

charged to public school districts for the President/CEO's services to YCS's private schools for the disabled (adopting in part 2005 N.J. AGEN LEXIS 1041). Youth Consultation Service, Inc. v. N.J. State Dep't of Educ., OAL Dkt. No. EDU 3361-04, 2006 N.J. AGEN LEXIS 570, Commissioner's Decision (July 26, 2006), aff'd, SB No. 34-06 (N.J. State Bd. of Educ. March 7, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 332) adopted, which concluded that because a private school for the disabled failed to comply with the then applicable 45-day requirement for notifying sending school districts of a final tuition rate in excess of 10% of the tentative rate, the school was properly limited to a maximum tuition increase of 10%. Where auditors provided sufficient information from which it was readily ascertainable that the increase would be greater than 10%, the school director's claim of ignorance did not excuse the school and its board of trustees from having to comply with the notice requirement (decided under former version of rule). Cerebral Palsy League, Inc. v. N.J. Dep't of Educ., OAL Dkt. No. EDU 9024-04, 2006 N.J. AGEN LEXIS 670, Commissioner's Decision (June 6, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 262) adopted, which concluded that, in light of New Jersey boasting a variety of excellent quality theaters, a \$2,635 cost of a student field trip to a Broadway show should be disallowed from the final approved tuition rate for the 2002-03 fiscal year of an approved private school for the disabled; common sense should have alerted the school's administration that, in this era of fiscal restraint and recurring budget crisis, the luxury of sending school children to Broadway plays at public expense is a questionable use of scarce resources. Forum School v. N.J. State Dep't of Educ., OAL Dkt. No. EDU 3879-05, 2006 N.J. AGEN LEXIS 656, Commissioner's Decision (May 4, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 244) adopted, which determined that the Department of Education appropriately disallowed certain legal fees from the final approved tuition rates of six private schools for the disabled, where the legal fees were incurred for defense against criminal charges and two former directors and the schools were ultimately convicted of theft by deception. In addition, even assuming, arguendo, that the Commissioner had the authority to extend the 30-day timeline prescribed by N.J.A.C. 6A:23-4.2 [now N.J.A.C. 6A:23A-18.2] for the repayment of the monies, public policy and the equities militated against such an action. Windsor Learning Center, Inc. v. N.J. State Dep't of Educ., Office of Compliance, OAL Dkt. Nos. EDU 5983-04, EDU 5984-04, 2006 N.J. AGEN LEXIS 663, Commissioner's Decision (April 6, 2006), aff'd, SB No. 23-06 (N.J. State Bd. of Educ. November 1, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 492) adopted, which concluded that the cost of a field trip (\$16.50 per student) was improperly disallowed in setting the tuition rate that an approved private school for the disabled charged to the sending public school district. Bergen Center for Child Dev., Inc. v. N.J. Dep't of Educ., OAL DKT. NO. EDU 1807-05, 2005 N.J. AGEN LEXIS 1150, Commissioner's Decision (October 14, 2005).

### **6A:23A-18.3 New approved private schools for students with disabilities**

(a) A prospective applicant shall file an application to establish an approved private school for students with disabilities with the Office of Special Education Programs and obtain approval of such application from the Commissioner prior to operating an approved private school for students with disabilities.

1. A currently approved private school for students with disabilities which is expanding a program to another location or opening a new program is considered a new private school subject to (a) above.

2. A currently approved private school for students with disabilities that is expanding a program, or adding a new class type(s) to be housed in another building at the current location, shall not be considered a new private school for students with disabilities and shall charge as a tentative tuition rate the tuition the school is currently charging.

(b) An applicant applying for approval as a new private school for students with disabilities shall provide evidence to the Department that there is sufficient need for the new private school as defined as follows:

1. The applicant shall file an application to establish an approved private school for students with disabilities with the Office of Special Education Programs and document the need for a minimum of 24 public school placement students in order to be approved by the Commissioner.

(c) Applicants that meet the criteria in (b) above, shall be approved as follows:

1. The school shall receive preliminary approval to operate for a two year period, after which the school shall provide documentation that the school has a minimum ADE of 24 public school placement students by the end of the second school year;

i. A school meeting the minimum ADE of 24 public school placement students by the end of the second school year shall receive new school approval;

ii. A school not meeting the minimum ADE of 24 public school placement students by the end of the second school year shall have its preliminary approval status revoked and shall no longer be considered an approved private school for students with disabilities;

iii. Any previously approved private school for students with disabilities that falls below the previous minimum ADE of 16 public school placement students in a school year shall have its status as an approved private school for students with disabilities rescinded and shall be considered preliminarily approved. The school shall attain a minimum ADE of 16 public school placement students by the end of the third school year after the year in question or its approval shall be rescinded and it shall no longer be considered an approved private school for students with disabilities;

iv. Any new private school for students with disabilities approved in 2004-05 or thereafter that falls below an ADE of 24 public school placement students in a subsequent school year shall be considered preliminarily approved. The school shall attain a minimum ADE of 24 public school placement students by the end of the third school year after the year in question or its approval shall be rescinded and it shall no longer be considered an approved private school for students with disabilities;

v. Approved private schools for students with disabilities operating in and affiliated with a public school are exempt from (b)2 and (c)1i, ii, iii and iv above; and

vi. An approval for an approved private school for students with disabilities operating in and affiliated with a public school is restricted to operate in the public school district location only. An approved private school for students with disabilities operating in and affiliated with a public school that chooses to move to a location other than in a public school location shall comply with (a) and (b) above and this section.

(d) An approved private school for students with disabilities shall amortize start-up costs, if any, over a 60-month period.

(e) For the first two years of operation of an approved private school for students with disabilities, the tentative tuition rate charged at each site shall be established annually and be based on budgeted allowable costs. An approved private school for students with disabilities shall submit such estimated cost(s) to the Assistant Commissioner, Division of Finance for approval no later than 90 days preceding the beginning of each school year. The proposed budget shall be on a form prepared by the Assistant Commissioner, Division of Finance which provides for, but is not limited to, the following:

1. Fiscal and programmatic data;
2. Projected allowable cost items and projected enrollments;
3. A projected budget that reflects administrative costs not in excess of, and instructional costs not less than, the percentages identified in N.J.A.C. 6A:23A-18.2(a)3 and as defined in the chart of accounts;
4. A report of all funding resources;
5. An affidavit of compliance; and
6. A statement of assurance.

(f) If the Commissioner approves the tentative tuition rate charged, each sending district board of education shall pay tentative tuition charges based upon the approved estimated costs per student for the first two years of operation.

(g) If, after each year of operation, the tentative tuition rate charged differs from the final tuition rate charged, the tentative tuition charges will be adjusted in accordance with N.J.A.C. 6A:23A-18.2.

(h) In addition to this section, new approved private schools for students with disabilities shall be regulated in accordance with this subchapter.

Amended by R.2004 d.322, effective August 16, 2004.  
See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Amended by R.2006 d.361, effective October 2, 2006.  
See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Section was "New private schools for the disabled". Rewrote the section.

Recodified from N.J.A.C. 6A:23-4.3 and amended by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

In (e)3 and (g), updated the N.J.A.C. reference.

#### 6A:23A-18.4 Bookkeeping and accounting

(a) An approved private school for students with disabilities shall maintain accounting and bookkeeping systems as prescribed in Financial Accounting for New Jersey Private Schools for students with disabilities issued by the Department in accordance with the following standards:

1. An approved private school for students with disabilities shall maintain accounts in accordance with generally accepted accounting principles (GAAP) as defined by the American Institute of Certified Public Accountants, except as already modified in this chapter.

2. At a minimum, an approved private school for students with disabilities shall use accrual accounting on a quarterly basis.

3. An approved private school for students with disabilities shall capitalize fixed asset expenditures of \$2,000 or more and depreciate such expenditures using the straight line depreciation method and using a useful life consistent with current Federal tax law as defined in Internal Revenue Code Section 168 and class lives as defined in that section (also see IRS Publication 946), except for real property which may be depreciated using a useful life of 15 years or the term of the original mortgage, whichever is greater.

4. An approved private school for students with disabilities shall capitalize leasehold improvements and depreciate such improvements using the straight-line method and a useful life equal to that of the lease, but not less than five years.

5. An approved private school for students with disabilities shall maintain asset, liability and fund balance accounts, as well as expenditure and revenue accounts.

6. Non-profit organizations shall maintain financial records on a fund basis which requires that restricted or unrestricted donations shall be maintained in funds separate from the public school restricted fund. Costs incurred as a result of restricted or unrestricted donations shall be charged to the appropriate fund and not through the public school restricted fund. Profit-making organizations shall maintain financial records on a modified fund basis.

7. A chart of accounts issued by the Commissioner shall be maintained by each approved private school for students with disabilities. Effective July 1, 2002, a uniform minimum chart of accounts consistent with Financial Accounting for Local and State School Systems 2003, developed by the National Center for Education Statistics, incorporated herein by reference, as amended and supplemented as prepared, published and distributed by the Com-

(c) The district board of education shall be notified by the Department of the determination of the district of residence. In order to prevent a lapse in the child's education and/or child study services, the district board of education shall be bound by such determination unless and until it is reversed on redetermination or appeal pursuant to the provisions of (e) and (f) below.

(d) A district board of education contesting the Department's determination of district of residence shall submit a written notification of a dispute to the Division of Finance, within 30 days of the receipt of a final notice that a child was determined to be a resident of the district for purposes of State funding. As part of this written notice, the following information shall be submitted:

1. A written statement detailing the effort of the district board of education to verify the determination of the Department;
2. Written rationale for rejecting the determination of the Department; and
3. Any additional information the district board of education has obtained which might enable redetermination of the district of residence.

(e) The Division of Finance shall attempt to resolve the dispute administratively and shall notify the district board of education whether a redetermination of district of residence shall be made within 90 days of the receipt of the written notification that a dispute exists.

(f) A district board of education may initiate a formal proceeding before the Commissioner to resolve such a dispute if the Division of Finance is unable to resolve a dispute within the 90-day time limit, by filing a Petition of Appeal with the Commissioner pursuant to the provisions of N.J.A.C. 6A:3, Controversies and Disputes.

(g) As prescribed by N.J.S.A. 18A:7B-12, the "district of residence" for a homeless child whose parent(s) or guardian(s) temporarily moves from one district board of education to another is the district in which the parent(s) or guardian(s) last resided prior to becoming homeless. This district shall be designated as the district of residence for as long as the parent(s) or guardian(s) remains homeless.

Amended by R.2004 d.322, effective August 16, 2004.  
See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (a), rewrote the last sentence in 2 and added 3; in (c), rewrote the second sentence.

Amended by R.2006 d.361, effective October 2, 2006.  
See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (a)2, inserted "approved" and "for students with disabilities"; in (d), substituted "notification of a dispute to the Division" for "notification that a dispute exists to the Assistant Commissioner, Division"; and in (f), inserted "Controversies and Disputes".

Recodified from N.J.A.C. 6A:23-5.2 and amended by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

In (a)1, substituted "18A:7F-45" for "18A:7F-3"; and in (a)2, substituted "most recent" for "initial" and deleted the last sentence.

#### Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 32) adopted, which concluded that a residency appeal by a school district, challenging the County Superintendent's determination that it was the district of residence of certain children for school funding purposes, was time-barred under the 30-day filing requirement of N.J.A.C. 6A:23-5.2(d) [now N.J.A.C. 6A:23A-19.2(d)]; petitioner did not file its appeal with the Division of Finance until 142 days after the Superintendent's decision. *North Brunswick Bd. of Educ. v. Bd. of Educ. of Somerville*, OAL Dkt. No. EDU 10499-07, 2008 N.J. AGEN LEXIS 249, Commissioner's Decision (March 3, 2008).

Where a student had been assigned to the KidsPeace program in Pennsylvania, and about the same time, the student's father was evicted and moved in with his parents, the Department of Education correctly assigned costs to the school district where the student lived when he was placed in KidsPeace, and from which the father was evicted, because the costs are to be assigned to the last district where the student resided before placement, and there was no clear evidence in the record of the date of eviction, nor did the record indicate any intent on the part of the student's father to remain with his parents; a school district challenging a residency determination bears the burden of proving the Department of Education's determination was arbitrary, capricious, or without merit. *Bd. of Educ. of Twp. of Delaware v. N.J. Dep't of Educ.*, OAL Dkt. No. EDU 08011-05S, 2006 N.J. AGEN LEXIS 644, Commissioner's Decision (May 10, 2006).

#### 6A:23A-19.3 Address submission for determining the district of residence

(a) The address submitted to the Department for determining the district of residence for school funding purposes for a child described below shall be the address defined below:

1. If the State has custody of the child or if a court or the State has appointed a third party as the custodian of the child, the present address of the parent(s) or guardian(s) with whom the child resided immediately prior to his or her most recent admission to a State facility or placement by a State agency shall be submitted. If the child resides in a resource family home, the present address of the resource family parent(s) shall be submitted pursuant to N.J.S.A. 18A:7B-12.

2. If the child's parents are divorced with joint guardianship, the present address of the individual parent with whom the child resided as of the date required by N.J.A.C. 6A:23A-19.2(a)1 or 2 shall be submitted.

3. If the child's parents are divorced with joint guardianship and the child resides with each parent equally, the present address of both the child's father and mother as of the date required by N.J.A.C. 6A:23A-19.2(a)1 or 2 shall be submitted.

4. If the child's sole parent or legal guardian resides in a State facility, the State will assume financial responsibility for the child's educational costs until such time as the parent or guardian no longer resides in the State facility.

5. If the child resides in a non-resource family home with a relative for less than one year immediately prior to the child's most recent admission to a State facility or most

recent placement by a State agency, the present address of the child's parent(s) or guardian(s) at the time this placement is submitted.

6. If the child resides in a non-resource family home with a relative pursuant to N.J.S.A. 18A:38-1d for one or more years immediately prior to the child's most recent admission to a State facility or most recent placement by a State agency, the present address of the child's relative(s) at the time of this placement is submitted.

7. If the child is age 18 or older, or has been legally emancipated and has lived on his or her own before the initial placement, the present address of the child as of the date required by N.J.A.C. 6A:23A-19.2(a)1 or 2 is submitted.

Amended by R.2004 d.322, effective August 16, 2004.  
See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (a), substituted "child resides in a foster home or with relatives" for "child is in a foster home" in the second sentence in 1, rewrote 3 and 4, and added 5 through 7.

Recodified from N.J.A.C. 6A:23-5.3 and amended by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).  
Rewrote (a)1 through (a)7.

## SUBCHAPTER 20. PURCHASE AND LOAN OF TEXTBOOKS

### 6A:23A-20.1 Eligibility

(a) For the purposes of this subchapter, a district board of education does not include an educational services commission or jointure commission.

(b) N.J.S.A. 18A:58-37.1 et seq. requires each district board of education in which a nonpublic school is located, to purchase and to loan, without charge, upon individual requests, textbooks to students in the nonpublic school or schools located within the school district when such students are residents of the State.

(c) Children who are enrolled in a nonpublic school whose parents or legal guardians do not maintain a residence in this State are not eligible to receive such textbooks. Children who are enrolled in a nonpublic school whose tuition is paid by a district board of education are not eligible to receive such textbooks.

Amended by R.2006 d.361, effective October 2, 2006.  
See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (b), inserted "school" preceding "district".  
Recodified from N.J.A.C. 6A:23-6.1 by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

### 6A:23A-20.2 Responsibility of the district board of education

A district board of education shall distribute to all students on an equitable basis existing book stocks and newly pur-

chased textbooks purchased pursuant to N.J.S.A. 18A:58-37.1 et seq. A district board of education shall not discriminate against students in either public or nonpublic schools.

Amended by R.2004 d.322, effective August 16, 2004.  
See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.  
Recodified from N.J.A.C. 6A:23-6.2 by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

### 6A:23A-20.3 Individual requests

(a) Individual written requests signed by the parent(s) or legal guardian(s) of nonpublic school students for the loan of textbooks are addressed to the district board of education in which the nonpublic school is located.

(b) Individual requests are submitted directly to the district board of education in which the nonpublic school is located or to the nonpublic school. In the latter case, the nonpublic school official shall forward such requests collectively to the district board of education.

(c) Individual requests are due on or before March 1 preceding the school year.

(d) A district board of education shall purchase textbooks in accordance with district board of education policy and purchasing practices.

(e) Students attending public schools are not required to submit such requests.

Amended by R.2004 d.322, effective August 16, 2004.  
See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (d), substituted "A district board of education shall purchase textbooks" for "Textbooks purchased shall be ordered"; substituted references to are for shall throughout.

Recodified from N.J.A.C. 6A:23-6.3 by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

### 6A:23A-20.4 Ownership and storage of textbooks

(a) All textbooks purchased under the provisions of N.J.S.A. 18A:58-37.1 et seq. remain the property of the district board of education, which shall indicate such ownership in each book by a label.

(b) The district board of education shall be responsible for the receipt of the textbooks from the vendor and inventory of such textbooks.

(c) The district board of education may require that the textbooks be returned to the district board of education at the end of the school year, or may enter into agreements with the nonpublic schools to store such books. In the event of such an agreement, the district board of education shall not pay storage charges of any kind to a nonpublic school for this service.

Amended by R.2004 d.322, effective August 16, 2004.  
See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).