of the Authority's recommendations to the Commissioner, the Authority shall consult with the district and the Commissioner and determine whether changes can be made in the school facilities project which will result in a reduction in costs while at the same time meeting the requirements of educational adequacy.

1. When the Commissioner is notified by the Authority that the Authority has determined that changes in the school facilities project are possible so that 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;
- ii. Give final approval to the school facilities project with the changes noted; and
- iii. Issue a final project report to the Authority in accordance with (i) below.

2. When the Commissioner is notified by the Authority that the Authority has determined that it is not possible to make changes in a school facilities project so that it can be completed within the preliminary eligible costs either because the additional costs are the result of factors outside the control of the district or because the additional costs are required to meet the requirements of educational adequacy, the 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 Authority;
- ii. Give final approval to the school facilities project; and
- iii. Issue a final project report to the Authority in accordance with (i) below.

3. When the Commissioner is notified by the Authority that the Authority has determined that the additional costs are the result of factors that are within the control of the district or are the result of design factors that are not required to meet the facilities efficiency standards or approved pursuant to N.J.A.C. 6:23A-2.2(e), the 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 those preliminary eligible costs are determined to be insufficient to meet the educational needs of the district, in which case they shall be adjusted upward as appropriate, and specify the excess costs which are to be borne by the district;

ii. Give final approval to the school facilities project; and

iii. Issue a final project report to the Authority in accordance with (i) below.

(f) For any school facility projects to be constructed by the Authority in which the State share of final eligible costs is 100 percent, the Authority may, in its discretion, delay the request for a determination of final eligible costs until receipt of the construction bids by the Authority.

(g) After receipt by the Authority of a final project report, the district shall be responsible only for the local share identified in that report and the costs associated with changes, if any, made at the request of the district to the scope of the school facilities project.

(h) The Authority will not commence the acquisition or construction of a school facilities project until the Division transmits to the Authority a final project report except as provided in N.J.A.C. 6:23A-2.9.

(i) The final project report shall contain all of the information contained in the preliminary project report and, in addition, shall contain:

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

6:23A-2.6 Determination of final eligible costs for non-authority school facilities projects

(a) Prior to a determination of final eligible costs, a district that is not using the 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. 6:23A-2.3 if the detailed plans and specifications prepared in accordance with N.J.A.C. 6:22-1.6 by a licensed architect or engineer for the school facilities project indicate that the cost of constructing that portion of the school facilities project which has been approved for State support exceeds the preliminary eligible costs as determined by the Commissioner for the project by 10 percent or more. The 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 Authority for its review and recommendation.

(c) The Commissioner shall make a determination on the appeal within 30 days. If the Commissioner does not approve the adjustment to the preliminary eligible costs sought by the district, the Commissioner shall issue his or her findings in writing 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 district, is sufficient.

(d) If a district determines not to appeal the determination of preliminary eligible costs, it may, at any time after approval of the school facilities project and determination of preliminary eligible costs, request 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. If a district does not appeal the determination of preliminary eligible costs, the preliminary eligible costs become the final eligible costs;

2. If a district successfully appeals the determination of preliminary eligible costs pursuant to (b) above, the final eligible costs shall be the preliminary eligible costs as adjusted by the Commissioner, but in no case shall the adjustment to preliminary eligible costs be more than 10 percent; and

3. If a district unsuccessfully appeals the determination of preliminary eligible costs, the preliminary eligible costs shall be the final eligible costs.

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

1. The final eligible costs; and

- i. The amount of the grant if the district chose to receive a grant pursuant to N.J.S.A. 18A:7G-15; or

- ii. The debt service aid percentage the district will receive if it chose to obtain debt service aid pursuant to N.J.S.A. 18A:7G-9.

(g) A district shall not seek approval of the local support for the school facilities project until the Division has notified the district of the final eligible costs for the project.

6:23A-2.7 Local support of school facilities projects

(a) No school facilities project shall be constructed unless, if there is a local support amount, such local support

has received approval as set forth in this section. Districts shall notify the Commissioner, Authority and county superintendent of schools when approval is obtained, and, if applicable, provide each the schedule for issuance of school bonds. Districts shall also notify the county superintendent and Authority of the issuance of school bonds within 30 days of the issuance of the school bonds.

(b) If the Authority is constructing the school facilities project, the district shall provide funds for the local share of the project to the Authority in accordance with the rules of the Authority.

(c) If the district determines to issue school bonds to fund all or any part of the local support, the district shall proceed in accordance with (d), (e) or (f) below, as applicable. If the 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 approval of the expenditure of local funds or make withdrawals from capital reserve in accordance with this subchapter. A district may fund the local share for additions or improvements to an existing school facility through a lease purchase agreement not in excess of five years duration if the district obtains approval of the lease purchase agreement in accordance with N.J.S.A. 18A:20-4.2, provided that the lease purchase agreement provides for the funding in full to the district, upon commencement of construction of the school facilities project, and that there are no contingencies pursuant to which such funding could be withheld in whole or in part. The Commissioner shall not approve the use of a lease purchase agreement not in excess of five years duration for a local share that includes excess costs. A lease purchase agreement not in excess of five years duration that includes excess costs shall be approved by the voters, board of school estimate or capital project review board.

(d) Whenever the board of education in a Type I or Type II school district having a board of school estimate shall determine that it is necessary to sell school bonds to raise money for the local support for any school facilities project approved pursuant to EFCFA and this subchapter, it shall, by board resolution, estimate the amount necessary to be raised for such school facilities project or school facilities projects, itemizing such estimate so as to make it readily understandable, and the secretary of the board of education shall certify a copy of such resolution to each member of the board of school estimate of the district. The resolution shall include the amount needed to be raised by school bonds, the final eligible costs of the school facilities project as approved by the Commissioner and, if applicable, the amount of any costs of the school facilities project which are in addition to the final eligible costs. If the board determines to use a combination of school bonds and other funding sources, the resolution shall also include the portion of the local support to be raised through other funding sources, listing separately each source and the amount from that source.

(e) Whenever the undertaking of any school facilities project or projects to be paid for from the proceeds of an issue of school bonds is submitted to the voters of a Type II district at an annual or special school election for their approval or disapproval, the board shall frame and adopt the question or questions to be submitted so that each school facilities project is submitted in a separate question, or all or any number of them are submitted in one question, which shall state the school facilities project or projects so submitted and the amounts to be raised for each of the school facilities projects so separately submitted or for each or for all of the school facilities projects so jointly submitted, as the case may be, but any proposal for the purchase of land shall be sufficient to authorize the taking and condemning of such land. If the board determines to use a combination of school bonds and other funding sources, the question shall also include the portion of the local support to be raised through other funding sources, listing separately each source and the amount from that source.

1. If the school facilities project is to be constructed by the Authority or a redevelopment entity or by the district with a grant pursuant to N.J.S.A. 18A:7G-15, the referendum shall, when framed as a single question, request approval for the local share and shall disclose the final eligible costs of the school facilities project as approved by the Commissioner and, if applicable, the amount of any excess costs.

2. If the school facilities project is not to be constructed by the Authority or a redevelopment entity or by the district with a grant pursuant to N.J.S.A. 18A:7G-15, the referendum shall, when framed as a single question, request approval for the total costs of the school facilities project, disclose the State debt service aid percentage for the school facilities project and, if applicable, the amount of any excess costs.

3. When a school facilities project is framed in more than one question, a summary shall be included in the explanatory statement which accompanies the questions that includes the total costs of the project, and if applicable, the State debt service aid percentage and the amount of the excess costs, and any individual question containing excess costs shall include the amount of those excess costs and the funding source for those costs.

4. The statement of excess costs in any ballot question and in any explanatory statement that accompanies a ballot question shall describe the excess costs as follows: "This school facilities project includes \$(insert amount) for school facility construction elements which exceed the facilities efficiency standards developed by the Commissioner of Education."

(f) Whenever a State-operated school district shall determine that it is necessary to sell school bonds to raise money for any school facilities project approved pursuant to EFCFA and this subchapter, it shall estimate the amount necessary to be raised for such school facilities project or school facilities projects, itemizing such estimate so as to make it readily understandable, and the State district superintendent shall certify a copy of such resolution to each member of the Capital Project Review Board of the district. The resolution shall include the amount needed to be raised by school bonds, the final eligible costs of the project as approved by the Commissioner and, if applicable, the amount of any excess costs. The Capital Project Review Board shall review the school facilities project in accordance with the procedures in N.J.S.A. 18A:7A-46.2. If the district determines to use a combination of school bonds and other funding sources, the question shall also include the portion of the local support to be raised through other funding sources, listing separately each source and the amount from that source.

(g) Any proceeds of school bonds issued by the district for the purpose of funding a non-Authority school facilities project which remain unspent upon completion of the school facilities project shall be used by the district to reduce the outstanding principal amount of the school bonds.

(h) Any proceeds of school bonds issued by the district and provided to the Authority for the purpose of funding an Authority constructed school facilities project which remain unspent upon completion of the school facilities project shall be returned to the district based on the pro-rata share of the proceeds derived from the ratio of the State share to the local share.

(i) A district, other than a State-operated school district, that sought approval pursuant to N.J.S.A. 18A:7G-11 of a school facilities project that did not have excess costs, and failed to receive such approval, and within the three years prior to that, sought and failed to receive approval of the same school facilities project, with or without excess costs, provided the first such failure to receive approval occurred after July 18, 2000, may submit the school facilities project to the Commissioner and request that the Commissioner approve the school facilities project and authorize the issuance of school bonds for the local share of the school facilities project.

1. Upon receipt of a request, the Commissioner shall review the school facilities project and determine whether the school facilities project is necessary for the provision of a thorough and efficient system of education in the district.

2. If the Commissioner concludes that the school facilities project is necessary, the Commissioner shall approve the school facilities project without excess costs and authorize the issuance of school bonds to fund the local share.

3. In addition to the amount of taxes determined by the legal voters of the district at the annual school election, the secretary of the board of education shall certify the amount required for the repayment of the interest and principal of the school bonds required to fund the local share approved by the Division in the same manner required for interest and debt redemption charges pursuant to N.J.S.A. 18A:22-33, and the amount so certified shall be included in the taxes assessed, levied and collected in the municipality or municipalities comprising the school district for those purposes.

4. Any school facilities project authorized pursuant to this subsection shall be constructed by the Authority.

(j) Any non-Abbott district included in district factor group A or B as of July 18, 2000 may apply to the Commissioner for 100 percent State support of final eligible costs of a school facilities project in the event the district is having difficulty financing the local support of the total cost of the project. In order to receive a recommendation for 100 percent State support of final eligible costs from the Commissioner, a district shall submit documentation demonstrating that:

1. It sought approval of a school facilities project that did not have excess costs, and failed to receive such approval, and, prior to that failed appeal, sought and failed to receive approval of the same school facilities project, with or without excess costs, and:

- i. The T & E budget equalized tax rate of the district is at least 130 percent of the State average; and
- ii. The equalized municipal tax rate is above the State average; and

2. The school facilities project is necessary for the provision of a thorough and efficient system of education in the district.

(k) Upon review of the application, the Commissioner shall determine whether to recommend to the Legislature that the district receive 100 percent State support of the final eligible costs of the project. A district shall receive 100 percent State support only if the Legislature so determines upon receipt of the Commissioner's recommendation.

6:23A-2.8 Determination of State support for school facilities projects

(a) State support for school facilities projects shall be determined as follows:

1. State debt service aid for projects approved on or after July 18, 2000 shall be calculated as follows:

Aid is the sum of A for each issuance of school bonds issued for a school facilities project approved by the Commissioner on or after July 18, 2000 where:

$$A = B \times AC/P \times (DAP \times 1.15) \times M, \text{ with } AC/P = 1$$

Whenever AC/P would otherwise yield a number greater than one, and where:

B is the district's debt service for the individual issuance for the State fiscal year;

AC is the preliminary eligible costs determined pursuant to section 7 of EFCFA;

P is the principal of the individual issuance plus any other funding sources approved for the school facilities project;

DAP is the district aid percentage as defined pursuant to N.J.S.A. 18A:7G-3, except that DAP x 1.15 shall not be less than 40 percent and for county special services school districts, DAP is that of the county vocational school district in the same county; and

M is a factor representing the degree to which a district has fulfilled maintenance requirements for a school facilities project, and shall be 1.0 except when a different maintenance factor is required by N.J.S.A. 18A:7G-9.

2. State debt service aid for school facilities projects approved prior to July 18, 2000 shall be calculated as follows:

Aid is the sum of A where:

$$A = B \times CCSAID/TEBUD \text{ and where}$$

B is the district's total debt service or lease purchase payment for the individual issuance for the State fiscal year;

CCSAID is the district's core curriculum standards aid amount determined pursuant to N.J.S.A. 18A:7F-15; and

TEBUD is the district's T & E budget determined pursuant to N.J.S.A. 18A:7F-13.

For county special services school districts, CCSAID/TEBUD shall be that of the county vocational school district in the same county.

3. The amount of a grant shall be determined as follows:

i. The State share payable to the district shall equal the product of the school facilities project's final eligible costs and 115 percent of the district aid percentage or 40 percent, whichever is greater. The Authority shall provide grant funding for the State share pursuant to an agreement between the district and the Authority which shall, in addition to other terms and conditions, set forth the terms of disbursement of the State share.

(1) All grants and the corresponding local share shall be accounted for separately by project in the capital projects fund.

(2) Local share budgeted in capital outlay shall be transferred to the capital projects fund upon execution of the grant agreement with the Authority. Any unexpended transferred capital outlay funds remaining after completion of the school facilities project shall be reserved and designated in the subsequent year's budget.

6:23A-2.9 Design and construction of Authority school facilities projects

(a) The Authority will design and construct school facilities projects in accordance with EFCFA and the Authority's rules.

(b) All Department fees for review and approval of school facilities projects shall be waived for school facilities projects in which the State share of final eligible costs is 100 percent.

(c) After approval of the LRFP for a district that is required to use the Authority, the district, Department and Authority shall meet and agree upon a schedule for undertaking the school facilities projects in the approved LRFP and identify the need for temporary facilities, if any, except that meetings to determine the need for temporary facilities in Abbott districts to meet early childhood needs for September 2001 may occur prior to approval of the district's LRFP and, once identified, the Department and Authority shall take all steps necessary to meet those needs.

(d) A district that is required to use the Authority and has an approved LRFP may begin undertaking feasibility studies for new construction identified pursuant to N.J.A.C. 6:23-2.3(b)9, remediation, site development, design work and acquire temporary facilities, provided that such activities are consistent with its approved LRFP and are undertaken under the auspices of the Authority. Any costs incurred pursuant to this subsection shall be allocated to the applicable school facilities project and shall be deemed eligible for State support. For districts in which the State share of eligible costs for a school facilities project is 100 percent, the Authority shall provide the funding for these costs. For all other districts required to use the Authority, the costs shall be funded locally and, once the costs have been allocated to the applicable school facilities project and that project has been approved pursuant to N.J.A.C. 6:23A-2.3, the district shall receive a credit toward the local share of that project.

(e) A district that is required to use the Authority shall seek approval to acquire land from the Commissioner. The Commissioner may approve the purchase of land if the site is capable of supporting the applicable school facility in the approved LRFP. If the Commissioner approves the request, he or she shall notify the district and the Authority. Any costs incurred pursuant to this subsection shall be allocated to the applicable school facilities project and shall be deemed eligible for State support. For districts in which the State share of eligible costs for the school facilities projects is 100 percent, the Authority shall provide the funding for the cost of the land if approved by the Commissioner and the Authority. For all other districts required to use the Authority, the costs shall be funded locally and the district shall comply with N.J.A.C. 6:23A-2.13 and any additional procedures established by the Authority; once the costs have been allocated to the applicable school facilities project and that project has been approved pursuant to N.J.A.C. 6:23A-2.3, the district shall receive credit toward the local share of that project.

(f) Whenever the final plans and specifications prepared by the Authority change the number, size or location of educational spaces as set forth in the schematics submitted to the Department when a school facilities project was approved, such final plans and specifications shall be submitted to the Department for review and approval.

(g) For all school facilities projects constructed by the Authority, or which the district is constructing under delegation by the Authority pursuant to N.J.S.A. 18A:7G-13(a), the Authority shall notify the Department of any change order affecting the number, size or location of educational spaces and submit the change order to the Department for review and approval.

6:23A-2.10 Design and construction of non-authority school facilities projects

(a) The provisions of the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., and implementing rules are applicable to any school facilities project constructed by a district.

(b) Prior to construction of a school facilities project, a district shall submit the final plans and specifications to the division for approval pursuant to N.J.A.C. 6:22-1.6.

(c) Oversight of school facilities projects constructed by school districts shall be as follows:

1. Upon the award of contracts for design and/or construction, the district shall submit a form, to be provided by the Commissioner, to be certified by the school business administrator, and approved by resolution of the district board of education, certifying that the bidding process conformed to all requirements of statute and regulations and that all contracts procured for the school facilities project conformed to Title 18A of the New Jersey Statutes and all other applicable laws.

2. The district shall maintain a project file that shall include, but not be limited to, the following documents:

- i. All documents related to the project approval process, including project siting, land acquisition, real estate documents (deeds, leases, title report including searches for easements, mortgages, judgments, liens, unpaid taxes, water and sewer, property description by metes and bounds) surveys, school board resolutions, referenda and all public notices pursuant to the Open Public Meeting Act;

- ii. All documents related to the financing of the school facilities project including:

- (1) Selection and payment of professionals, such as bond counsel and other attorneys, underwriters, financial and investment advisors, trustees, official printers and bond insurers;

(2) Structuring of the financing, such as the method(s) of borrowing considered, complete financing estimates and cash flows, all number runs including escrow sufficiency, if applicable, and yield calculations, the rationale for the plan of financing (resulting in the issuance of obligations under terms most advantageous to the school district) long range plans or models, computerized models, private uses and costs of issuance; and

(3) Issues of debt, such as general, series and supplemental bond resolutions, trust indentures, trust agreement, preliminary official statement, all disclosure materials, Official Notice of Sale or Purchase Contract, arbitrage certificate, tax regulatory agreement, IRS Form 8083, as appropriate, Disclosure Agreement and TEFRA Notice, if applicable;

iii. All documents related to the bidding process for design and construction management, if applicable, and for construction, evaluation of bids, award and execution of contracts, the specifications, Request for Proposal ("RFP") or other invitations to bidders, the advertisements or public notices of the opportunity to bid, logs of the bids received and the bids opened, bid evaluation worksheets, notices of contract award, and the executed design contract documents, construction contract documents and any other contracts entered into with regard to the school facilities project;

iv. All documents related to the design and construction of school facilities, including the documents required to be kept by the contract documents, specifications, change orders, alternate submissions, approvals or rejections, unit prices, product data, time of performance schedules, construction photographs, quality control management reports, value engineering information, up-to-date project accounting system, intermediate and final audits, "as built" or other drawings documenting the actual facilities built and fixtures installed, close-out documentation on forms provided by the Department related correspondence, vouchers and certifications; and

v. All documents a district is legally required to make, maintain or keep on file as part of a construction project.

3. The documents in (c)2 above shall be maintained in a readily accessible place for review and inspection by the Department, the Authority, the Department of Community Affairs and the Unit of Fiscal Integrity in the Department of Law and Public Safety for the duration of the school facilities project and three years thereafter or, if litigation concerning any aspect of the school facilities project is instituted, until completion of all litigation. Destruction of these documents shall be accomplished pursuant to N.J.S.A. 47:3-15 et seq.

4. A standardized voucher form, where provided to districts by the Department, shall be fully executed by consultants and contractors, delivered to the district prior to a district providing any payment to a consultant or contractor and maintained by the district in the project file. Prior to the district providing any payment, the voucher form shall be countersigned, where indicated, by the district.

5. Change orders shall be subject to the provisions of N.J.A.C. 6:20-8.3 except that where the Bureau of Facilities Planning Services is referenced, the Division of Facilities shall be substituted.

6. Districts shall include standardized contract provisions, where provided by the Department, in all contracts for the design and construction of a school facilities project.

7. All contractors, and subcontractors in the four areas listed in N.J.S.A. 18A:18A-18, utilized by districts to construct school facilities projects shall be pre-qualified pursuant to the authority pre-qualification process.

8. Upon completion of a school facilities project, a district shall submit, on a form to be provided by the Commissioner, a certification of the school business administrator, which shall be approved by resolution of the district board of education, certifying that the school facilities project was constructed consistent with the approved plans and specifications for the school facilities project and all approvals provided by the Commissioner pursuant to the act.

(d) Upon completion of a school facilities project by a district, the district shall submit a plan for the maintenance of the school facility to the Commissioner, in accordance with the Commissioner's rules to be adopted pursuant to N.J.S.A. 18A:7G-9(b)(3). All such plans will include a provision for a maintenance reserve fund. All maintenance reserve funds created in accordance with the Commissioner's rules to be adopted pursuant to N.J.S.A. 18A:7G-9(b)(3) shall be funded annually with two-tenths of one percent of the net replacement cost of the school facility, which amount shall be included in the annual budget of the school district. The funds in the maintenance reserve fund may be withdrawn at any time during the year to fund the maintenance mandated by the Commissioner's rules to be adopted pursuant to N.J.S.A. 18A:7G-9(b)(3). The net replacement cost of the school facility shall equal the area cost allowance multiplied by the gross square footage of the school facility.

6:23A-2.11 ECPA district community early childhood education facilities projects

(a) An ECPA district seeking to initiate a community provider early childhood education facilities project shall apply to the Division for approval of the project. The application shall, at a minimum, contain the following information:

1. The name and location of the community provider;
2. Evidence that the community provider is licensed by the Department of Human Services pursuant to N.J.S.A. 30:5B-1 et seq. and is a tax exempt nonprofit organization;
3. Evidence that the community provider is providing, or will provide, early childhood education programs for preschool students for the district;
4. A description of the project;
5. A schematic drawing of the project, or at the option of the district, preliminary plans and specifications;
6. A delineation and description of each of the functional components of the project;
7. Identification of those portions of the proposed project which will be devoted in whole or in part to the provision of early childhood education programs to preschool students from the ECPA district;
8. The estimated cost to complete the project as determined by the district in consultation with the community provider; and
9. Whether the facility provides services other than early childhood education programs for preschool students, pursuant to a contract with the ECPA district.

(b) The Division shall review the application to determine whether it is consistent with the district's approved LRFP, whether it will provide a facility which is structurally adequate and safe and capable of providing a program which will enable preschool students being served pursuant to the ECPA district's approved early childhood education operational plan to meet the early childhood education expectations established by the Department, and whether there is a need for increased capacity or for rehabilitating existing space to meet these standards. For new construction, classrooms to house preschool students from the ECPA district shall meet the minimum square foot requirement for preschool classroom space in the facilities efficiency standards. For rehabilitation, classrooms to house preschool students from the ECPA district shall meet the minimum square foot requirement for preschool classroom space in the facilities efficiency standards unless the district can demonstrate that the proposed space is sufficient to provide a program which will enable those preschool students being served to meet the early childhood expectations, and the space meets the minimum square foot requirements established by the Department of Human Services.

(c) Only those facilities which are used for preschool students pursuant to a contract with the ECPA district shall be eligible for approval. Facilities which are jointly used by preschool students from the ECPA district and from other districts shall also be eligible for approval, but only the space to be utilized for preschool students from the ECPA district, and/or a pro-rata portion of common spaces and associated support systems, shall be eligible for State support pursuant to EFCFA and this subchapter.

(d) When the Division approves a project, the Division, after consulting with the Authority, shall determine the cost to complete the approved project, which shall be the estimated cost of the renovation or new construction necessary to provide a facility which is structurally adequate and safe and capable of providing a program which shall enable preschool children being served pursuant to the ECPA district's approved early childhood education operation plan to meet the early childhood education expectations. For projects initiated by an Abbott district, the State support shall be 100 percent of the cost to complete the project. For projects initiated by an ECPA district that is not an Abbott district, the State support shall be an amount equal to 115 percent of the district aid percentage of that ECPA district, of such estimated cost, except that the State support shall not be less than 40 percent of such estimated cost and local support shall equal the cost to complete the project less the amount of State support.

(e) The Division shall issue a final project report to the Authority which shall contain:

1. A complete description of the project;
2. The actual location of the project;
3. The total square footage of the project together with a breakdown of total square footage by functional component;
4. Any other factors to be considered by the Authority in undertaking the project;
5. The names and addresses of the people to contact from the district and the community provider;
6. The amount of State support for the project; and
7. The amount of local support required from the community provider to pay for costs of the project which have not been approved by the Commissioner for State support, if any.

6:23A-2.12 Initiation of other capital projects

(a) Other capital projects are not eligible for State support pursuant to EFCFA and this subchapter, but shall be reviewed to determine whether they are consistent with the district's LRFP, the total amount of funds the district intends to expend to complete the other capital project, the type of facility to be constructed and whether the facility, if it is to house students, conforms to educational adequacy requirements. Other capital projects are subject to the provisions of N.J.A.C. 6:22-1.2, 1.4 and 1.6. Land acquisition projects shall be reviewed pursuant to N.J.A.C. 6:22. Other capital projects shall conform to all other applicable statutes and rules, including N.J.S.A. 18A:18A-1.1 et seq. and N.J.A.C. 6:22. If a district issues school bonds for another capital project, the resolution or question to the voters shall specifically state that the other capital project is not eligible for State support. If a district has not received approval of its LRFP, or has not included another capital project in its approved LRFP, the district's other capital project shall be reviewed as set forth above and, if the project receives all necessary approvals, the district's LRFP shall be amended to include the approved other capital project.

(b) Districts shall obtain approval pursuant to N.J.A.C. 6:23A-2.7 or 5.1(d), as applicable, for the funding of another capital project.

6:23A-2.13 Acquisition of land by districts for non-authority school facilities projects

(a) An acquisition of land for a school facilities project shall comply with N.J.A.C. 6:22-2.1 and receive approval thereunder.

(b) Districts may seek to acquire land as part of a school facilities project or prior to approval of a school facilities project. If approval for land acquisition is sought prior to approval of a school facilities project and the school facilities project is subsequently approved, such school facilities project shall be deemed to have included the land acquisition.

(c) If a district intends to utilize school bonds to purchase the land prior to the approval of a school facilities project, the request for local debt authorization shall state that the school bond proceeds will be utilized to purchase land to be used for a school facilities project identified in the approved LRFP, and that the availability of State support for such a school facilities project will not be determined unless and until the school facilities project is submitted and approved as eligible for State support pursuant to EFCFA and this subchapter.

(d) If a district utilizes funds other than school bonds or funds from the capital reserve account to purchase the land, the district shall obtain approval as required for expenditure of funds for the land acquisition.

6:23A-2.14 Use of temporary facilities

(a) A district may propose, as part of a school facilities project, providing temporary facilities while a school facilities project is being constructed, either by the Authority or the district.

(b) Temporary facilities shall be approved pursuant to N.J.A.C. 6:22.

(c) When a district receives State support for a school facilities project, and temporary facilities are acquired by the district to house students pending completion of the school facilities project, such temporary facilities shall not be encumbered, sold or otherwise disposed of until the division approves such action.

6:23A-2.15 Demonstration projects

(a) For the initial three full fiscal years following the effective date of EFCFA, the State Treasurer is authorized to designate up to six school facilities projects which the State Treasurer determines to be in the best interests of the State and of the districts to be demonstration projects. A district and municipality may apply to the Authority for the designation of a school facilities project contained in an

approved LRFP to be a demonstration project to provide for the coordination of local economic development, redevelopment or community development with a school facilities project.

(b) The application shall be accompanied by resolutions requesting the designation adopted by the board of education of the district and the governing body of the municipality. The application shall set forth:

1. A plan for carrying out the redevelopment project as a whole, including the construction of the school facilities project;
2. The name of the redevelopment entity to undertake the project under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.;
3. A description of how the project fits into a redevelopment plan adopted or to be adopted by the municipal governing body pursuant to N.J.S.A. 40A:12A-7; and
4. A description of the community design features to be included in the school facilities project.

(c) The Commissioner shall approve the inclusion of the community design features as part of the school facilities project if he or she finds that the inclusion of the community design features as part of the school facilities project would be conducive to the usefulness and success of the project for both the students of the district and the residents of the community. The Commissioner may condition his or her approval upon the adoption by the district of policies suitable for assuring continuing educational or community access to the community design features.

(d) A district may request inclusion in the final eligible costs of a school facilities project that is a demonstration project, all or any portion of the cost of any community design features, but there shall not be included in the final eligible costs any portion of the cost of any community design features which are not an integral part of the school building and grounds or exceed the facilities efficiency standards.

(e) The cost of the community design features approved by the Commissioner shall be reviewed by the Authority. The district shall submit the documentation required by the Authority for the Authority to make its determination. The Authority will, in its recommendation to the Commissioner pursuant to section 5 of EFCFA, include its recommendation with respect to the cost of the community design features. The Commissioner shall make the final determination with respect to the inclusion of the cost of community design features in the final eligible costs. Any approved community design feature whose cost is not approved by the Commissioner to be part of the final eligible costs shall be deemed an excess cost.

(f) Upon completion of a demonstration project by a redevelopment entity, the district shall submit to the Com-

missioner a plan for the maintenance of the school facility, in accordance with the provisions of N.J.A.C. 6:23A-2.10(d).

SUBCHAPTER 3. APPLICATIONS FOR RETROACTIVE FUNDING OF PROJECTS

6:23A-3.1 General provisions

(a) Any school district may apply, on a form provided by the Commissioner, for funding of school facilities projects initiated prior to July 18, 2000. Districts shall cooperate with all requests for additional filings and information necessary to render applications for funding pursuant to this subsection complete. Applications for funding of such projects submitted prior to January 26, 2001 must be complete no later than January 15, 2001 to be eligible for retroactive funding. New applications for retroactive funding shall be filed no later than May 1, 2001 and must be complete by June 30, 2001 in order to receive funding pursuant to this subsection. If a district intends to utilize ECPA funds that had been placed in a capital reserve account pursuant to N.J.S.A. 18A:7F-16 for the local support for a school facilities project under this subsection, its application for funding under this subsection shall not be considered complete unless and until the district demonstrates that facilities are in place to meet the requirements of N.J.S.A. 18A:7F-16. Preliminary eligible costs for purposes of computing debt service aid under N.J.S.A. 18A:7G-9 shall equal preliminary eligible costs as defined under N.J.A.C. 6:23A-3.4, as may be increased by the Commissioner pursuant to an appeal approval under N.J.A.C. 6:23A-2.6.

(b) Any district which obtained approval from the Commissioner between September 1, 1998 and July 18, 2000 for the educational specifications for a school facilities project pursuant to N.J.A.C. 6:22, or obtained approval from the Department of Community Affairs or the appropriately licensed municipal code official since September 1, 1998 of final construction plans and specifications, and the district has issued debt prior to July 18, 2000, may elect to have the final eligible costs of the project determined pursuant to N.J.S.A. 18A:7G-5 and to receive State debt service aid under N.J.S.A. 18A:7G-9 or 18A:7G-10 and this chapter.

(c) Any district which received approval from the Commissioner for a school facilities project at any time prior to July 18, 2000, and has not issued debt, other than short term notes, for any portion of the school facilities project may submit an application to the Commissioner pursuant to N.J.S.A. 18A:7G-5 to have the final eligible costs of the project determined pursuant to that section and this chapter and to have the Authority construct the project or, at its discretion, the district may choose to receive State debt service aid pursuant to N.J.S.A. 18A:7G-9 or 18A:7G-10 and this chapter or to receive a grant under N.J.S.A. 18A:7G-15 and this chapter. In order to receive funding in accordance with this subsection, a district shall demonstrate the following:

1. Commissioner approval for the school facilities project was obtained, including the date of the approval;
2. The district has not issued debt, other than short-term notes, for any portion of the school facilities project;
3. The approval of the Commissioner is still valid. The Commissioner's approval remains valid unless:

- i. Changes have been made to the educational specifications or schematic plans;
- ii. One year has passed from the date of educational specification approval if no further activity is recorded on the school facilities project;
- iii. One year has passed from the date of schematic plan approval if no further activity is recorded on the school facilities project;
- iv. One year has passed from the date of approval of preliminary plans if no further activity is recorded on the school facilities project;
- v. Six months has passed from the date of approval of final plans for the school facilities project; or
- vi. Any subcode in the UCC governing the plan is amended; and

4. Construction of the school facilities project was not completed by July 18, 2000, unless short-term notes were issued. For purposes of this section, completed construction shall mean that the school facility has received all necessary approvals from the Department and the appropriate State or local construction official has issued a temporary or permanent certificate of occupancy pursuant to law for the school facility or a portion thereof.

(d) Debt service aid and grants obtained in accordance with EFCFA and this section shall be prospective and determined as follows:

1. The calculation of debt service payable shall be made pursuant to N.J.A.C. 6:23A-2.8;
2. No State debt service aid under N.J.S.A. 18A:7G-9 shall be provided for debt service payments made by a district prior to a determination of final eligible costs and calculation of the amount of State debt service aid payable to the district; and
3. Grant amounts shall be determined pursuant to N.J.S.A. 18A:7G-15 and these regulations, utilizing final eligible costs for the school facilities project as determined in this subchapter.

(e) The "issuance of debt" for the purpose of this subchapter shall include lease purchase agreements in excess of five years.

SUBCHAPTER 4. COUNTY VOCATIONAL SCHOOL DISTRICT FACILITIES REHABILITATION FUND

6:23A-4.1 County vocational school district facilities rehabilitation fund

(a) Subject to appropriation and availability of funds, a county vocational school district may apply to the Commissioner for a grant, in the maximum amount of \$500,000, to be matched dollar for dollar by the district, for the purpose of funding health and safety school facilities rehabilitation projects. The grant and matching district funds shall be maintained by the district in a special revenue fund as certified by the district's board of education and its chief financial officer and shall be subject to annual audit. A project funded through the grant fund shall not require the approval of the Commissioner pursuant to N.J.S.A. 18A:7G-5, but shall meet all other requirements of EFCFA and this chapter pertaining to school facilities projects.

6:23A-4.2 Application for funds

(a) Any county vocational school district seeking a grant from the County Vocational School District Facilities Rehabilitation Fund shall apply to the Commissioner on a form provided by the Commissioner. The application shall, at a minimum, contain the following information:

1. A description of the school facilities project to be undertaken with the funds;
2. A schematic drawing of the project or, at the option of the district, preliminary plans and specifications for the project to be funded;
3. A delineation and description of each of the functional components of the project to be funded;
4. The number of students and previously unhoused students to be housed in the project;
5. The approved area for unhoused students;
6. The estimated cost to complete the project as determined by the district on a form prescribed by the Commissioner; and
7. Any additional information the Commissioner deems relevant for the Commissioner's review of the project.

(b) The Division shall review an application for funds and, if the project conforms with the requirements of EFCFA and this chapter for approval of school facilities projects, notify the county vocational school district of the amount of any grant within 90 days of receiving a complete grant application. The grant funds shall be provided to the county vocational school district after the district submits documentation demonstrating that the county board of freeholders has appropriated the necessary matching funds.

(c) Any county vocational school district which receives grant funding pursuant to section 58 of EFCFA and this subchapter shall not be eligible to receive school facilities aid pursuant to any other provision of EFCFA for a period of five years from the district's receipt of the grant, except that the district may receive debt service aid pursuant to N.J.S.A. 18A:7G-10, and any county vocational school district which receives aid under any provision of EFCFA other than N.J.S.A. 18A:7G-10 shall not receive a grant pursuant to this subsection for five years after approval of a project which is otherwise funded under EFCFA.

SUBCHAPTER 5. CAPITAL RESERVE ACCOUNTS

6:23A-5.1 Capital reserve accounts

(a) Notwithstanding any provision of any other rule to the contrary, by October 15, 2000, a board of education or a board of school estimate, as appropriate, shall have, through the adoption of a board resolution, established a capital reserve account. A true copy of the establishing resolution shall be filed with the county superintendent of schools.

(b) The funds in the capital reserve account shall be used to implement capital projects in a district's LRFP required pursuant to N.J.S.A. 18A:7G-4(a) and N.J.A.C. 6:23.

(c) The amount of funds in the capital reserve account in any budget year shall not exceed the amount of local support required to fund the costs of capital projects in a district's LRFP and adjusted annually in the district's annual Quality Assurance Annual Report (QAAR).

(d) Notwithstanding any other provision or rule to the contrary, the capital reserve account shall be established, administered and accounted for as follows:

1. The account shall be established and held in accordance with Generally Accepted Accounting Principles and is subject to annual audit pursuant to N.J.S.A. 18A:23-1 et seq.
2. A district may withdraw funds from the capital reserve account at any time in accordance with the following:
 - i. By board resolution to the line items in the capital outlay major account/fund to fund the local support for the final eligible costs of a school facilities project as determined in accordance with this chapter;
 - ii. By board resolution after receiving voter, board of school estimate or capital project review board approval, as applicable, to the line items in the capital outlay major account/fund to fund excess costs of a school facilities project and to fund other capital projects as determined in accordance with this chapter.

(1) Voter or board of school estimate approval may be obtained through the original budget certified for taxes, which shall include a statement of purpose in the advertised budget or through a special appropriation process.

(2) The statement of purpose or special question shall include the capital project's total cost, final eligible costs and amount requested for withdrawal for excess costs. It shall also include a statement of purpose for the capital project, or portion thereof, which the excess costs will fund.

(3) If requesting a withdrawal for multiple capital projects, the statement of purpose or special question shall separately include the required information identified in (d)2ii(1) and (2) above for each capital project.

(4) Amounts approved by the voters, board of school estimate or capital project review board shall be used exclusively for the purpose or purposes contained in the associated question.

(5) A district board of education shall maintain a separate accounting of expenditures for each withdrawal from capital reserve for excess costs or other capital projects, and approved amounts which remain unexpended or unencumbered at the end of the school year shall be returned to the capital reserve account or anticipated as part of the designated general fund balance of the subsequent school year budget or reserved and designated in the second subsequent school year budget;

iii. By board resolution and after approval of the Commissioner in accordance with N.J.A.C. 6:23A-2.13, to the line items in the capital outlay major account/fund for the purchase of land;

iv. By board resolution for the transfer of funds to the debt service account for the purpose of offsetting principal and interest payments for bonded projects which are included in the district's approved LRFP.

3. Any withdrawals or transfers from the capital reserve account cannot be used for current expenses pursuant to N.J.S.A. 18A:22-8.2.

4. Upon submission of a district's LRFP to the Department, a district may deposit funds into the capital reserve account at any time by board resolution through:

i. The transfer of undesignated, unreserved general fund balance; or

ii. The transfer of excess undesignated, unreserved general fund balance that is anticipated in the budget certified for taxes. No transfer of undesignated, unreserved fund balance shall be made by districts subject to the provisions of N.J.A.C. 6:19-2.5(b).

5. Audited excess undesignated, unreserved general fund balance shall not be deposited into a capital reserve account and shall be reserved and designated in the subsequent year's budget pursuant to N.J.A.C. 6:19-2.5(c).

6. A board of education may appropriate funds in the district's annual budget to supplement the funds in the account as required to meet the local support need of its LRFP submitted to the Department. The district's spending growth limitation as established pursuant to N.J.S.A. 18A:7F-5 shall be adjusted by the amount of funds appropriated in the budget year to the capital reserve account.

7. Upon approval of a district's LRFP, if the amount in the capital reserve account exceeds the amount of local support required to implement the projects in the approved LRFP, the district shall withdraw the excess and reserve and designate it in the subsequent year's budget.

8. Notwithstanding anything to the contrary, a district may apply at any time to the Commissioner for approval to withdraw funds from its capital reserve account. A district shall make a withdrawal pursuant to this subsection only upon receipt of written approval of the Commissioner. Commissioner approval shall be provided only if a district establishes to the satisfaction of the Commissioner that an emergent situation exists including, but not limited to, emergent circumstances affecting the health and safety of students, necessitating an immediate withdrawal of funds.

9. If the cost to complete an approved school facilities project exceeds the final eligible costs as determined pursuant to N.J.A.C. 6:23A-2.6, those costs up to 10 percent above the final eligible costs may be funded with funds from a district's capital reserve account in accordance with (d)2i above.

(e) As part of a district's annual audit mandated by N.J.S.A. 18A:23-1, public school auditors shall, pursuant to procedures developed by the Commissioner, verify that the amount in the capital reserve account at any time during the budget year does not exceed the local support of costs of uncompleted capital projects in its approved LRFP. All excess amounts in the capital reserve account identified in the annual audit shall be reserved and designated in the subsequent year's budget.

(f) Funds in capital reserve accounts in existence prior to July 18, 2000 shall be utilized for the original purpose for which the funds were deposited in the capital reserve account to fund.

1. If the original purpose is outside the scope of an LRFP, such funds shall be accounted for separately in the capital reserve fund and must be appropriated as revenue for such purposes in the annual budget certified for taxes. No additional funds shall be deposited into capital reserve pursuant to (d) above for such pre-July 18, 2000 purposes.

2. If the original purpose is within the scope of an LRFP, withdrawals shall be made pursuant to (d)2 above except that, if voter approval of excess costs or another capital project was obtained when the funds were deposited into the capital reserve account, such approval shall satisfy the requirement for voter approval of excess costs or other capital projects in (d)2 above.

(g) Funds withdrawn for the local share of a school facilities project which received a grant pursuant to N.J.S.A. 18A:7G-15 shall be transferred to the capital projects fund and accounted for separately with the corresponding grant. Any unexpended transferred capital reserve funds remaining after completion of a capital project must be reserved and designated in the subsequent year's budget.

(h) The capital reserve account shall be increased by the earnings attributable to the investment of the account's assets pursuant to N.J.S.A. 18A:21-3.

1. Anticipated investment income shall be included in the original annual general fund budget certified for taxes as miscellaneous income.

2. Investment earnings shall be included in the maximum amount of capital reserve permitted in (c) above.

(i) A separate account shall be established in the general fund for bookkeeping purposes only in order to account for increases to and withdrawals from the capital reserve account and its balance. The capital reserve account shall be reflected on the annual audit's balance sheet in the general fund as follows:

1. Dr: Capital Reserve Account; and
2. Cr: Reserved Fund Balance—Capital Reserve Account.

(j) Any capital reserve account in existence as of July 18, 2000 shall be subject to EFCFA and this section.

6:23A-5.2 Quality Assurance Annual Report

(a) All school districts must submit a Quality Assurance Annual Report (QAAR) by October 15 of each year pursuant to N.J.A.C. 6:8-2.1 for approval by the Department. Absent approval of the QAAR, a district's budget shall not receive Department approval. The QAAR, in addition to all other required information, shall set forth, on a form to be provided by the Commissioner, the status of all capital projects in the district's approved LRFP then in effect.

(b) The QAAR must include the maximum permitted amount of the district's capital reserve account. This amount is calculated as the total local support required to implement uncompleted capital projects in a district's approved LRFP.

SUBCHAPTER 6. STATE SCHOOL FACILITIES DOCUMENTS

6:23A-6.1 Documents excluded from right-to-know requests

(a) Government records or records in connection with EFCFA that are in the Department's possession are subject to disclosure pursuant to P.L. 1963, c.73, as amended and supplemented, and the common law right to know, unless excluded under (b) below. "EFCFA government records" or "EFCFA records" include any paper, written or printed document, data processed or image processed document, information stored or maintained electronically or by sound recording or similar device, or any copy thereof, that has been made, maintained or kept on file by the Department.

(b) "EFCFA government records" or "EFCFA records" that are subject to production and disclosure in response to a right to known request to the Department do not include the following material in its possession: interagency or intra-agency deliberative material in connection with EFCFA. Excluded EFCFA material may include, but not be limited to, drafts, notes, memoranda, correspondence, charts and other work product related to contracts, plans, regulations, reports, and determinations that arise under EFCFA. "Excluded EFCFA material" may be stored or maintained in any of the ways EFCFA government records are stored or maintained, as described in (a) above.

SUBCHAPTER 7. APPEALS

6:23A-7.1 Appeals of Commissioner's determinations

(a) All appeals of final determinations made by the Commissioner pursuant to EFCFA and this chapter shall be to the Appellate Division of the New Jersey Superior Court.

(b) Appeals arising from decisions of the Division of Facilities and Transportation of the Department of Education may be requested in writing, and an opportunity given for an informal hearing before the Assistant Commissioner or other designated official. Such written request for an informal hearing must be made within 30 days of the receipt of the Division's decision.

(c) In the event of an adverse decision after an informal hearing under (b) above, or if a district determines not to seek an informal hearing, a district may request, within 90 days of the decision of the Assistant Commissioner or the determination of the Division if an informal hearing is not sought, a formal hearing pursuant to N.J.S.A. 18A:6-9 and 18A:6-24 and N.J.A.C. 6A:3. Such hearings shall be governed by the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by N.J.A.C. 1:1.