

CHAPTER 20

BUSINESS SERVICES

Authority

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Source and Effective Date

R.1999 d.2, effective December 4, 1998.
See: 30 N.J.R. 3613(a), 31 N.J.R. 36(a).

Executive Order No. 66(1978) Expiration Date

Chapter 20, Business Services, expires on December 4, 2003.

Chapter Historical Note

Chapter 20, Business Services, was filed and became effective prior to September 1, 1969, with Subchapters 1 through 5 on Attendance and Pupil Accounting, Bookkeeping and Accounting in Local School Districts, Tuition Public Schools, Tuition Nonpublic Schools, and State Aid.

Subchapter 6. Purchase and Loan of Textbooks, was adopted as Emergency R.1974 d.240, effective August 29, 1974. See: 6 N.J.R. 389(a). Subchapter 7. Qualification, Debarment, Suspension and Disqualification of Person(s) Concerning Contract Administration, was adopted as R.1976 d.388, effective December 7, 1976. See: 8 N.J.R. 501(c), 9 N.J.R. 13(a). Subchapter 8. Public School Contracts, was adopted as R.1980 d.69, effective February 8, 1980. See: 11 N.J.R. 499(a), 12 N.J.R. 107(a). Subchapter 4. Tuition Nonpublic Schools, was repealed and a new Subchapter 4, Tuition for Private Schools for the Handicapped, was adopted as R.1983 d.369, effective September 6, 1983. See: 15 N.J.R. 730(a), 15 N.J.R. 1469(a). The text of Subchapter 4 was subsequently replaced by R.1984 d.398, effective September 4, 1984. See: 16 N.J.R. 1298(a), 16 N.J.R. 2358(a).

Pursuant to Executive Order No. 66(1978), Subchapter 5, State Aid, was readopted as R.1984 d.546, effective November 15, 1984. See: 16 N.J.R. 2392(a), 16 N.J.R. 3429(a). Subchapter 7. Qualification, Debarment, Suspension and Disqualification of Person(s) Concerning Contract Administration, was readopted as R.1984 d.545, effective November 15, 1984. See: 16 N.J.R. 2394(a), 16 N.J.R. 3430(a). Subchapter 8. Public School Contracts, was readopted as R.1985 d.88, effective March 4, 1985. See: 16 N.J.R. 3372(b), 17 N.J.R. 584(a). Subchapter 6. Purchase and Loan of Textbooks, was readopted as R.1985 d.150, effective March 8, 1985. See: 17 N.J.R. 148(a), 17 N.J.R. 814(a). Subchapter 3. Tuition Public Schools, was readopted as R.1985 d.157, effective March 11, 1985. See: 17 N.J.R. 144(a), 17 N.J.R. 811(c). Subchapter 2. Bookkeeping and Accounting in Local School Districts, was readopted as R.1985 d.452, effective August 9, 1985. See: 17 N.J.R. 1361(a), 17 N.J.R. 2105(b).

Subchapter 2, Bookkeeping and Accounting in Local School Districts, was amended and recodified as Subchapter 2A, Double Entry Bookkeeping and GAAP Accounting in Local School Districts, and a new Subchapter 2, Bookkeeping and Accounting in Local School Districts, was adopted as R.1990 d.21, effective January 16, 1990. See: 21 N.J.R. 2919(a), 22 N.J.R. 176(a).

Pursuant to Executive Order No. 66(1978), Chapter 20 was readopted as R.1990 d.393, effective July 16, 1990. As part of R.1990 d.393, the expiration of Subchapter 2, Bookkeeping and Accounting in Local School Districts, was set for July 1, 1993, the implementation date of the provisions of Subchapter 2A, Double Entry Bookkeeping and

GAAP Accounting in Local School Districts. See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

Subchapter 9, Child Nutrition Programs, was recodified from N.J.A.C. 6:79 by R.1992 d.202, effective May 4, 1992. See: 24 N.J.R. 324(a), 24 N.J.R. 1791(c).

Pursuant to Executive Order No. 22(1994), the expiration date of Chapter 20 was extended from July 16, 1995 to January 16, 1997. See: 26 N.J.R. 3783(a) and 3942(a).

Pursuant to Executive Order No. 66(1978), Chapter 20, Business Services, was readopted as R.1997 d.9, effective December 10, 1996. See: 28 N.J.R. 4297(a), 29 N.J.R. 124(a).

Pursuant to Executive Order No. 66(1978), Chapter 20, Business Services, was readopted as R.1999 d.2, effective December 4, 1998. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 9. (RESERVED)

SUBCHAPTER 1. ATTENDANCE AND PUPIL ACCOUNTING

6:20-1.1 School register

(a) The Commissioner shall prepare and distribute a school register which shall be known as the New Jersey School Register, for recording pupil attendance in all public schools of the State operated by district boards of education, except adult high schools.

(b) Pupil attendance shall be recorded in the school register during school hours on each day the school is in session.

(c) Separate school registers shall be kept for pupils attending A.M. kindergarten, P.M. kindergarten, full-day kindergarten, grades 1 through 6, grades 7 and 8, grades 9 through 12, each pre-school handicapped class, each handicapped class, shared-time classes for regular pupils, shared-time classes for handicapped pupils, full-time bilingual education programs and vocational day programs, and summer schools operated by district boards of education.

(d) The attendance record of all pupils furnished individual instruction or training shall be recorded in a separate official record of home instruction provided by the district board of education. Pupils on roll in home instruction shall not be regarded as enrolled for purposes of average daily enrollment and average daily attendance.

Amended by R.1990 d.393, effective August 6, 1990.

See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

More clearly delineated the use of separate school registers.

Amended by R.1990 d.610, effective December 17, 1990.

See: 22 N.J.R. 2633(a), 22 N.J.R. 3736(a).

Deleted reference to "annual" distribution of school register.

6:20-1.2 School enrollment

(a) The enrollment in a class, a school or a school district shall be the total number of original entries plus the number of re-entries, less the number of transfers, withdrawals or dropouts in any such unit during a school year. The total number of original entries and re-entries, less the number of transfers, withdrawals or dropouts, in all the classes and schools of a school district shall constitute the school enrollment for that district board of education during any school year.

(b) No pupil attending a school operated by a district board of education shall be enrolled in more than one school register in any school district during a school year. All pupils shall be enrolled as of the first day of attendance for that year.

(c) No pupil shall be enrolled in a school register until the pupil has reached the following legal school age:

1. Kindergarten—over four years and less than six years;
2. Day school—over five years;
3. Pre-school handicapped—over three years and less than five years.

(d) Within 10 days of the start of the school year, a school district must determine whether any re-entering student who has not attended school that year has an excused absence or has transferred, withdrawn or dropped out of the school district.

(e) Any pupil enrolled in a school register in a school district who moves to another school district in the same school year shall be enrolled in one register in the new school district upon entering school in that district.

(f) The average daily enrollment in a school district for a school year shall be the sum of the days present and absent of all enrolled pupils when schools were in session during the year, divided by the number of days schools were actually in session. The average daily enrollment for the classes or schools of a district having varying lengths of terms shall be the sum of the average daily enrollments obtained for the individual classes or schools.

(g) The average daily attendance in a school district for a school year shall be the sum of the days present of all enrolled pupils when schools were in session during the year, divided by the number of days schools were actually in session. The average daily attendance for the classes or schools of a district having varying lengths of terms shall be the sum of the average daily attendance obtained for the individual classes or schools.

Amended by R.1990 d.393, effective August 6, 1990.

See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

Added (f) defining calculation of the "average daily attendance".

Amended by R.1990 d.610, effective December 17, 1990.

See: 22 N.J.R. 2633(a), 22 N.J.R. 3736(a).

Added new (d) requiring school make determination of status absent reentering students within 10 days of start of school year.

Case Notes

Minor's father failed to show that he resided within school district. *A.A. v. Board of Education of the City of Paramus*, 97 N.J.A.R.2d (EDU) 243.

Termination of sending-receiving relationship would have no substantial negative impact on receiving high school. *Board of Education of Logan v. Board of Education of the Borough of Paulsboro*, 97 N.J.A.R.2d (EDU) 207.

Parents would be required to reimburse school district for cost of educating children where family did not reside within school district. *Greater Egg Harbor Board of Education v. DiDonato*, 97 N.J.A.R.2d (EDU) 11.

School district's disenrollment of children who resided in district with their older sister was set aside where sister was determined to be children's legal guardian. *G.A. v. Borough of Somerville*, 96 N.J.A.R.2d (EDU) 1013.

Student's mother would be required to pay tuition for son's attendance at district school where student allegedly resided with his grandmother in district, but grandmother failed to sign affidavit attesting to that fact. *Cebula v. North Arlington Board of Education*, 96 N.J.A.R.2d (EDU) 1009.

Student's mother was liable for tuition payments to school district where home alleged to be family's domicile was vacant during time in question, and mother's testimony concerning residency was not credible. *H.C.J. v. Scotch Plains-Fanwood School District*, 96 N.J.A.R.2d (EDU) 999.

Payment of tuition was ordered for illegal attendance by affidavit student of district school where student did not appear for prehearing conference or answer board's counterclaim. *M.D. v. School District of South Orange and Maplewood*, 96 N.J.A.R.2d (EDU) 921.

Student domiciled with her grandparents would be allowed to attend school in grandparents' district where child's father lived in another state and provided no financial support for her, and whereabouts of child's mother were unknown. *C.N. v. South Orange and Maplewood Board of Education*, 96 N.J.A.R.2d (EDU) 913.

Parents who resided out of school district were liable for tuition payments covering period of time that their children had attended

school in district, even though parents paid taxes both in district where they resided and in district where children attended school. *H.M. and L.M. v. Township of Freehold*, 96 N.J.A.R.2d (EDU) 854.

School board's denial of free or reduced tuition for out-of-district student was valid exercise of discretion. *S.P. on Behalf of Minor Child G.P. v. Board of Education*, 96 N.J.A.R.2d (EDU) 804.

School board was obligated to provide round-trip transportation for student enrolled in out-of-county program. *K.F. v. Board of Education of the City of Trenton*, 96 N.J.A.R.2d (EDU) 775.

School board's denial of free or reduced tuition for out-of-district pupil was valid exercise of discretion. *Metaxas et al. v. Board of Education of the City of Hoboken*, 96 N.J.A.R.2d (EDU) 708.

Parent of student found not to have been residing with her grandfather was ordered to make tuition payments to board of education in grandfather's school district. *T.P. v. Point Pleasant Board of Education*, 96 N.J.A.R.2d (EDU) 680.

Failure to give student's counsel timely notice of Board of Education decision required remand of residency case for full hearing. *H.S. v. Persi*, 96 N.J.A.R.2d (EDU) 641.

Student would be permitted to attend school in her grandmother's district where mother's economic hardship compelled student to live with grandmother. *R.G. v. Ocean Township Board of Education*, 96 N.J.A.R.2d (EDU) 632.

Family discord which prompted student to move in with his grandmother constituted hardship entitling student to public education in his grandmother's school district, even though his parents retained legal custody of student. *R.H. v. Ocean Township Board of Education*, 96 N.J.A.R.2d (EDU) 628.

Divorced parents sharing equal custody owe no tuition to school board when children attend school in father's district. *Clifton Board of Education v. Sauro*, 96 N.J.A.R.2d (EDU) 497.

Children entitled to attend district school without charge where evidence showed that family never intended to reside in investment property located outside of district. *Norcross v. Berlin Board of Education*, 96 N.J.A.R.2d (EDU) 458.

Student living with guardians who have assumed full care is entitled to free education in district where guardians reside. *MacKinney v. Clifton Board of Education*, 96 N.J.A.R.2d (EDU) 434.

School district is responsible for education of child who lives with his grandparents even though grandparents are not his legal guardians and do not provide all his support. *East Brunswick Board of Education v. J.R.*, 96 N.J.A.R.2d (EDU) 285.

Sufficient showing of hardship entitles adopted student free education in adoptive family's school district. *D.E. v. Greater Egg Harbor Board of Education*, 96 N.J.A.R.2d (EDU) 244.

School district may "disenroll" students whose family moved out of district. *Thomas v. Passaic County Manchester Regional High School District Board of Education*, 96 N.J.A.R.2d (EDU) 37.

Student who failed to show domicile with relatives in district not eligible to attend school within that district. *S.J.S. v. Woodbury Heights Borough Board of Education*, 96 N.J.A.R.2d (EDU) 18.

School district in which child was domiciled with mother was responsible for special needs notwithstanding occasional exercises of parental responsibility by non-domiciled father. *Summit Board of Education v. Millburn Board of Education*, 95 N.J.A.R.2d (EDU) 506.

Child in parens patriae relationship with person domiciled within school district met hardship eligibility requirements for attending school within district. *S.L. v. Clifton Board of Education*, 95 N.J.A.R.2d (EDU) 476.

Student living with his grandmother in district to assist with a disability was not a legal resident entitled to a free education in district when supported entirely by his father living in another district. *D.W. v.*

Egg Harbor Board of Education, 95 N.J.A.R.2d (EDU) 225, supplemented 95 N.J.A.R.2d (EDU) 587.

Children were not entitled to a free and public education in school district after they moved with their mother to a true, fixed and permanent home outside district. *Lee v. Holmdel Board of Education*, 95 N.J.A.R.2d (EDU) 214.

Changing geographic designation for attendance in kindergarten was based on excessive student enrollment and was not unreasonable. *G.M. v. Roselle Park Board of Education*, 95 N.J.A.R.2d (EDU) 107.

Tuition for school attendance in district was waived until children's domicile with parent in another district was established. *Union County Board of Education v. A. McG. and L.M.*, 95 N.J.A.R.2d (EDU) 74, appeal dismissed 96 N.J.A.R.2d (EDU) 140.

Parent established domicile in school district to entitle children to free public education. *R.A. v. Ewing Board of Education*, 95 N.J.A.R.2d (EDU) 49.

Lack of affidavit from natural father residing out of state did not preclude enrollment of child in school district when control had otherwise been relinquished. *Gunderson v. Brigantine Board of Education*, 95 N.J.A.R.2d (EDU) 39.

Family illegally living year-round at campsite; domicile; right to free education. *Board of Education of Township of Middle v. K.K. and P.K.*, 93 N.J.A.R.2d (EDU) 461.

Neither domicile nor temporary residence in district established; student ineligible for free public education. *I.P. v. Board of Education of Borough of Leonia*, 93 N.J.A.R.2d (EDU) 128.

Incarcerated pupils; proof of residence. *Board of Education of City of Atlantic City v. New Jersey Department of Education*, 92 N.J.A.R.2d (EDU) 545.

Domicile; multiple residences. *Fort Lee Board of Education v. Kintos*, 92 N.J.A.R.2d (EDU) 96.

Enrollment status. Parents on behalf of "G.S." v. Bd. of Ed., *Rockaway, Morris Cty.*, 1974 S.L.D. 637.

6:20-1.3 School attendance

(a) For purposes of school attendance a day in session shall be a day on which the school is open and pupils are under the guidance and direction of a teacher or teachers engaged in the teaching process. Days on which school is closed for such reasons as holidays, teachers' institutes and inclement weather shall not be considered as days in session.

(b) A school day shall consist of not less than four hours of actual school work, except that in an approved kindergarten one continuous session of 2½ hours may be considered as a full day.

(c) An approved kindergarten shall meet the following requirements:

1. Every kindergarten teacher shall be properly certified.

2. A balanced program in an approved facility with adequate equipment, materials and supplies shall be provided each child. This program is to be designed to meet the individual needs of every child and may include instruction in reading and other subjects when it has been determined that a child is ready for such instruction by the teacher of the class.

3. The maximum enrollment for any kindergarten class shall be 25 pupils per teacher. The county superintendent of schools may give permission to increase the number in a room to any number he chooses provided another teacher, an auxiliary teacher, or a teacher aide is employed full-time to provide for the increased size.

(d) A day of attendance shall be one in which a pupil is present for the full day under the guidance and direction of a teacher while school is in session. Whenever over-crowded conditions make it necessary to hold two separate sessions with a different group of pupils in each session a pupil attending for all of either session shall be regarded as having attended for the full day. An excused absence for any reason shall not be counted as a day of attendance in the school register.

(e) A half-day class shall be considered the equivalent of a full day's attendance only if in session for four hours or more, exclusive of recess periods or lunch periods.

(f) A record of the attendance of all pupils on roll in a school register shall be kept each day that school is in session by a teacher or other authorized person. It shall be the duty of this person to keep the attendance records according to these rules and the specific instructions printed in the school register, and if necessary, according to supplementary instructions issued from time to time by the Commissioner.

(g) No pupil shall be recorded as present unless the school is in session and the pupil or pupils so recorded are under the guidance and direction of a teacher in the teaching process.

(h) A pupil shall be recorded as absent in the school register when not in attendance at a session of the school while a member of the school, except pupils excused due to religious holidays who shall be recorded as excused.

(i) A pupil shall be recorded as either present, absent, or excused for religious observance, every day the school is in session after the pupil enters until the date the pupil is transferred to another school, transferred to an individual home instruction record, or officially leaves the school system.

(j) The Commissioner shall annually prescribe a list of religious holidays on which it shall be mandatory to excuse pupils for religious observance upon the written request signed by the parent or person standing in loco parentis.

(k) The mere presence of a pupil at roll call shall not be regarded as sufficient attendance for compliance with these rules. In a school which is in session during both the forenoon and the afternoon, a pupil shall be present at least one hour during both the forenoon and the afternoon in order to be recorded as present for the full day. In a school which is in session during either the forenoon or the afternoon, a pupil shall be present at least two hours in the session in order to be recorded as present for the full day.

Amended by R.1990 d.393, effective August 6, 1990.

See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

Deleted (f), (m) and (n); recodified with editorial changes.

Case Notes

State Board of Education regulations applying to institutionalized children adopted. *New Jersey Assn. for Retarded Citizens, Inc. v. State Dept. of Human Services*, 89 N.J. 234, 445 A.2d 704 (1982).

Pupils not shown not to be residents of school district; incarceration. *Board of Education of City of Atlantic City v. New Jersey Department of Education*, 93 N.J.A.R.2d (EDU) 336.

Speculative impact of rule does not justify rescission of Board resolution allowing early enrollment. *McDowell v. Bd. of Ed., Island Heights, Ocean Cty.*, 1974 S.L.D. 1316.

SUBCHAPTER 2. (RESERVED)

SUBCHAPTER 2A. DOUBLE ENTRY BOOKKEEPING AND GAAP ACCOUNTING IN LOCAL SCHOOL DISTRICTS

6:20-2A.1 Prescribed system of double entry bookkeeping and GAAP accounting

(a) A uniform system of double entry bookkeeping shall be established, and such uniform system shall be utilized by all district boards of education.

(b) Accounting principles consistent with the "generally accepted accounting principles" (henceforth referred to as GAAP) promulgated by the Governmental Accounting Standards Board shall be applied by all district boards of education when preparing financial statements.

Amended by R.1985 d.452, effective September 3, 1985.

See: 17 N.J.R. 1361(a), 17 N.J.R. 2105(b).

"district board of education" substituted for "local school."

New Rule, R.1989 d.86, effective February 6, 1989.

See: 20 N.J.R. 2502(a), 21 N.J.R. 292(a).

This section was "prescribed system of bookkeeping".

Amended by R.1990 d.21, effective January 16, 1990.

See: 21 N.J.R. 2919(a), 22 N.J.R. 176(a).

Recodified and new (c) added.

Amended by R.1990 d.393, effective August 6, 1990.

See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

Added effective date of these rules: July 1, 1993.

Amended by R.1999 d.2, effective January 4, 1999.

See: 30 N.J.R. 3613(a), 31 N.J.R. 36(a).

Deleted a former (c).

6:20-2A.2 Summary statement of principles

(a) The accounting and reporting objectives of a district board of education accounting system shall make it possible to:

1. Present fairly and with full disclosure the financial position and results of operations of the funds and the

presentation of account groups of the district board of education in conformity with GAAP; and

2. Determine and demonstrate compliance with finance-related legal and contractual provisions.

(b) District board of education accounting systems shall be organized and operated on a fund basis. A fund is defined as a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with the fund's special regulations, restrictions, or limitations.

(c) The following types of funds shall be used by district boards of education:

1. Governmental funds shall be established, when necessary as follows:

- i. The general fund is used to account for all financial resources except those required to be accounted for in another fund. The general fund shall include, as necessary, major accounts (funds) as follows: general current expense; capital outlay; and other current expense categories designated by the Commissioner.

- ii. Special revenue funds are used to account for the proceeds of specific revenue sources (other than expendable trusts or for major capital projects) that are legally restricted to expenditure for specified purposes.

- iii. Capital projects funds are used to account for financial resources to be used for the acquisition or construction of major capital facilities (other than those financed by general fund revenues such as property taxes, proprietary funds and trust funds).

- iv. Debt service funds are used to account for the accumulation of resources for, and the payment of, general long-term debt principal and interest.

2. Proprietary funds shall be established, when necessary, as follows:

- i. Enterprise funds are used to account for operations that are financed and operated in a manner similar to private business enterprises, where the intent of the district board of education is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges; or where the district board of education has decided that periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes.

- ii. Internal service funds are used to account for the financing of goods or services provided by one department or office to other departments or offices of the

district board of education, or to other district boards of education and governmental units, on a cost-reimbursement basis.

3. Fiduciary funds shall be established, when necessary, as follows:

i. Trust and agency funds are used to account for assets held by a district board of education in a trustee capacity or as an agent for individuals, private organizations, other governmental units, and/or other funds. These include expendable trust funds, nonexpendable trust funds, pension trust funds, and agency funds.

(d) District boards of education shall establish and maintain those funds required by law and sound financial administration. Only the minimum number of funds consistent with legal and operating requirements should be established.

(e) District boards of education shall maintain account groups for fixed assets and long-term liabilities.

1. A clear distinction shall be made between fund fiscal assets and general fixed assets.

i. Fixed assets related to specific proprietary funds or trust funds shall be accounted for through such funds.

ii. All other fixed assets of a district board of education not required to be accounted for in a proprietary or trust fund shall be accounted for through the general fixed assets account group.

2. A clear distinction shall be made between fund long-term liabilities and general long-term debt.

i. Long-term liabilities of proprietary funds and trust funds shall be accounted for through such funds.

ii. All other unmatured general long-term liabilities of the district board of education not required to be accounted for in a proprietary or trust fund shall be accounted for through the general long-term debt account group.

(f) Fixed assets shall be accounted for at cost or, if the cost is not practicably determinable, at estimated historical cost determined in accordance with GAAP. Donated fixed assets shall be recorded at their estimated fair value at the time received.

(g) The following shall apply to the depreciation of fixed assets:

1. Depreciation of general fixed assets accounted for through the general fixed assets account group shall not be recorded in the accounts of governmental funds. Depreciation of general fixed assets may be recorded in cost accounting systems or calculated for cost finding analyses, and accumulated depreciation may be recorded in the general fixed assets account group.

2. Depreciation of fixed assets accounted for in a proprietary fund shall be recorded in the accounts of such fund. Depreciation is also recognized in trust funds where expenses, net income, and/or capital maintenance are measured.

(h) The modified accrual or accrual basis of accounting as appropriate shall be used in measuring financial position and operating results.

1. Governmental fund revenues and expenditures shall be recognized on the modified accrual basis. Revenues shall be recognized in the accounting period in which they become available and measurable. Expenditures shall be recognized in the accounting period in which the fund liability is incurred, if measurable, except for unmatured interest on general long-term debt, which shall be recognized when due.

2. Proprietary fund revenues and expenses shall be recognized on the accrual basis. Revenues shall be recognized in the accounting period in which they are earned and become measurable; expenses shall be recognized in the period incurred, if measurable.

3. Fiduciary fund revenues and expenses or expenditures (as appropriate) shall be recognized on the basis consistent with the fund's accounting measurement objective. Nonexpendable trust and pension trust funds shall be accounted for on the accrual basis; expendable trust funds shall be accounted for on the modified accrual basis. Agency fund assets and liabilities shall be accounted for on the modified accrual basis.

4. Transfers shall be recognized in the accounting period in which the inter-fund receivable and payable arise.

(i) An annual budget(s) shall be adopted by each district board of education and shall be included in the minutes of the board.

1. A detailed school district budget statement which shall include the classification of expenditures by program and/or function shall be prepared on a fund basis and in accordance with N.J.S.A. 18A:22-8. The school district budget statement shall be submitted by each district board of education in a form prescribed by the Commissioner.

2. Detailed budgets for each special project, capital project and Federal or State grant shall be prepared and maintained along with all authorized revisions on file in the business office.

3. A district board of education shall take appropriate action, as necessary, to maintain a "balanced budget", that is, one in which budgeted anticipated revenues and fund balance equal budgeted appropriations.

i. The board secretary shall notify the district board of education of any changes in anticipated revenue sources.

(j) The accounting system shall provide the basis for appropriate budgetary control.

(k) Budgetary comparisons shall be included in the appropriate financial statements and schedules for governmental funds for which an annual school district budget has been adopted.

(l) Transfer, revenue, expenditure, and expense account classification shall be maintained as follows:

1. Interfund transfers and proceeds of general long-term debt issues shall be classified separately from fund revenues and expenditures or expenses.

2. Governmental fund revenues shall be classified by fund, character (major account) and source. Expenditures shall be classified by fund, program and/or function, organization unit, activity, character (major account), and principal classes of objects.

3. Proprietary fund revenues and expenses shall be classified in essentially the same manner as those of similar business organizations, functions, or activities.

(m) A common terminology and classification shall be used consistently throughout the budget, the accounts and the financial reports of each fund. District boards of education shall adopt a chart of accounts prepared in conformity with established guidelines as follows:

1. The Commissioner shall prepare, publish and distribute a uniform minimum chart of accounts consistent with Financial Accounting for Local and State School Systems, commonly referred to as Handbook 2R2 and developed by the National Center for Education Statistics, for use in the accounting systems of all district boards of education and shall compel its use for financial reporting to the Department of Education.

2. The Commissioner shall publish and distribute Financial Accounting for Local and State School Systems, commonly referred to as Handbook 2R2 and developed by the National Center for Education Statistics, for use in the accounting systems of district boards of education selecting the program oriented budget system or those wishing to expand upon the minimum requirements for the function oriented budget system established in (m)1 above. Such expanded systems shall compile budget data in the expanded and minimum format each month and at the end of the fiscal year.

3. Any modifications to the chart of accounts adopted by the district board of education must conform to the guidelines established in (m)1 and 2 above and shall be subject to the district board of education's approval.

(n) Monthly and annual financial reports shall be prepared as follows:

1. Monthly financial statements and reports of financial condition, operating results and other pertinent information shall be prepared, in accordance with directions issued by the Commissioner, to facilitate management control of financial operations, legislative oversight and, where necessary or desired, for external reporting purposes.

2. A Comprehensive Annual Financial Report (annual audit), including General Purpose Financial Statements in compliance with Governmental Finance Officers Association (GFOA) standards, covering all funds and account groups of the district board of education, including introductory section; appropriate combined, combining, and individual fund statements; notes to the financial statements; required supplementary information; schedules; narrative explanations; and statistical tables, shall be prepared and published. The Commissioner shall prepare, publish and distribute a uniform program and shall compel its use for preparing the Comprehensive Annual Financial Report (annual audit).

3. General Purpose Financial Statements may be issued separately from the Comprehensive Annual Financial Report. Such statements shall include the basic financial statements and notes to the financial statements that are essential to fair presentation of financial condition and results of operations (and changes in financial position of proprietary funds and similar trust funds). Such statements may also be required to be accompanied by required supplementary information, essential to financial reporting.

Amended by R.1985 d.452, effective September 3, 1985.

See: 17 N.J.R. 1361(a), 17 N.J.R. 2105(b).

Added text "board of education."

New Rule, R.1989 d.86, effective February 6, 1989.

See: 20 N.J.R. 2502(a), 21 N.J.R. 292(a).

This section was "records of receipt and expenditure accounts".

Amended by R.1990 d.21, effective January 16, 1990.

See: 21 N.J.R. 2919(a), 22 N.J.R. 176(a).

Reference added to "Minimum" chart and requirements to be met if minimums are expanded upon.

Amended by R.1990 d.393, effective August 6, 1990.

See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

Added "fund balance" to (i)3.

Case Notes

Commissioner's allocation of surplus education funds determined proper after review of district's year-end audit. Board of Education of the Borough of Fairview v. Borough of Fairview, 96 N.J.A.R.2d (EDU) 678.

County educational services commission; refund of surplus funds. Essex County Educational Services Commission v. New Jersey State Department of Education, 93 N.J.A.R.2d (EDU) 522.

Prior use of method of determining costs; no continuing right to such methodology; grant applicant liable for reimbursement. Children's Seashore House v. New Jersey Department of Education, 93 N.J.A.R.2d (EDU) 373, reversed 95 N.J.A.R.2d (EDU) 205.

Method of crediting board of education employees' voluntary contributions to credit union and tax annuity accounts; unconstitutional. Board of Education of Township of Neptune v. Neptune Township Education Association, 92 N.J.A.R.2d (EDU) 602, supplemented 95 N.J.A.R.2d (EDU) 209, affirmed 293 N.J.Super. 1, 679 A.2d 669.

6:20-2A.3 Conflicts between legal provisions and GAAP

(a) Where financial statements prepared in conformity with GAAP do not demonstrate finance-related legal and contractual compliance, the district board of education shall present such additional schedules and narrative explanations in the Comprehensive Annual Financial Report as may be necessary to report its legal compliance responsibilities and accountabilities.

(b) The accounting system shall be maintained on a legal-compliance basis, and shall include sufficient additional records to permit GAAP based reporting.

As amended, R.1977 d.463, eff. December 13, 1977.

See: 9 N.J.R. 359(a), 10 N.J.R. 5(b).

As amended, R.1981 d.353, eff. September 10, 1981.

See: 13 N.J.R. 333(e), 13 N.J.R. 563(b).

(d): 1982-83 changed to 1983-84.

(e): Classifications amended.

(f): added concerning 1982-83 budget "crosswalk."

As amended, R.1982 d.194, eff. June 21, 1982.

See: 14 N.J.R. 309(a), 14 N.J.R. 654(b).

(d): "Local boards" changed to "District boards"; "fiscal year" stipulation deleted.

(f): Existing text replaced by Commissioner's reporting requirement. Amended by R.1985 d.452, effective September 3, 1985.

See: 17 N.J.R. 1361(a), 17 N.J.R. 2105(b).

Added text "boards of education."

New Rule, R.1989 d.86, effective February 6, 1989.

See: 20 N.J.R. 2502(a), 21 N.J.R. 292(a).

This section was "budget and cost distribution records".

Case Notes

Local board of education accountable for funds raised by pupils through activities under the board's auspices. *Silver v. Bd. of Ed., Hillside, Union Cty.*, 1977 S.L.D. 366, 1977 S.L.D. 371. *Cluff v. Lower Cape May Reg. H.S. Bd. of Ed.*, 1972 S.L.D. 560.

6:20-2A.4 Accounting and reporting directives

The Commissioner shall prepare accounting and reporting directives to be used by school officials in keeping the double entry bookkeeping and accounting system mandated in this subchapter and shall from time to time prepare, publish and distribute books, materials or bulletins for the guidance of school officials.

Amended by R.1989 d.86, effective February 6, 1989.

See: 20 N.J.R. 2502(a), 21 N.J.R. 292(a).

Added "accounting and reporting directives" and "mandated". Repealed old section 2.4 Physical property records.

Case Notes

Step-down method used by children's rehabilitation hospital to determine fringe benefit expense was reasonable even though result was more than that for which hospital was reimbursed. *Children's Seashore House v. Department of Education*, 93 N.J.A.R.2d (EDU) 629, 95 N.J.A.R.2d (EDU) 205.

6:20-2A.5 Supplies and equipment

(a) Criteria to distinguish between supplies and equipment for accounting purposes as prescribed by GAAP pursuant to N.J.A.C. 6:20-2A.1 and contained in the Financial Accounting for Local and State School Systems (presently referred to as Handbook 2R2) which is established by the National Center for Education Statistics, is herein adopted by reference and on file and may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, PO Box 049, Trenton, New Jersey and the Department of Education, PO Box 500, Trenton, New Jersey.

(b) For the purpose of this section, "food supplies" shall include only those supplies which are to be eaten or drunk and those substances which may enter into the composition of a food in the operation of a school cafeteria or in a home economics class.

(c) Public notification of method of purchase:

1. Whenever any district board of education elects to purchase food supplies pursuant to this section, it shall adopt a policy stating what food supplies will be purchased without advertising for bids, designating a person or persons authorized to purchase food supplies, describing the procedure by which interested vendors may become eligible to submit quotations, and outlining the method by which the district board of education will solicit and accept quotations.

2. This policy shall be adopted before the opening of schools in September and shall be made known to the public.

(d) Specifications and quotations shall be as follows:

1. Definite and uniform specifications governing standards of quality shall be given to each eligible vendor from whom quotations are solicited.

2. Each time a purchase of food supplies is to be made, the person designated by the district board of education to purchase food supplies shall solicit quotations from interested, eligible vendors in the manner prescribed in the adopted district board of education policy. Quotations for fresh or frozen fruits, vegetables and meats need not be solicited more than once in any two-week period.

3. The food supplies on which quotations are obtained shall be purchased from the vendor giving the lowest quotation unless the person or persons designated by the district board of education to purchase food supplies can justify the purchase from one of the other vendors submitting a quotation; such justification, together with all quotations received, shall be in permanent record form, available to school officials, the district board of education and the Department of Education for review and for audit for a minimum of three years.

4. Contingent upon approval of the district board of education in its adopted policy, the person or persons designated by the district board of education to purchase food supplies may purchase food supplies for any school cafeteria or home economics class to the extent of not more than \$250.00 in any month without soliciting quotations, provided a statement signed by the purchaser is filed with the invoice indicating the reason why quotations could not be obtained; such record shall also be retained for review and for audit.

(e) Paragraphs (d)1, 2 and 3 above shall not apply to food supplies purchased by advertising for bids.

As amended, R.1980 d.381, effective September 5, 1980.

See: 12 N.J.R. 453(a), 12 N.J.R. 569(d).

(d)4 was \$100.00.

Amended by R.1985 d.452, effective September 3, 1985.

See: 17 N.J.R. 1361(a), 17 N.J.R. 2105(b).

Added "district board of education".

Amended by R.1989 d.86, effective February 6, 1989.

See: 20 N.J.R. 2502(a), 21 N.J.R. 292(a).

Substituted "this section" for "these rules".

Amended by R.1990 d.393, effective August 6, 1990.

See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

"Handbook 2R2" adopted by reference at (a).

Amended by R.1999 d.2, effective January 4, 1999.

See: 30 N.J.R. 3613(a), 31 N.J.R. 36(a).

In (a), deleted a street address for the Department of Education.

6:20-2A.6 Mechanical bookkeeping systems

District boards of education which contract for electronic data processing bookkeeping services shall annually have an audit prepared or obtain a copy of an audit of the internal controls of the service company or agency as prescribed by Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants and maintain a copy of such audit on file.

Amended by R.1985 d.452, effective September 3, 1985.

See: 17 N.J.R. 1361(a), 17 N.J.R. 2105(b).

(b) added.

Amended by R.1989 d.86, effective February 6, 1989.

See: 20 N.J.R. 2502(a), 21 N.J.R. 292(a).

Added text "or obtain a copy of an audit" and "as prescribed by Certified Public Accountant".

Amended by R.1990 d.393, effective August 6, 1990.

See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

Deleted (a), prior approval by Commissioner for use of electronic and mechanical systems deleted.

6:20-2A.7 Employee organizational dues

(a) Pursuant to provisions of N.J.S.A. 52:14-15.9(e), any person holding employment with a district board of education in this State may have deductions made from this compensation for the purpose of paying dues to a bona fide employee organization.

(b) Employees desiring payroll deductions of organizational dues should indicate, in writing, their choice of employee organization. Any such written authorization may be withdrawn at any time by filing a notice with the secretary of the district board of education, according to directions promulgated by the Commissioner.

(c) Any secretary of a district board of education making organizational payroll deductions shall submit to the designated employee organization all deductions made for such purposes.

Amended by R.1985 d.452, effective September 3, 1985.

See: 17 N.J.R. 1361(a), 17 N.J.R. 2105(b).

Added "district".

Amended by R.1989 d.86, effective February 6, 1989.

See: 20 N.J.R. 2502(a), 21 N.J.R. 292(a).

Old section 2.7 was "Bookkeeping and accounting forms" and was repealed.

Case Notes

School board was not in violation of prohibition against use of public money except for public purposes by forwarding once a month total amount of employees' monthly contributions to credit union and/or annuity agent. Neptune Board of Education v. Neptune Township Association, 95 N.J.A.R.2d (EDU) 209, affirmed 293 N.J.Super. 1, 679 A.2d 669.

6:20-2A.8 Petty cash fund

(a) Pursuant to the provisions of N.J.S.A. 18A:19-13, a district board of education may establish on July 1 of each year, or as needed, a petty cash fund or funds for the purpose of making immediate payments of comparatively small amounts.

(b) A district board of education establishing a petty cash fund shall:

1. Indicate the amount or amounts authorized for each fund;
2. Set the maximum expenditure which may be made from each fund;
3. Designate an individual who will be responsible for the proper disposition of each fund;
4. Establish the minimum time period in which the designated person shall report to the district board of education on amounts disbursed from each fund; and
5. Approve a voucher prepared by the board secretary to replenish each fund.

(c) All unused petty cash funds are to be returned to the depository at the close of each fiscal year.

As amended, R.1983 d.491, effective November 7, 1983.

See: 15 N.J.R. 982(a), 15 N.J.R. 1861(a).

Added to (b), 1-5 and (c).

Amended by R.1985 d.452, effective September 3, 1985.

See: 17 N.J.R. 1361(a), 17 N.J.R. 2105(b).

Added "district".

Amended by R.1990 d.21, effective January 16, 1990.

See: 21 N.J.R. 2919(a), 22 N.J.R. 176(a).

Deleted the word "imprest" before petty cash fund.

6:20-2A.9 Summer payment plan

Funds withheld from employees' salaries for the summer payment plan prescribed by N.J.S.A. 18A:29-3 shall be deposited in a separate account in a depository designated by the district board of education, said account to be known as Board of Education of _____ Summer Payment Plan Account. Withdrawals from this account shall be made by individual checks payable to the order of employees for the amount withheld from their salaries during the school year. A payment list shall be certified by the president and secretary of the district board of education and delivered to the treasurer of school moneys of the district board of education.

Amended by R.1985 d.452, effective September 3, 1985.

See: 17 N.J.R. 1361(a), 17 N.J.R. 2105(b).

Substituted "treasurer" for "custodian"; added "district".

6:20-2A.10 Overexpenditure of funds

(a) A district board of education shall implement controls over budgeted appropriations as follows:

1. No encumbrance or expenditure (liability or payment) shall be approved which when added to the total of existing encumbrances and expenditures exceeds the amount appropriated by the district board of education in the applicable line item account established pursuant to the minimum chart of accounts referenced in N.J.A.C. 6:20-2A.2(m)1. A line item account is defined as the lowest (most specific) level of detail in the appropriation/expenditure classification.

2. When a district board of education adopts an expanded chart of accounts pursuant to N.J.A.C. 6:20-2A.2(m)2, such district board of education shall adopt a policy concerning the controls over appropriations for line item accounts which exceed the minimum level of detail established pursuant to N.J.A.C. 6:20-2A.2(m)1. If a district board of education fails to adopt such a policy, the restrictions contained in (a)1 above shall apply to line item accounts which exceed the minimum level of detail.

3. A district board of education may transfer amounts necessary to effectuate the approval of encumbrances or expenditures prohibited in (a)1 and 2 above from line item accounts with available appropriation balances. These transfers shall be made prior to the approval of such encumbrances or expenditures and shall be made in accordance with N.J.S.A. 18A:22-8.1 and 18A:22-8.2.

(b) A district board of education anticipating an over-expenditure in either the general, capital projects or debt service funds as designated in N.J.A.C. 6:20-2A.2(c)1 shall proceed in the following manner:

1. The district board of education shall direct the chief school administrator to immediately notify the county superintendent of schools, of the following:

- i. The projected amount of the overexpenditure;
- ii. The reason or reasons for the projected overexpenditure; and
- iii. The action being taken by the district board of education to avoid the projected overexpenditure.

2. The county superintendent shall immediately notify the Commissioner, in writing, if the projected amount of the over-expenditure exceeds five percent of the district's general fund budget or \$100,000, whichever is lower.

3. The county superintendent shall immediately investigate to determine if the corrective action being taken by the district board of education is sufficient to avoid an overexpenditure. If necessary, the county superintendent shall assist the district board of education in determining what further corrective action can be taken, or request assistance from the Division of Finance.

4. The county superintendent shall immediately notify the Commissioner, in writing, should it appear that an overexpenditure may occur and the district board of education is not taking adequate action to avoid an overexpenditure.

(c) A district board of education secretary shall report to the district board of education, at each regular meeting, the amounts appropriated, expended and transferred into or out of an item of appropriation, for each item of appropriation shown on the budget form prepared in accordance with N.J.S.A. 18A:22-8. This report shall be in addition to the report required by N.J.S.A. 18A:17-9.

(d) A district board of education shall obtain a certification from the district board of education secretary each month that no line item account has encumbrances and expenditures which in total exceed the line item appropriation in violation of (a) above. If a violation has occurred, the district board of education shall by resolution either transfer amounts among line items and/or from free balance or direct the district board of education secretary or the chief school administrator, as appropriate, to transfer amounts among line items and/or from free balance to eliminate the line item account deficit(s). If the latter option is selected, the appropriate official shall provide a detailed report of the amounts transferred into and out of the affected line item account(s) or free balance for the board's ratification at the next regularly scheduled meeting. As applicable, the secretary's certification or a detailed account of all transfers and the board's ratification, when this option is selected, shall be reflected in the minutes of the board. All transfers shall be subject to the restrictions contained in N.J.S.A. 18A:22-8.1 and 18A:22-8.2.

(e) A district board of education, after review of the secretary's monthly financial report (appropriations section) and upon consultation with the appropriate district officials, shall certify in the minutes of the board each month that no major account or fund has been overexpended in violation of (b) above and that sufficient funds are available to meet the district's financial obligations for the remainder of the fiscal year. If the board is unable to make such a certification, the board shall direct the chief school administrator to initiate the steps outlined in (b) above and such directive shall be reflected in the minutes of the board.

(f) By August 15, the county superintendent shall report to the Commissioner all overexpenditures as shown on the June report of the district board of education secretary filed pursuant to N.J.S.A. 18A:17-10.

(g) Should a district board of education fail to develop an acceptable remedial plan to eliminate the projected overexpenditure, the district may be disqualified for certification under the State's monitoring procedure. In those cases where the Commissioner determines that the failure to develop an acceptable remedial plan to eliminate the projected overexpenditure impacts the district's ability to meet its goals and objectives, the Commissioner shall recommend to the State Board of Education that the district's certification be rescinded.

(h) Beginning in the second year following the year in which the deficit occurred the State aid of a district board of education will be reduced by the product of the sum of the deficits in any fund and the percentage of that sum to its T&E program budget defined in N.J.S.A. 18A:7F-3.

1. Reductions will be made in the following descending order:

- i. Foundation aid;
- ii. Transition aid;
- iii. Transportation aid;
- iv. Aid for at-risk pupils;
- v. Bilingual education aid; and
- vi. Special education aid.

2. Deficits incurred for special schools, State and Federal grant projects, enterprise funds such as the school lunch fund, trust and agency funds and student activity funds will be applied to the balance or deficit of the general fund when such overexpended projects and funds should have been balanced by expenditures from or transfers to that fund.

New Rule R.1986 d.118, effective April 7, 1986.

See: 17 N.J.R. 2939(b), 18 N.J.R. 643(a).

Amended by R.1989 d.86, effective February 6, 1989.

See: 20 N.J.R. 2502(a), 21 N.J.R. 292(a).

Substantially amended.

Amended by R.1990 d.21, effective January 16, 1990.

See: 21 N.J.R. 2919(a), 22 N.J.R. 176(a).

New (a)1-3 added, implementing of controls over budgeted appropriations.

Amended by R.1990 d.393, effective August 6, 1990.

See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

New (d) and (e) added; remaining subsections recodified.

Administrative Correction in (b).

See: 23 N.J.R. 59(a).

Amended by R.1991 d.459, effective September 3, 1991.

See: 23 N.J.R. 1733(a), 23 N.J.R. 2634(a).

Text on Debt service State support deleted; text on overexpenditure of funds recodified from 2A.11 with amendments to specify reduction order and application of deficits.

Prior annotations on Debt service State support:

Amended by R.1980 d.427, effective October 2, 1980.

See: 12 N.J.R. 505(a), 12 N.J.R. 639(a).

Amended by R.1985 d.452, effective September 3, 1985.

See: 17 N.J.R. 1361(a), 17 N.J.R. 2105(b).

Added "district".

Amended by R.1999 d.2, effective January 4, 1999.

See: 30 N.J.R. 3613(a), 31 N.J.R. 36(a).

In (b), substituted "general, capital projects" for "current expense, capital outlay" following "either the" in the introductory paragraph, and substituted "general fund" for "current expense" following "district's" in 2; and in (h), deleted "major account or" following "in any" and substituted "T & E program budget defined in N.J.S.A. 18A:7F-3" for "maximum foundation budget defined in N.J.S.A. 18A:7D-6" at the end of the introductory paragraph, and deleted "major account, current expense of the" preceding "general" and deleted "major account" following "to that" in 2.

Case Notes

Recoupment of overpaid funds due to miscalculations affirmed. Buena Region Support Staff v. Board of Education of the Borough of Buena, Atlantic County, 97 N.J.A.R.2d (EDU) 507.

6:20-2A.11 (Reserved)

New Rule, R.1987 d.239, effective June 1, 1987.

See: 19 N.J.R. 437(a), 19 N.J.R. 728(a).

Amended by R.1989 d.86, effective February 6, 1989.

See: 20 N.J.R. 2502(a), 21 N.J.R. 292(a).

Uppercased Commissioner.

Amended by R.1991 d.459, effective September 3, 1991.

See: 23 N.J.R. 1733(a), 23 N.J.R. 2634(a).

Text on overexpenditure of funds recodified to 2A.10; text on appropriation of free balance recodified from 2A.12; appropriation of all available free balance required for waiver; (c) deleted.

Amended by R.1991 d.590, effective December 16, 1991.

See: 23 N.J.R. 2818(a), 23 N.J.R. 3746(a).

Established the requirement that appropriations be used exclusively for their intended purpose when associated with budget gap waivers, level II remedial plans, level III corrective action plans, educational improvement plans and "T&E" directives.

Repealed by R.1997 d.372, effective September 2, 1997.

See: 29 N.J.R. 2591(a), 29 N.J.R. 3806(a).

Section was "Appropriation of free balance and restricted appropriations".

6:20-2A.12 Capital reserve account procedures

(a) A district board of education or board of school estimate in a district having such a board may establish by formal resolution a capital reserve account within the general fund for the accumulation of funds for capital outlay appropriations/expenditures in subsequent fiscal years pursuant to N.J.S.A. 18A:21-2 and 3. The capital reserve account shall be established, administered and accounted for as follows:

1. A true copy of the establishing resolution shall be filed with the Division of Finance pursuant to N.J.S.A. 18A:21-3.

2. A district board of education may establish or increase the balance in the capital reserve account by including in the original annual general fund budget, which is certified for taxes, an appropriation of core curriculum standards aid revenue not to exceed 1.5 percent of such revenue pursuant to N.J.S.A. 18A:21-3.

3. The capital reserve account may also be established or increased in the original annual general fund budget which is certified for taxes by an amount expressly approved by the voters of the district or the board of school estimate pursuant to N.J.S.A. 18A:21-3.

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

5. Additions to the capital reserve account from core curriculum standards aid, amounts approved by the voters or board of school estimate and investment income are included in the annual budget statement's appropriation section in the line item "Increase in Capital Reserve."

6. Funds placed in the capital reserve account are restricted to the capital outlay major account/fund and

transfers of such funds to other major accounts/funds are prohibited pursuant to N.J.S.A. 18A:22-8.2.

7. Funds in the capital reserve account may be appropriated as revenue only in the annual budget which is certified for taxes pursuant to N.J.S.A. 18A:21-4 in the line item "Withdrawal from Capital Reserve" subject to the following restrictions:

i. Funds withdrawn from the capital reserve account and included in the annual budget shall not be transferred for current expenses or debt service payments pursuant to N.J.S.A. 18A:21-4. In any year that capital reserve account funds are appropriated in the annual budget along with unrestricted fund sources, no transfers from capital outlay to current expense which are permitted by N.J.S.A. 18A:22-8.2 shall be made which reduce the capital outlay appropriation to an amount less than the appropriated capital reserve account funds;

ii. Funds in the capital reserve account which are not appropriated in the original annual general fund budget which is certified for taxes shall not be appropriated during the year;

iii. In any year that capital reserve account funds are appropriated in the annual budget, unexpended capital outlay appropriations up to the amount of capital reserve account funds appropriated shall be restored to the capital reserve account. Expenditures are deemed as being charged first to unrestricted capital outlay fund sources with capital reserve account appropriations expended last; and

iv. In any year that capital reserve account funds are appropriated in the annual budget, earnings attributable to the investment of unexpended capital outlay funds up to the amount of capital reserve account funds appropriated (lesser of unexpended capital outlay funds or capital reserve account funds appropriated) shall be placed in the capital reserve account along with earnings attributable to the investment of funds remaining in the capital reserve account.

8. A separate fund 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:

- i. Dr: Capital Reserve Account; and
- ii. Cr: Reserved Fund Balance—Capital Reserve Account.

New Rule, R.1991 d.459, effective September 3, 1991.

See: 23 N.J.R. 1733(a), 23 N.J.R. 2634(a).

Former section 6:20-2A.12 "Appropriation of free balance" was recodified to 6:20-2A.11.

Amended by R.1999 d.2, effective January 4, 1999.

See: 30 N.J.R. 3613(a), 31 N.J.R. 36(a).

In (a), substituted "general fund" for "capitulate outlay major account/fund" in the introductory paragraph and 8, substituted "general fund" for "capital outlay" in 2, 3, 4 and 7ii, substituted "core curriculum standards aid revenue not to exceed 1.5 percent of such revenue" for "foundation aid revenue not to exceed the amount of foundation aid for capital outlay" in 2, and substituted "core curriculum standards aid" for "foundation aid for capital outlay" in 5.

6:20-2A.13 (Reserved)

New Rule, R.1989 d.86, effective February 6, 1989.

See: 20 N.J.R. 2502(a), 21 N.J.R. 292(a).

Repealed by R.1990 d.21, effective January 16, 1990.

See: 21 N.J.R. 2919(a), 22 N.J.R. 176(a).

SUBCHAPTER 3. TUITION PUBLIC SCHOOLS

6:20-3.1 Method of determining tuition rates for regular public schools

(a) The term "actual cost per pupil" for determining the tuition rate or rates for a given year referred to in N.J.S.A. 18A:38-19 and 18A:46-21 shall mean the local cost per pupil in average daily enrollment, based upon audited expenditures for that year for the purpose for which the tuition rate is being determined and consistent with the grade/program categories in N.J.S.A. 18A:7F-13 and 18A:7F-19 that is, regular education classes: pre-school/kindergarten, grades one through five, grades six through eight, and grades nine through 12; and special education classes by handicap classification.

1. All expenditures for each purpose except Federal and State special revenue fund expenditures and those specifically excluded in (d)5 below shall be included.

2. "Average daily enrollment" for the purpose of determining the "actual cost per pupil," shall be the sum of the days present and absent of all pupils enrolled in the register or registers of the program for which the rate is being determined during the year divided by the number of days school was actually in session, but in no event shall the divisor be less than 180 days.

3. The "actual cost per pupil" for all grade and program categories shall be reduced as appropriate by Abbott v. Burke Parity Remedy Aid and State aid for programs for bilingual pupils received pursuant to N.J.S.A. 18A:7F-20 for both resident and nonresident pupils. Such reductions shall be made in accordance with the option selected in (b) below for certification of the "actual cost per pupil" for each tuition category.

(b) The Commissioner shall certify the "actual cost per pupil" for each tuition category for a given year for each receiving district board of education based upon either:

1. A report prepared and submitted annually by the receiving district board of education indicating the actual amounts of expenditures and adjustments whenever practicable or amounts equitably allocated and supported by

documentation for each applicable item in the grade/program category for which the tuition rate is required, according to the prescribed bookkeeping and accounting system; or

2. A report prepared annually by the Commissioner for each receiving district board of education. This report shall determine the "actual cost per pupil" for each tuition category utilizing the following:

- i. Expenditures reflected in the receiving district's annual independent audit;
- ii. Supplemental data for average daily enrollment and items of expenditure detailed in (d)2 below submitted by category by the receiving district on a form prescribed by the Commissioner; and
- iii. Criteria contained in (d) below.

(c) Once having determined to annually submit the report pursuant to (b)1 above to the Commissioner, a receiving district must submit a written request to the Commissioner in order to change to the certification method in (b)2 above. The request must indicate reason(s) for the change and shall be subject to the Commissioner's approval.

(d) The share of each item of expenditure for each grade/program category on the report in (b)2 above shall be determined on a pro rata or actual basis as follows:

1. The actual expenditures for each category as reflected in the receiving district's annual independent audit will be used for the following items:

- i. Teachers' salaries and equipment for regular education classes;
- ii. Direct instructional expenditures for salaries, equipment and other expenses for special education classes; and
- iii. Local contribution for early childhood programs.

2. Expenditures submitted by category on the supplemental data report and determined on either an actual basis or an equitable basis of allocation, such as square footage or average daily enrollment, selected by the receiving district and supported by documentation will be used for the following items:

- i. Rental of land and buildings;
- ii. Interest on lease purchase agreements;
- iii. School sponsored co-curricular activities, athletics, and other instructional programs of the general fund;
- iv. Local vocational programs;
- v. Facilities acquisition and construction services;
- vi. Building use charges as defined in (d)6 and 7 below; and
- vii. Other support services, special education students.

3. Expenditures for regular education class categories as reflected in the receiving district's annual independent

audit will be allocated in proportion to the average daily enrollment in the grade categories for regular education classes for the following items:

- i. Other salaries for instruction such as teaching assistants and aides as well as others providing or assisting directly in the instructional program;
- ii. Textbooks;
- iii. Equipment;
- iv. Teaching supplies;
- v. Purchased professional educational services;
- vi. Purchased technical educational services;
- vii. Other support services, regular students;
- viii. Other direct expenses of regular education classes;
- ix. Direct instructional expenditures for salaries, other expenses and equipment for basic skills/remedial programs; and
- x. Employee benefits.

4. Expenditures including related employee benefits and equipment as reflected in the receiving district's annual independent audit will be allocated in proportion to the average daily enrollment in each category for all categories listed in (a) above for the following items:

- i. General administration and business and other support services;
- ii. Improvement of instruction services;
- iii. Staff training services;
- iv. Educational media services, school library;
- v. School administration;
- vi. Attendance, social work and health;
- vii. Contracted transportation or transportation provided by district owned vehicles for curricular activities such as field trips, athletic trips and other trips which are part of the instructional program;
- viii. Operation and maintenance of plant expenditures;
- ix. Fixed charges: Unallocated employee benefit costs for retirement and social security contributions except T.P.A.F. contributions, insurance and judgments including unemployment compensation (U.C.C.), interest on current loans, and other fixed charges except rental of land and buildings and interest on lease purchase agreements which are determined pursuant to (d)2 above and principal on lease purchase agreements and tuition which are excluded pursuant to (d)5 below;
- x. Food service expenditures of the general fund; and

xi. Direct instructional expenditures for salaries, equipment and other expenses for bilingual education programs and home instruction.

5. Expenditures will be excluded from the actual cost per pupil for tuition purposes for the following items:

i. Transportation to and from school which is paid by the resident district;

ii. Employee retirement and social security contributions for T.P.A.F. members which are fully funded by the State;

iii. Principal on lease purchase agreements;

iv. Tuition;

v. Community services;

vi. Resource room which is determined pursuant to (d)9 below and permitted as a separate charge over and above tuition for regular education classes;

vii. Accredited adult education programs and nonaccredited adult and evening programs; and

viii. Extraordinary services provided to special education students for which a district may bill directly.

6. Building use charge is determined as follows:

i. Divide the amount of debt service State support received by the debt service paid for the school year to determine the ratio of State support;

ii. Multiply the debt service interest charges paid on debt for the buildings in which the program is located by the ratio of State support obtained in (d)6i above;

iii. Subtract the amount obtained in (d)6ii above from the debt service interest charge paid on debt for the buildings in which the program is located;

iv. Distribute the amount obtained in (d)6iii above in accordance with (d)2 above.

7. Special building use charge is determined as follows:

i. Whenever a receiving district receives more than 50 percent of the average daily enrollment in a program for which a tuition rate is being determined, except for special education programs, the receiving district may include in accordance with (d)2 above the amount expended for principal and interest on major repairs and major renewals of furniture, equipment and apparatus for the building in which the program is located, provided that:

(1) Such major repairs or major renewals were funded by the issuance of bonds as provided in N.J.S.A. 18A:21-1;

(2) The receiving district consulted with each sending district having more than 10 percent of the average daily enrollment in the program for which the tuition rate is being determined prior to taking any action in accordance with N.J.S.A. 18A:24-10 to authorize the issuance of such bonds; and

(3) The majority of districts with more than 10 percent of the enrollment in the program has passed a resolution in support of the receiving district's determination to issue such bonds or the Commissioner, after a conference, has approved the proposal for the issuance of such bonds.

ii. Receiving districts for which this section is applicable may include in accordance with (d)2 above the entire rental on a site or school building acquired by a lease purchase agreement pursuant to N.J.S.A. 18A:20-4.2 provided that:

(1) The receiving district consulted with each sending district having more than 10 percent of the average daily enrollment in the program for which the tuition rate is being determined prior to entering into the lease purchase agreement; and

(2) Each sending district with more than 10 percent of the enrollment in the program has passed a resolution in support of the receiving district's determination to enter into a lease purchase agreement or the Commissioner, after a conference, has approved the proposal to enter into a lease purchase agreement.

8. The actual and prorated expenditures for all grade/program categories shall be adjusted to determine the "actual cost per pupil" for tuition purposes as follows:

i. Abbott v. Burke Parity Remedy Aid shall be deducted in proportion to the average daily enrollment for each category weighted on a basis consistent with N.J.S.A. 18A:7F-13. For this purpose the average weight for the grade categories in N.J.S.A. 18A:7F-13 shall be used to determine the weighted average daily enrollments for special education classes;

ii. State aid for programs for bilingual pupils received pursuant to N.J.S.A. 18A:7F-20 for both resident and nonresident pupils shall be deducted in proportion to the average daily enrollment for each category; and

9. In addition to the tuition charged for each grade category, receiving district boards of education may charge for pupils receiving services in a resource room an additional amount up to the actual direct instructional cost per pupil for such services calculated on an hourly basis (an example of the calculation is contained in Policy Bulletin: 100-1 issued by and available from the Division of Finance, State Department of Education, PO Box 500, Trenton, New Jersey 08625-0500).

(e) A tentative tuition charge shall be established for budgetary purposes by written contractual agreement between the receiving district board of education and the sending district board of education, and such tentative charge shall equal an amount not in excess of the receiving district's estimated cost per pupil for the ensuing school year for the purpose or purposes for which tuition is being charged, multiplied by the estimated average daily enrollment of pupils expected to be received during the ensuing school year. Such written contract shall be on a form prepared by the Commissioner.

1. The sending district board of education and the receiving district board of education shall enter into a written contractual agreement for tuition for the ensuing school year, except for a contractual agreement for a pupil enrolled in a special education class, no later than seven days prior to the date on which the proposed budget for the ensuing school year is required to be submitted to the county superintendent. Such contractual agreement shall require the sending district board of education to pay 10 percent of the tentative tuition charge no later than the first of each month from September through June of the contract year. The contractual agreement, except for a contractual agreement for a pupil enrolled in a special education class, shall require that all adjustments which shall be made because of a difference in cost or in the number of pupils sent shall only be made during the third school year following the contract year. All contractual agreements shall contain a payment schedule for all adjustments which may be necessary.

2. The sending district board of education shall notify in writing the receiving district board of education of the estimated average daily enrollment of pupils in each tuition category expected to be sent during the ensuing school year no later than December 15 preceding the beginning of the ensuing school year. The receiving district board of education shall notify in writing the sending district board of education of the estimated cost per pupil in each tuition category for the ensuing school year and the tentative tuition charge no later than January 15 preceding the beginning of the ensuing school year. The receiving district board of education shall submit to the sending district board of education a copy of its calculations to determine the estimated cost per pupil in each tuition category for the ensuing school year no later than January 15 preceding the beginning of the ensuing school year. Such calculations shall be on a form prepared by the Commissioner.

3. If the Commissioner later determines that the tentative tuition charge established by written contractual agreement, except for a contractual agreement for a pupil enrolled in a special education class, was greater than the actual cost per pupil during the school year multiplied by the actual average daily enrollment received, the receiving district board of education shall return to the sending district board of education in the third school year following the contract year the amount by which the tentative

charge exceeded the actual charge as determined above, or, at the option of the receiving district board of education shall credit the sending district board of education with the excess amount. Such adjustment for a contractual agreement for a pupil enrolled in a special education class shall be made no later than the end of the third school year, following the contract year.

4. If the Commissioner later determines that the tentative charge established by written contractual agreement, except for a contractual agreement for a pupil enrolled in a special education class, was less than the actual cost per pupil during the school year multiplied by the actual average daily enrollment received, the receiving district board of education may charge the sending district board of education all or part of the amount owed by the sending district board of education, to be paid during the third school year following the school year for which the tentative charge was paid. Such adjustment for a contractual agreement for a pupil enrolled in a special education class shall be made no later than the end of the third school year following the contract year. The county superintendent of schools of the county in which the sending district board of education is located may approve the payment of the additional charge over another period, if the sending district board of education can demonstrate that payment during the third school year following the school year for which the tentative charge was paid would cause a hardship.

(f) The Commissioner shall prepare the necessary forms to certify the "actual cost per pupil" for each tuition category according to the rules in this section. The Commissioner shall also prepare the contract forms and the forms to be used by the receiving district board of education to establish the estimated cost per pupil for each tuition category for the ensuing school year.

(g) In any year in which the receiving district board of education can prove to the satisfaction of the Commissioner that the maintenance charge for the use of the school facilities is not adequate, the Commissioner may approve the additional charge for the use of such school facilities.

As amended, R.1970 d.145, effective December 7, 1970.

See: 2 N.J.R. 89(c), 3 N.J.R. 3(b).

As amended, R.1980 d.165, effective April 17, 1980.

See: 12 N.J.R. 251(c).

As amended, R.1980 d.225, effective May 15, 1980.

See: 12 N.J.R. 308(a).

As amended, R.1982 d.270, effective August 16, 1982, operative July 1, 1983.

See: 14 N.J.R. 458(a), 14 N.J.R. 914(b), 14 N.J.R. 978(b).

Added paragraph (c)12.

As amended, R.1984 d.205, effective June 4, 1984 (operative July 1, 1984).

See: 15 N.J.R. 2089(a), 16 N.J.R. 1345(a).

Section substantially amended.

Emergency amendment, R.1984 d.589, effective December 10, 1984 (expires February 8, 1985).

See: 17 N.J.R. 119(a).

Amended by R.1985 d.91, effective March 18, 1985.

See: 17 N.J.R. 119(a), 17 N.J.R. 583(a).

Amended by R.1985 d.157, effective April 1, 1985.

See: 17 N.J.R. 144(a), 17 N.J.R. 811(c).

Substantially amended.

Amended by R.1988 d.147, effective April 4, 1988.

See: 19 N.J.R. 1598(a), 20 N.J.R. 787(b).

Substantially amended.

Amended by R.1990 d.393, effective August 6, 1990.

See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

Amended language throughout clarifying procedures and formulas.

Amended by R.1991 d.590, effective December 16, 1991.

See: 23 N.J.R. 2818(a), 23 N.J.R. 3746(a).

Revised to comport with the grade and program categories, State-aid distribution, and other aspects of the QEA.

Amended by R.1999 d.2, effective January 4, 1999.

See: 30 N.J.R. 3613(a), 31 N.J.R. 36(a).

In (a), substituted a reference to N.J.S.A. 18A:7F-13 and 18A:7F-19 for a reference to N.J.S.A. 18A:7D-6 and 18A:7D-16 in the introductory paragraph, substituted "revenue fund" for "project" in 1, and rewrote 3; in (b)2, deleted a former iii and recodified former iv as iii; and rewrote (d).

Case Notes

Nonresident student attending free public school owes school board tuition reimbursement. *Livingston Township Board of Education v. E.J.B.*, 96 N.J.A.R.2d (EDU) 536.

Adoptive family no longer liable for child's tuition expenses after surrendering custody. *Board of Education of the Borough of Buena v. New Jersey Department of Education*, 96 N.J.A.R.2d (EDU) 288.

Tuition must be paid to board of education for students enrolled in district schools but not domiciled in district. *Ciabattari v. Ocean Township Board of Education*, 96 N.J.A.R.2d (EDU) 249.

School board lacks authority to charge tuition for nonmandated preschool program. *Herron v. Board of Education of the Town of Montclair*, 96 N.J.A.R.2d (EDU) 167.

Tuition rate for sending school districts was properly recalculated on basis of costs attributable to tuition in a sending-receiving relationship. *Millville Board of Education v. Maurice River Board of Education*, 95 N.J.A.R.2d (EDU) 92.

No tuition reimbursement allowed for students not properly domiciled in district. *Pascack Valley Regional High School District v. Kwon*, 93 N.J.A.R.2d (EDU) 897.

Parents domiciled in another district required to reimburse board for children's education. *Fort Lee Board of Education v. Kintos*, 93 N.J.A.R.2d (EDU) 837.

Rules to be construed consistently with statute. *Bd. of Ed., N. Bergen v. Bd. of Ed., Guttenberg, Hudson Cty.*, 1973 S.L.D. 18, 1973 S.L.D. 28, 1974 S.L.D. 1415, 1975 S.L.D. 1111, 1975 S.L.D. 1115, 1975 S.L.D. 1015, 1976 S.L.D. 1152.

Policy behind methods of determining costs. *Bd. of Education, Burlington v. Bd. of Ed., Edgewater Pk., Burlington Cty.*, 1974 S.L.D. 692, 1975 S.L.D. 1074, 1976 S.L.D. 1123.

Application of permissive language. *Bd. of Ed. of Hackensack v. Bd. of Ed., Rochelle Pk., Bergen Cty.*, 1970 S.L.D. 292.

6:20-3.2 Method of determining tuition rate in a new district board of education

(a) During the first year of operation of a district board of education program which is to receive pupils, the estimated cost per pupil in each program for which the tuition rate is required shall be set by the receiving district board of education and shall be based on budgeted costs; the estimated cost or costs per pupil so established shall be submitted to the Commissioner for approval or disapproval no later than January 1 preceding the beginning of the first year of operation.

(b) If the Commissioner approves the estimated cost or costs per pupil each sending district board of education shall pay tentative tuition charges based upon these estimated costs per pupil during the first year of operation.

(c) If, after the first year of operation, the Commissioner determines that the tentative tuition charge was greater than the actual cost, the receiving district board of education shall return, except if the tentative tuition charge was for a pupil who was enrolled in a special education class, in the third school year following the first year of operation to each sending district board of education the amount by which the tentative charge exceeded the actual cost, or, at the option of the receiving district board of education, shall credit each sending district board of education with the amount by which the tentative tuition charge exceeded the actual cost. The payment or credit for a pupil who was enrolled in a special education class shall be made no later than the end of the third school year, following the first year of operation.

(d) If, after the first year of operation, the Commissioner determines that the tentative tuition charge was less than the actual cost, the receiving district board of education may charge the sending district board of education all or part of the amount owed by the sending district board of education, to be paid, except if the amount owed is for a pupil who was enrolled in a special education class, during the third school year following the first year of operation. The amount owed for a pupil who was enrolled in a special education class shall be paid no later than the end of the third school year following the first year of operation.

Amended by R.1985 d.157, effective April 1, 1985.

See: 17 N.J.R. 144(a), 17 N.J.R. 811(a).

Recodified with substantial amendments from 6:20-3.3.

Amended by R.1999 d.2, effective January 4, 1999.

See: 30 N.J.R. 3613(a), 31 N.J.R. 36(a).

6:20-3.3 Method of determining tuition rates for county vocational schools

(a) The term "actual cost per pupil" for determining the tuition rate or rates for a given year referred to in N.J.S.A. 18A:46-21 and 18A:54-20.1 shall mean the adjusted net cost per pupil in average daily enrollment, based upon audited expenditures for that year for the purpose for which the tuition rate is being determined.

1. Tuition rates shall be determined for the following categories:

- i. Regular vocational classes; and
- ii. Special vocational classes.

2. All expenditures for each purpose except Federal and State grant project expenditures shall be included.

3. "Average daily enrollment" for the purpose of determining the "actual cost per pupil" shall be the sum of the days present and absent of all pupils enrolled during the year in the register or registers of the program for which the rate is being determined divided by the number of days school was actually in session, but in no event shall the divisor be less than 180 days.

4. The "actual cost per pupil" for all tuition categories shall be adjusted to reflect net costs plus a reasonable surplus.

(b) The Commissioner shall certify the "actual cost per pupil" for each tuition category for a given year for each county vocational school district board of education utilizing the following:

1. Revenues, expenditures and fund balances reflected in the county vocational school's annual independent audit;

2. Average daily enrollment data by category submitted by the county vocational school on a form prescribed by the Commissioner; and

3. Criteria contained in (c) below.

(c) The share of each item of expenditure for each tuition category shall be determined on a pro rata or actual basis as follows:

1. Direct instructional expenditures for salaries and related benefits, textbooks, teaching supplies, purchased services, equipment, and other expenses for the tuition categories listed in (a)1 above shall be allocated on an actual basis;

2. Direct instructional expenditures for salaries and related benefits, textbooks, teaching supplies, purchased services, equipment and other expenses for basic skills/remedial programs and other support services, regular students shall be allocated to the regular vocational classes category listed in (a)1i above on an actual basis;

3. Direct instructional expenditures for salaries and related benefits, textbooks, teaching supplies, purchased services, equipment and other expenses for other support services, special education students indirectly related to the special vocational classes listed in (a)1ii above shall be allocated to the special vocational classes category on an actual basis;

4. Expenditures for all other general fund items, except for TPAF pension and social security and special schools, indirectly related to all tuition categories listed in (a)1 above shall be allocated between regular vocational classes and special vocational classes categories in proportion to the average daily enrollment for such categories.

(d) The total direct and indirect expenditures determined for each tuition category in (c) above shall be adjusted to reflect the net cost by deducting in proportion to the

average daily enrollment for each tuition category the amount obtained from the sum of all State aid (except State grants), county appropriations pursuant to N.J.S.A. 18A:54-29.2, non-resident fees pursuant to N.J.S.A. 18A:54-20.1 and miscellaneous income less expenditures for post-secondary programs for which no tuition may be charged pursuant to N.J.S.A. 18A:54-20.1, respectively, and expenditures for resource room, special schools and evening schools and extraordinary services.

1. Whenever funds have been appropriated by the county, the county vocational school district may charge the non-resident fee mentioned in (d) above in addition to tuition for any pupils who are not residents of the county. The fee per non-resident pupil shall not exceed the amount obtained by dividing the county appropriation by the number of pupils who are residents of the county pursuant to N.J.S.A. 18A:54-20.1.

(e) The net cost determined for each tuition category in (d) above shall be adjusted as appropriate to include in the certified maximum tuition rate for each category an amount which will permit the county vocational school district to maintain at its discretion for the year the tuition rate applies an ending general fund free balance not to exceed six percent of the district's net budget as defined in N.J.S.A. 18A:7F-3 which is consistent with the excess surplus provision of N.J.S.A. 18A:7F-7.

1. If the district's ending general fund free balance is less than six percent of its net budget for the year the tuition rate applies, the difference will be allocated amongst the tuition categories in proportion to the average daily enrollment for each category.

2. If the district's ending general fund free balance is equal to or greater than six percent of its net budget for the year the tuition rate applies, no amount shall be added to the net cost of any tuition category.

(f) The tuition for each program category shall be at the same rate per pupil for each sending district whether within or without the county pursuant to N.J.S.A. 18A:54-20.1.

(g) Calculation of tentative tuition rates, execution of written contractual agreements, payment of tuition (including the non-resident fee) and adjustments to tentative tuition charges upon certification of actual tuition rates by the Commissioner shall be made in accordance with N.J.A.C. 6:20-3.1(e) except that the tentative tuition rates shall be based on the county vocational school district's estimated adjusted net cost per pupil consistent with the calculation in (c), (d) and (e) above.

(h) The Commissioner shall prepare the necessary forms to certify the "actual cost per pupil" for each tuition category according to the rules in this section. The Commissioner shall also prepare the contract forms and the forms to be used by the county vocational school district boards of education to establish the estimated adjusted net cost per

pupil for each tuition category (tentative tuition rates) for the ensuing school year.

Repealed by R.1985 d.157, effective April 1, 1985.

See: 17 N.J.R. 144(a), 17 N.J.R. 811(c).

Section recodified to 3.2.

New Rule, R.1991 d.590, effective December 16, 1991.

See: 23 N.J.R. 2818(a), 23 N.J.R. 3746(a).

Amended by R.1999 d.2, effective January 4, 1999.

See: 30 N.J.R. 3613(a), 31 N.J.R. 36(a).

In (a), rewrote 1; in (c), inserted a reference to related benefits in 1, and rewrote 2 through 4; in (d), deleted "supplementary. speech, and home instruction and" following "expenditures for", deleted a reference to N.J.S.A. 18A:7D-16, and added a reference to extraordinary services in the introductory paragraph; and in (e), substituted "six percent" for "7.5 percent" throughout, changed N.J.S.A. reference in the introductory paragraph, and rewrote 2.

Case Notes

Tuition to be charged by receiving school district; actual cost of educating students. Board of Education of Township of Maurice River v. Board of Education of City of Millville, 92 N.J.A.R.2d (EDU) 305.

6:20-3.4 Method of determining tuition rates for county special services schools

(a) The term "actual cost per pupil" for determining the tuition rate or rates for a given year referred to in N.J.S.A. 18A:46-31 shall mean the adjusted net cost per pupil in average daily enrollment for special education classes, based upon audited expenditures for that year.

1. All expenditures for each purpose except Federal and State grant project expenditures shall be included.

2. "Average daily enrollment" for the purpose of determining the "actual cost per pupil" shall be the sum of the days present and absent of all pupils enrolled during the year in the register or registers of the program for which the rate is being determined divided by the number of days school was actually in session, but in no event shall the divisor be less than 180 days.

3. The "actual cost per pupil" for all tuition categories shall be adjusted to reflect net costs plus a reasonable surplus.

(b) The Commissioner shall certify the "actual cost per pupil" for a given year either for the school district or for each special education class by handicap classification for each county special services school district board of education utilizing the following:

1. Revenues, expenditures and fund balances reflected in the county special services school's annual independent audit;

2. Average daily enrollment data by category submitted by the county special services school on a form prescribed by the Commissioner; and

3. Criteria contained in (c) below.

(c) The share of each item of expenditure for each tuition category (special education classes by handicap classification) shall be determined on a pro rata or actual basis as follows:

1. Direct instructional expenditures for salaries and related benefits, textbooks, teaching supplies, purchased services, equipment and other expenses for each tuition category shall be allocated on an actual basis;

2. Expenditures for all other general fund items, except for TPAF pension and social security and special schools, indirectly related to all tuition categories shall be allocated amongst all categories in proportion to the average daily enrollment.

(d) The total direct and indirect expenditures determined for each tuition category in (c) above shall be adjusted to reflect the net cost by deducting in proportion to the average daily enrollment for each tuition category the amount obtained from the sum of all State aid (except State grants), county appropriations pursuant to N.J.S.A. 18A:46-41, non-resident fees pursuant to N.J.S.A. 18A:46-31 and miscellaneous income less expenditures for resource room and extraordinary services.

1. Whenever funds have been appropriated by the county, the county special services school district may charge the non-resident fee mentioned in (d) above in addition to tuition for any pupils who are not residents of the county. The fee per non-resident pupil shall not exceed the amount obtained by dividing the county appropriation by the number of pupils who are residents of the county pursuant to N.J.S.A. 18A:46-31.

(e) The net cost determined for each tuition category in (d) above shall be adjusted as appropriate to include in the certified maximum tuition rate for each category an amount which will permit the county special services school district to maintain at its discretion for the year the tuition rate applies an ending general fund free balance not to exceed 10 percent of the district's general fund budget which is consistent with the excess surplus provision of N.J.S.A. 18A:46-31.

1. If the district's ending general fund free balance is less than 10 percent of its net budget for the year the tuition rate applies, the difference will be allocated amongst the tuition categories in proportion to the average daily enrollment for each category.

2. If the district's ending general fund free balance is equal to or greater than 10 percent of its general fund budget for the year the tuition rate applies, no amount shall be added to the net cost of any tuition category.

(f) The tuition for each category of special education class shall be at the same rate per pupil for each sending district whether within or without the county pursuant to N.J.S.A. 18A:46-31.

(g) Calculation of tentative tuition rates, execution of written contractual agreements, payment of tuition (including the non-resident fee) and adjustments to tentative tuition charges upon certification of actual tuition rates by the Commissioner shall be made in accordance with N.J.A.C. 6:20-3.1(e) except that the tentative tuition rates shall be based on the county special services school district's estimated adjusted net cost per pupil consistent with the calculation in (c), (d) and (e) above.

(h) The Commissioner shall prepare the necessary forms to certify the "actual cost per pupil" for each tuition category according to the rules in this section. The Commissioner shall also prepare the contract forms and the forms to be used by the county special services school district board of education to establish the estimated adjusted net cost per pupil for each tuition category (tentative tuition rates) for the ensuing school year.

(i) A new county special services school district board of education shall use the method of determining tentative tuition rates contained in N.J.A.C. 6:20-3.2.

New Rule, R.1991 d.590, effective December 16, 1991.

See: 23 N.J.R. 2818(a), 23 N.J.R. 3746(a).

Administrative Correction to (e).

See: 24 N.J.R. 1882(a).

Amended by R.1999 d.2, effective January 4, 1999.

See: 30 N.J.R. 3613(a), 31 N.J.R. 36(a).

In (a), deleted "for each handicap classification contained in N.J.S.A. 18A:7D-16" at the end of the introductory paragraph; in (b), inserted a reference to school districts in the introductory paragraph; in (c), inserted a reference to related services in 1, and rewrote 2; in (d), substituted "expenditures for resource room and extraordinary services" for "expenditures for supplementary, speech and home instruction for which no tuition may be charged pursuant to N.J.S.A. 18A:7D-16 and expenditures for resource room" at the end on the introductory paragraph; and in (e), substituted "10 percent of the district's general fund budget" for "7.5 percent of the district's net budget as defined in N.J.S.A. 18A:7D-3" and changed N.J.S.A. reference in the introductory paragraph, substituted "10 percent" for "7.5 percent" in 1, and rewrote 2.

6:20-3.5 through 6:20-3.6 (Reserved)

As amended, R.1980 d.165, effective April 17, 1980.

See: 12 N.J.R. 251(c).

As amended, R. 1980 d.225, effective May 15, 1980.

See: 12 N.J.R. 308(a).

Repealed by R.1985 d.157, effective April 1, 1985.

See: 17 N.J.R. 144(a), 17 N.J.R. 811(a).

SUBCHAPTER 4. TUITION FOR PRIVATE SCHOOLS FOR THE HANDICAPPED

6:20-4.1 Tuition rate procedures

(a) The term "actual cost per pupil" referred to in N.J.S.A. 18A:46-21, for the purpose of this subchapter shall be defined as the certified actual cost per pupil. For determining the tuition rate(s) for a 10 month school year or an extended school year for approved private schools for

the handicapped located in New Jersey, the certified actual cost(s) per pupil shall mean the actual allowable cost for the year plus the applicable maximum surcharge/working capital fund divided by the average daily enrollment for a 10 month school year or total per diem days for an extended school year. Based on the certified actual cost(s) per pupil, the school's management shall determine the actual tuition rate(s) charged which is an amount less than or equal to the certified actual cost(s) per pupil. The certified actual cost(s) per pupil and actual tuition rate(s) charged shall be identified in the certified audit submitted pursuant to N.J.A.C. 6:20-4.8.

1. Actual allowable costs for the 10 month school year program shall be based on a minimum of 180 days of pupil instruction between September 1 and June 30 and for the extended school year program on the days of pupil instruction between July 1 and August 30. Such costs shall be consistent with the individualized education program of a handicapped pupil and shall be reasonable, that is, ordinary and necessary and not in excess of the cost which would be incurred by an ordinarily prudent person in the administration of public funds.

2. "Average daily enrollment" for the purpose of determining the actual cost per pupil shall be the sum of the days present and absent of all school pupils enrolled in the register(s) of the school divided by the number of days the approved private school for the handicapped was actually in session rounded to the nearest four decimal places, except in no event shall the divisor be less than 180 days. A pupil enrolled in a preschool program (10 hours per week of pupil instruction), a half-day program or enrolled in a full day program on a shared time basis shall not have a maximum average daily enrollment in excess of 0.5.

(b) Whenever possible, direct costs which can be identified specifically with an approved private school facility, 10 month school year program or extended school year program shall be recorded in the prescribed bookkeeping and accounting system and used in determining the respective actual cost per pupil.

(c) Indirect costs are costs which are incurred for a common or joint purpose and not readily assignable to an approved private school facility, 10 month school year program or extended school year program. Indirect cost pools may be established as appropriate for allocation between common or joint purposes at the end of the fiscal year. Indirect costs shall be included on a consistent basis in the respective actual cost per pupil in accordance with an equitable allocation plan approved by the Commissioner or in accordance with either of the following ratios:

1. Direct costs for each program determined pursuant to (b) above to total direct costs; or

2. Average daily enrollment for each program to total average daily enrollment.

(d) Whenever a facility used by an approved private school for the handicapped is also used for unrelated activities and/or enterprises by related or unrelated parties, all costs, direct or indirect, associated with such facilities and operations shall be charged accordingly to the associated activities and/or enterprises which they benefit. Indirect cost pools may be established as appropriate for allocation between common or joint purposes at the end of the fiscal year. Indirect costs shall be distributed in accordance with an equitable allocation plan approved by the Commissioner or as follows:

1. For joint activities and enterprises which have a common purpose of educating pupils, the indirect costs shall be allocated consistent with the methods contained in (c) above.

2. For joint activities and enterprises which do not have a common purpose of educating pupils, indirect costs for the approved private school for the handicapped shall be based on the ratio of the revenues for the approved private school to the total of all revenues for all purposes.

(e) A tentative tuition rate shall be established by written contractual agreement between the approved private school for the handicapped and the sending district board of education. The tentative tuition rate shall be an amount not in excess of the approved private school's estimated actual cost per pupil for the ensuing school year. The written contract shall be on a form prepared by the Commissioner and shall be executed prior to the enrollment of a pupil.

1. The contractual agreement shall require the sending district board of education to pay a tentative tuition charge based upon a per diem rate for the total number of days the pupil was enrolled during the month for each month the pupil is enrolled. The per diem rate shall be determined by dividing the estimated actual cost per pupil for the school year by the estimated number of days school will be in session and rounding to the nearest two decimal places.

2. The contractual agreement for an extended school year program shall require the sending district board of education to pay a tentative tuition charge based upon a per diem rate which shall not exceed the per diem rate determined for the 10 month school program.

3. The contractual agreement shall require the sending district board of education to pay the approved private school for the handicapped the tentative tuition charge on a mutually agreed upon date but not later than 60 days after receipt of the monthly tuition bill and attendance report.

(f) The Commissioner shall determine the estimated actual cost per pupil for each approved private school for the handicapped for the ensuing school year and its tentative tuition rate no later than January 1 preceding the beginning of the ensuing school year. Upon request, the approved private school for the handicapped shall submit to the sending district board of education a copy of the Commissioner's calculation to determine the estimated actual cost per pupil for the ensuing school year.

1. The estimated actual cost per pupil shall equal the product of the audited actual cost per pupil for the school year prior to the current school year and the sum of 1.0 and twice the PCI as defined and calculated pursuant to N.J.S.A. 18A:7D-3.

2. The tentative tuition rate shall include:

i. For profit-making schools, the annual surcharge permitted in accordance with N.J.A.C. 6:20-4.5; and

ii. For non-profit schools, a working capital amount in accordance with N.J.A.C. 6:20-4.6.

(g) The Commissioner may approve a higher tentative tuition rate for any year in which the approved private school for the handicapped can prove to the satisfaction of the Commissioner that the tentative tuition rate for the year is not adequate and would cause an undue financial hardship on the private school.

1. In the event of such hardship, the approved private school for the handicapped shall be required to submit its request for a higher tentative tuition rate for the entire school no later than January 31 preceding the beginning of the ensuing school year. The request shall be forwarded to the Assistant Commissioner, Division of Finance and include, but not be limited to, the following information:

i. A budget, by major account category, reflecting projected costs, working capital fund or surcharge, estimated enrollment and the requested tuition rate based on this information;

ii. A detailed explanation, by major account category, of the need for increases in excess of those already provided in the tentative tuition rate calculation; and

iii. A financial report which is properly completed and in the format prescribed by the Commissioner for the six months of operations ended December 31 immediately preceding the school year for such request. This report format is available at the Division of Finance, PO Box 500, Trenton, New Jersey.

2. Whenever a district board of education agrees to pay for a pupil's extraordinary services, the board shall notify the Commissioner within 30 days of such agreement. The notification shall include the pupil's initials, the private school, the type of extraordinary service(s) and the cost of the additional service(s).

(h) The Commissioner shall certify the actual tuition rate(s) charged according to these rules.

(i) If the Commissioner determines that the tentative tuition rate(s) for a 10 month school year or an extended school year established by written contractual agreement is greater than the actual tuition rate(s) charged for the school year, the private school for the handicapped shall pay each sending district board of education the difference no later than June 30 of the school year in which the actual tuition rate(s) charged is received from the Commissioner or not more than 30 days after an appeal on a certified amount is finally resolved.

(j) If the Commissioner determines that the tentative tuition rate(s) for a 10 month school year or an extended school year established by written contractual agreement is less than the actual tuition rate(s) charged for the school year, the approved private school for the handicapped may charge each sending district board of education all or part of the difference owed. The district board of education shall pay the difference on a mutually agreed upon date but not later than the end of the second school year following the year for which the actual cost per pupil is certified.

(k) The Commissioner shall prepare the contract and the form to establish the tentative tuition rate for the ensuing school year.

(l) The Commissioner shall calculate and publish a list of maximum salaries by job title and county. Maximum salaries shall be based on the highest contracted salaries of certified staff in local public school districts for any prior year indexed by the Statewide average increase in salary between the two preceding school years for each job title. Under no circumstances shall the maximum salary calculated be less than the corresponding salary in the prior year for the same job title and county. For the purpose of this list, the maximum salary of the private school director shall be based on the title, chief school administrator/district superintendent. Other unrecognized job titles shall be correlated to similar job titles in public schools based on their functional activities.

Amended by R.1990 d.610, effective December 17, 1990.
See: 22 N.J.R. 2633(a), 22 N.J.R. 3736(a).

Substantially amended in response to Pineland Learning Center, Inc. v. New Jersey Department of Education, Division of Finance, OAL Docket Number 0788-88, Decided February 3, 1990.

Amended by R.1991 d.459, effective September 3, 1991.
See: 23 N.J.R. 1733(a), 23 N.J.R. 2634(a).

Calculation at (f)1 revised; (f)2 deleted.

Administrative correction to (g)1.ii.

See: 24 N.J.R. 245(a).

Amended by R.1999 d.2, effective January 4, 1999.

See: 30 N.J.R. 3613(a), 31 N.J.R. 36(a).

In (g)iii, deleted a street address for the Division of Finance.

Case Notes

Regulations valid as authorized by statute. Council of Private Schools for Children with Special Needs, Inc. v. Cooperman, 205

N.J.Super. 544, 501 A.2d 575 (App.Div.1985), certification denied 103 N.J. 490, 511 A.2d 665.

Private school for disabled children was required to return unearned payments under state's tuition payment program. Somerset Hills School v. Commissioner of Education, 95 N.J.A.R.2d (EDU) 487, certification denied 143 N.J. 324, 670 A.2d 1065.

Amount of rent charged to state by contract school for handicapped that exceeds costs of ownership was properly excluded from tuition rate. Coastal Learning Center v. State Board of Education, 96 N.J.A.R.2d (EDU) 406.

Private school failed to comply with 180-day school year. Somerset Hills School, Inc. v. Ellis, 94 N.J.A.R.2d (EDU) 501.

6:20-4.2 New private schools for the handicapped

(a) For the first two years of operation of an approved private school for the handicapped which was first in operation after the 1985-86 school year, the estimated actual cost per pupil and per diem rate at each site or in each program shall be established annually and be based on budgeted allowable costs. These estimated cost(s) shall be submitted to the Commissioner for approval or disapproval no later than 90 days preceding the beginning of each school year. The proposed budget shall be on a form prepared by the Commissioner which shall provide for, but not be limited to, the following:

1. Identifying data;
2. Projected allowable cost items and the projected enrollments;
3. An income schedule for the budget year;
4. A report of all funding resources;
5. An affidavit of compliance; and
6. A statement of assurance.

(b) If the Commissioner approves the estimated actual cost(s) per pupil, each sending district board of education shall pay tentative tuition charges based upon the approved estimated costs per pupil for the first two years of operation.

(c) If, after each year of operation, the Commissioner determines that the actual cost per pupil or per diem rate differs from the estimated cost per pupil or per diem rate, the tentative tuition charges shall be adjusted in accordance with the provisions of N.J.A.C. 6:20-4.1.

Amended by R.1990 d.610, effective December 17, 1990.

See: 22 N.J.R. 2633(a), 22 N.J.R. 3736(a).

Stylistic changes only.

6:20-4.3 Bookkeeping and accounting

(a) An approved private school for the handicapped shall maintain accounting and bookkeeping systems as prescribed in a publication issued by the Department of Education in accordance with the following standards:

1. Accounts shall be kept in accordance with generally accepted accounting principles (G.A.A.P.) as defined by

the American Institute of Certified Public Accountants, except as already modified in these rules.

2. Accrual accounting shall be used.
3. Fixed asset expenditures of \$1,000 or more shall be capitalized and depreciated using the straight line method and a useful life consistent with current Federal tax law 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. Asset, liability and fund balance accounts, as well as expenditure and revenue accounts, shall be maintained.
5. Non-profit organizations shall maintain financial records on a fund basis, and profit-making organizations shall maintain financial records on a modified fund basis.
6. A chart of accounts issued by the Commissioner shall be maintained by each approved private school for the handicapped. Each expenditure or revenue account utilized shall be reflected on the approved private school's general ledger. The approved private school shall be restricted to those account categories listed in the chart of accounts.
7. If multiple facilities for a private school have been approved, financial information shall be segregated by facility in the bookkeeping records. If both a 10 month school year program and extended school year program have been approved, financial information shall be segregated by program in the bookkeeping records. Bookkeeping records shall include, but not be limited to:
 - i. Cash receipts journal;
 - ii. Cash disbursement journal;
 - iii. General ledger;
 - iv. Tuition ledger;
 - v. Payroll journal;
 - vi. Fixed asset inventory.
8. Documentation to verify postings shall be maintained. Purchase orders shall be prepared in detail to document all payments for goods and services. Invoices or cash register receipts shall be attached to their related purchase orders to support all purchases of goods. Detailed vouchers signed by the payee shall be attached to their related purchase orders to support all payments for personal services, employee mileage reimbursements or any payment for which invoices or cash register receipts are not utilized.
9. A payroll shall be prepared and supported by the employee time record in a format prescribed or approved by the Commissioner, signed by the employee and supervisor, prepared in the time period in which the work was done and completed at least semi-monthly.

10. A financial report prescribed by the Commissioner shall be prepared at a minimum each quarter for the 10 month program and once at the end of the session for the extended school year program. This report shall be submitted to the school's governing body. Acceptance of the financial report shall be documented in the minutes of the meetings.

11. Good internal control practices shall be maintained which include the separation of duties such as the recording and authorizing of checks and purchase approvals.

12. An approved private school shall use the contract prescribed by the Commissioner for each pupil received from a local school district.

13. An approved private school which incurs contingent pay increases shall have in place an employee contract which contains the criteria by which the increase shall be paid. The payment of such increase must be paid if the contractual contingencies are met. The contract shall contain at least the following items:

- i. The date and signature of both the staff member and authorized school representative;
- ii. The specific performance or contingency which shall be met to generate the increase;
- iii. The specific dollar amount or percentage of original contracted salary to be paid.

14. An approved private school for the handicapped which incurs merit pay increases shall have adopted a formal board policy which outlines the criteria of the merit pay plan(s). The plan(s) shall be filed with the Commissioner who may exclude from tuition any merit award(s) if the sole purpose of the award(s) is to avoid returning unexpended tuition funds to public schools. The plan(s) shall include the following:

- i. Eligibility for all employees;
- ii. Basis by which the pay is earned;
- iii. The amount of the awards by plan(s);
- iv. The maximum number of awards to be given by plan(s) for each year;
- v. The date of board approval and date of initiation of the plan(s).

15. A petty cash fund shall be approved by the governing body and supported by documentation. The fund shall not exceed \$1,500 and, except in the case of an emergency, no disbursement shall exceed \$150.00.

16. A student activity fund shall be approved by the governing body and supported by documentation. Revenues derived from public school placement tuition shall be used to supplement, not supplant, student contributions.

17. An inventory of non-depreciable, non-consumable equipment and materials shall be maintained.

18. A mileage record shall be maintained for each school-owned vehicle, leased vehicle or vehicle contained in a related party transaction involving the purchase of transportation services in a format prescribed by the Commissioner.

19. Upon request from the Commissioner, a profit-making approved private school shall provide a copy of the Internal Revenue Service (I.R.S.) corporate tax return to the Department of Education. A non-profit approved private school shall provide a copy of I.R.S. form 990.

20. An approved private school shall maintain all pertinent financial record(s) for a period of seven years.

21. A non-profit approved private school for the handicapped shall file a copy of its corporation dissolution papers with the Commissioner within 90 days of dissolution. Such papers shall include the total dollar amount transfer of the working capital fund (public school placement restricted fund balance) and the name of the recipient non-profit corporation.

(b) An approved private school for the handicapped which receives a refund(s) from a current or prior year

expenditure or cancels an accounts payable shall apply such refund or accounts payable as a reduction to the general expenditure account charged, which will reduce the current year expenditure account. If the original expenditure account charged is not charged in the current school year, such amount(s) shall be used to reduce total expenditures in the current year.

Amended by R.1990 d.610, effective December 17, 1990.

See: 22 N.J.R. 2633(a), 22 N.J.R. 3736(a).

Added provisions which include procedures for merit or contingent pay increases.

Administrative Corrections to (a)10 and 11.

See: 23 N.J.R. 1410(c).

6:20-4.4 Non-allowable costs

(a) A cost which is not allowable in the calculation of the certified actual cost per pupil includes the following:

1. The cost of maintaining an administrative office in a private home or other residence;
2. Advertising cost(s) associated with public relations and lobbying, except for the printing of descriptive brochures;
3. Costs other than those governed by (a)52 below associated with lobbying in an attempt to influence:

- i. The outcome(s) of any Federal, State, or local referendum, initiative or similar activity; or
 - ii. The introduction of Federal legislation, State legislation or State rulemaking or the enactment or modification of any Federal legislation, State legislation or State rulemaking.
4. The salary of a professional staff member who is not certified but is functioning in a position requiring certification in accordance with N.J.A.C. 6:11;
 5. The salary or fringe benefits of a staff member for time not expended and/or services not performed;
 6. A salary or consultant fee paid to an individual functioning in a conflict of interest position;
 7. A salary in excess of the associated maximum salary determined in N.J.A.C. 6:20-4.1(1) for a certified employee. Part-time or split-time positions shall be prorated;
 8. The salary of the director of an approved private school in excess of the maximum salary determined in N.J.A.C. 6:20-4.1(1);
 9. A salary of an employee not covered by (a)7 or 8 above, who does not hold a professional license or certificate or a bachelor's degree from an accredited institution commensurate with the job function, in excess of the lowest maximum salary in the same county according to the list of maximum salaries determined in N.J.A.C. 6:20-4.1(1) when such employee is in a position which does not require certification or such employee, pursuant to a "save harmless" provision, is serving in a position requiring certification without such certification. The Bureau of Teacher Certification will determine if the individual meets the requirements;
 10. A salary of an employee in a position covered by (a) 9 above, who holds a professional license, or certificate or bachelor's degree from an accredited institution commensurate with the job function, in excess of the maximum salary in the same or similar job title in the same county according to the list of maximum salaries determined in N.J.A.C. 6:20-4.1(1). The Bureau of Teacher Certification will determine if the individual meets the requirements;
 11. The cost of fringe benefits which are based on a non-allowable salary;
 12. A legal, accounting or consultant fee resulting from a frivolous challenge to a State audit or financial review or the prosecution of a claim against the State. The Commissioner shall determine whether the challenge is frivolous by considering at least the following factors:
 - i. Overall merit of the claim; and
 - ii. Whether the challenge serves the public interest.
 13. A consultant fee for professional services which does not include at least a detailed list of the nature of the professional services provided, the number of days worked, the charge per day and the product or outcome of the consultation. Professional services are services rendered or performed by a person authorized by law to practice a recognized profession and whose practice is regulated by law and the performance of which requires knowledge of an advanced type in a field of learning and is acquired by a prolonged, formalized course of specialized instruction and study. The consultant shall hold the appropriate school certification when such certification exists;
 14. Total contributions, donations, awards and scholarships in excess of \$750.00;
 15. Depreciation unacceptable under N.J.A.C. 6:20-4.3(a)3 and depreciation on:
 - i. Donated goods;
 - ii. That which is not based on estimated straightline method;
 - iii. A single item costing below \$1,000; and
 - iv. Autos in excess of the dollar or percentage limitation contained under Internal Revenue Service Code Section 280F;
 16. An investment expense associated with the purchase/sale of stock, securities, other investment instruments or other investments not associated with the education of handicapped children;
 17. Total annual costs in excess of \$500.00 incurred for the entertainment of school employees, school officers, consultants and/or individuals providing professional services;
 18. All personal expenses, such as a personal travel expense, holiday party or repair on a personal vehicle;
 19. The cost of a fine or penalty which results from a violation of or failure by the school to comply with a Federal, State and/or local law or rule;
 20. The cost for meals, unless the meals meet the nutritional requirements of the Child Nutrition Program;
 21. Fringe benefits when the benefits are determined in an arbitrary or capricious manner rather than on an existing written uniform policy based on an equitable standard of distribution, such as years of service or education or when the benefits are not an initial inducement for employment;
 22. The cost of organized fund raising, such as a financial campaign, an endowment drive or solicitation of a gift and bequest which is done to raise capital or obtain a contribution;
 23. Goodwill;
 24. Interest costs on loans when:

- i. Interest is in excess of the general prevailing rate at the time the loan was taken;
 - ii. The loan is a less-than-arm's length/related party transaction which has not been previously approved by the department;
 - iii. The loan is not exclusively used to meet program needs.
25. Interest costs on long-term loans or mortgages when:
- i. The loan is used for other than financing of fixed assets;
 - ii. The loan is not secured by the fixed asset being financed;
 - iii. The interest costs are on the portion of the loan term which exceeds the recovery period for depreciation of the fixed asset securing the loan.
26. A loan to an employee or officer of the corporation;
27. A loss incurred on the sale or exchange of fixed assets between related parties;
28. The write-off of uncollected accounts receivable (bad debts) before three years have elapsed and before a reasonable effort has been made to collect such accounts receivable;
29. An ordinary living expense for a pupil that is normally assumed by the parent of a pupil attending a public day school;
30. Pension costs which are not in conformance with the Employee Retirement Income Security Act of 1974 and its successor legislation;
31. A payment made to a school employee in lieu of a pension;
32. The cost associated with a professional conference and/or meeting held in countries not contiguous to the United States;
33. The cost associated with a professional conference and/or meeting for a non-employee or employee whose position would not warrant attendance at the event;
34. The cost of travel involving the difference between first-class air accommodations and less than first-class air accommodations, except when less than first-class accommodations are not reasonably available which shall be documented by the airline or travel agent;
35. A payment or benefit to an employee in lieu of salary (bonus);
36. A profit or loss on an investment;
37. The cost of staff salary, supplies or printing and reproduction of a material for a research activity;
38. Payment of Federal, State and local income taxes on income other than tuition;
39. Any cost associated with travel to and from the officer's or employee's home and the school or agency;
40. Transportation costs for a pupil to and from school;
41. Any costs associated with a school-owned vehicle, leased vehicle or vehicle contained in a related party transaction involving the purchase of transportation services where a mileage log was not maintained;
42. Personal use of a school-owned or leased vehicle;
43. A business-incurred charge for a privately owned vehicle in excess of the mileage rate allowed by the United States Internal Revenue Service for automobile travel;
44. Rental costs for buildings and equipment when owned by a parent organization not separately incorporated;
45. Costs related to transactions between related parties in which one party to the transaction is able to control or substantially influence the actions of the other. Such transactions are defined by the relationship of the parties and include, but are not limited to, those between divisions of an institution; institutions or organizations under common control through common officers, directors, or members; and an institution and a director, trustee, officer, or key employee of the institution or his or her immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. Such costs shall include, but not be limited to:
- i. Rental costs for buildings and equipment in excess of the actual allocated costs of ownership (such as straight line depreciation, mortgage interest, real estate taxes, property insurance and maintenance costs) incurred by the related property owner including a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The lease agreement shall include a list of anticipated costs to be incurred by the property owner, prepared in the format supplied by the Commissioner, signed by the property owner and notarized;
 - ii. Rental costs under a sub-lease arrangement with a related party for buildings and equipment in excess of the actual allocated costs related to the lease (such as rent, lease commission expense and maintenance costs) incurred by the sub-lessor. No profit, return on investment or windfall of any kind shall be included in the sub-rental cost. The sub-lease agreement shall include a list of anticipated costs to be incurred by the sub-lessor, signed by the sub-lessor and notarized;

iii. Cost of purchasing buildings, equipment or other goods from related parties in excess of the original cost to the related party less depreciation calculated using the straight line method;

iv. Cost of personal services paid to a related party when such services are provided by an employee or consultant of the approved private school acting as an employee or agent of the related party. Cost of personal services includes all remuneration, paid or accrued, for services rendered during the school year including, but not limited to wages, salaries, management fees and fringe benefits;

v. Cost of the purchase of services in excess of the actual allocated costs of ownership (such as salaries, fringe benefits, insurance, operation, maintenance, straightline depreciation) incurred by the related party owner including a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The purchase agreement shall include a list of anticipated costs to be incurred by the related party, prepared in the format supplied by the Commissioner, signed by the property owner and notarized;

46. Cost of a less-than-arm's length/related party transaction when the related party does not provide documentation to support the actual costs of ownership to the Commissioner when requested and does not allow the Commissioner access to such information for review and audit during normal business hours. Documentation shall include, but not be limited to:

- i. The related parties' tax returns; and
- ii. The related parties' paid bills and cancelled checks concerning the transaction.

47. Rental costs under sale and leaseback arrangements in excess of the amount that would be incurred had the organization continued to own the property;

48. Costs of a salary increase or merit pay award when such amount(s) were not in accordance with N.J.A.C. 6:20-4.3(a)13 or 14 or the merit pay award(s) are not consistent with the plan(s) on file with the Commissioner;

49. Indirect and direct costs associated with unrelated activities or enterprises as defined in N.J.A.C. 6:20-4.1(d);

50. Cost of the year-end certified audit prepared by an individual who does not meet the requirements contained in N.J.A.C. 6:20-4.8(a);

51. Costs charged to account categories other than those reflected in the chart of accounts issued by the Commissioner in accordance with N.J.A.C. 6:20-4.3(a)6;

52. Costs for membership in civic, business, technical and professional organizations when the cost is:

- i. Not reasonably related to the value of the services or benefits received;

ii. For membership in an organization which devotes any activities to influencing legislation or state regulation(s) not directly related to the educational instruction program of handicapped pupils and such activities are not subsidized by sources other than membership fees from private schools for the handicapped;

iii. Not an established annual rate charged to all members but one which is periodically adjusted during the year; or

iv. Not supported by an annual affidavit signed by the organization's board of directors indicating that all legal and lobbying costs not directly associated with the educational instruction programs for handicapped pupils were funded by sources other than dues from private schools for the handicapped.

53. Salary of a staff member which is not properly supported by the employee time record in a format prescribed or approved by the Commissioner in accordance with N.J.A.C. 6:20-4.3(a)9; and

54. A cost found to be patently unreasonable by the Commissioner or his or her representative(s) or the independent auditor/accountant.

Correction: 16 N.J.R. 2530(a).

Deleted in (a): " , but is not limited to." and added "the following:"; (a)1.: deleted "location separate. . . . handicapped" and added "private home or other residence;"

Amended by R.1986 d.360, effective September 6, 1986.

See: 18 N.J.R. 1237(a).

Added new (a)36-37; renumbered old (a)36 to (a)38.

Amended by R.1990 d.610, effective December 17, 1990.

See: 22 N.J.R. 2633(a), 22 N.J.R. 3736(a).

Added more detailed listings of non-allowable costs.

Administrative Correction to (a)41.

See: 23 N.J.R. 1410(c).

Case Notes

Authority was vested in Department of Education to request ordinary and essential business records from private school during full scope tuition audit. *Pineland Learning Center v. State Board of Education*, 95 N.J.A.R.2d (EDU) 199.

Private school educating handicapped students from public school districts; determination of allowable costs. *Y.A.L.E. School, Inc. v. State of New Jersey*, 92 N.J.A.R.2d (EDU) 571.

6:20-4.5 Surcharge

For profit-making school(s), the school's tuition rate may include an annual surcharge up to 2.5 percent of the private school's allowable actual costs.

6:20-4.6 Working capital fund

For non-profit schools, the school's tuition rate may include an amount which will permit the school to establish a working capital fund which is not in excess of 15 percent of the private school's allowable actual costs.

6:20-4.7 Calculation of pupil attendance

(a) Each approved private school for the handicapped shall maintain a public school register for recording pupil attendance in accordance with N.J.A.C. 6:20-1.3.

(b) Each approved private school for the handicapped shall submit the school summary register annually to the Commissioner by September 1 to verify the average daily enrollment for the previous school year.

Amended by R.1990 d.610, effective December 17, 1990.

See: 22 N.J.R. 2633(a), 22 N.J.R. 3736(a).

Editorial changes only.

6:20-4.8 Audit requirements

(a) Regardless of the fiscal year of the school, each approved private school for the handicapped shall, by November 1 of each year, submit to the Commissioner a certified audit based on the July 1 to June 30 school year. The audit shall be prepared by an independent registered municipal accountant of New Jersey or an independent certified public accountant of New Jersey; the accountant shall hold an uncancelled registration license as a public school accountant of New Jersey. Independence will be determined in accordance with standards set forth in the Code of Professional Ethics issued by and available from the American Institute of Certified Public Accountants. Additionally, an accountant shall not be considered independent if such accountant or members of his or her firm are engaged to perform services other than the year-end audit and tax return functions for the private school for the handicapped.

(b) The audit shall follow audit standards and a format established and published by the Commissioner.

(c) The certified audit shall determine the certified actual cost(s) per pupil and actual tuition rate(s) charged at the end of the school year.

(d) The auditor and school management shall discuss the results of the auditor's determination of the certified actual cost per pupil in order for management to determine the actual tuition rate charged as a result of the audit. The actual tuition rate charged shall be an amount equal to or less than the certified actual cost per pupil. The audit report shall contain a letter signed by both the school auditor and an authorized school representative indicating that both parties met and discussed the audit and that the determination of the actual tuition rate charged was a management decision.

(e) Within 60 days of receipt of the year-end audit, management shall develop a corrective action plan in response to recommendations contained in the year-end audit and file such corrective action plan with the Commissioner. When the corrective action is based on the requirements of this subchapter, the Commissioner shall determine if the corrective action is adequate and, when appropriate, require additional action.

(f) The approved private school for the handicapped is precluded from amending the actual tuition rate charged upon certification by the Commissioner.

(g) Any adjustments necessary as a result of the certified audit or a tuition audit performed by the Commissioner which are in excess of \$10.00 per sending school district shall be made in accordance with N.J.A.C. 6:20-4.1(i) and (j).

(h) Audits filed after the November 1 due date shall cause the estimated actual cost per pupil for the ensuing school year to be calculated based upon the audited actual cost per pupil for the school year two years prior to the current school year, and N.J.A.C. 6:20-4.1(g)1 shall not apply.

(i) Failure to comply with this section may result in the Commissioner placing the approved private school for the handicapped on conditional approval status which precludes the school from accepting new pupils.

Amended by R.1990 d.610, effective December 17, 1990.

See: 22 N.J.R. 2633(a), 22 N.J.R. 3736(a).

Provisions added to define auditor independence, require documentation that the results of the year-end audit were discussed with school management, and to provide a sanction for a private school failing to comply with the audit requirements.

6:20-4.9 Appeals

(a) The decision of the Commissioner, regarding the calculation of the tentative tuition rate pursuant to N.J.A.C. 6:20-4.1(g), regarding the approval of a tentative tuition rate pursuant to N.J.A.C. 6:20-4.2(b) and regarding conditional approval status pursuant to N.J.A.C. 6:20-4.8(i), may be appealed in accordance with N.J.S.A. 18A:6-9 and N.J.A.C. 6A:3.

(b) The decision of the Commissioner in regard to certification may be appealed to the State Board of Education in accordance with N.J.S.A. 18A:6-27.

Amended by R.1990 d.610, effective December 17, 1990.

See: 22 N.J.R. 2633(a), 22 N.J.R. 3736(a).

Minor technical changes were made and an additional appealable item was added.

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

In (a), changed N.J.A.C. reference.

6:20-4.10 Out-of-State approved private schools for the handicapped

(a) Out-of-State private schools for the handicapped shall be approved to provide special education programs by the department of education of the state in which they are located. Exceptions to this requirement may be made only at the discretion of the Division of Special Education, the New Jersey Department of Education in accordance with N.J.A.C. 6:28-7.1(f).

(b) The Commissioner shall abide by the tuition regulations for approved private schools for the handicapped adopted by the department of education or other regulatory agency in the state in which the private school for the handicapped is located. The approved private school for the handicapped shall submit verification of the approval of the tuition rate to the Commissioner either on prescribed forms or verification from the out-of-State department of education or other regulatory agency.

(c) If the out-of-State approved private school for the handicapped is located in a state in which the department of education or other regulatory agency does not approve or sanction tuition rates such tuition rates shall be determined in the following manner:

1. The approved private school for the handicapped and the sending school district or state agency that determined the placement shall mutually agree to the tuition rate. The tuition rate must be agreed upon prior to the child's placement and a letter indicating agreement of such rate shall be forwarded to the Commissioner.

2. An approved private school for the handicapped which is licensed as a child care facility by the New Jersey Department of Human Services shall determine a tuition rate through mutual agreement between the approved private school, the sending school district and the Department of Human Services, Office of Education. The tuition rate must be agreed upon prior to the child's placement and documentation of such rate shall be forwarded to the Commissioner.

3. If a tuition rate cannot be mutually agreed upon in accordance with (c)1 or 2 above, the approved private school shall file a budget in a format prescribed by the Commissioner to determine a tentative tuition rate and shall comply with the provisions of this subchapter in order to collect tuition from a New Jersey school or agency. The cost of the audit contained in N.J.A.C. 6:20-4.8 may be charged to the sending school district(s) or agency which did not mutually agree to the tuition rate.

(d) An approved private school for the handicapped located in another state shall have bookkeeping and accounting records available for inspection upon request by the Commissioner.

Amended by R.1990 d.610, effective December 17, 1990.
See: 22 N.J.R. 2633(a), 22 N.J.R. 3736(a).

Provisions added to indicate that the Department will abide by tuition rates for private schools for the handicapped adopted by the state in which an out-of-State school is located and the Department acceptance of out-of-State tuition rates in states which do not regulate tuition rates as long as there is a mutual agreement of the tuition rate between the private school and sending school district.

Case Notes

Authority was vested in Department of Education to request ordinary and essential business records from private school during full scope tuition audit. *Pineland Learning Center v. State Board of Education*, 95 N.J.A.R.2d (EDU) 199.

6:20-4.11 Inspection of records

(a) All financial and accounting records maintained by the approved private school for the handicapped as required by this subchapter shall be open for review and audit during normal business hours by the Commissioner or his or her representative(s).

(b) All financial and accounting records maintained by a related party which pertain to a transaction between a related party and the approved private school for the handicapped shall be open for review and audit during normal business hours by the Commissioner or his or her representative(s).

(c) All auditor's workpapers used in the preparation of the year-end audit shall be open for review during normal business hours by the Commissioner or his or her representative(s).

New Rule, R.1990 d.610, effective December 17, 1990.
See: 22 N.J.R. 2633(a), 22 N.J.R. 3736(a).

Case Notes

Authority was vested in Department of Education to request ordinary and essential business records from private school during full scope tuition audit. *Pineland Learning Center v. State Board of Education*, 95 N.J.A.R.2d (EDU) 199.

SUBCHAPTER 5. STATE AID

6:20-5.1 (Reserved)

As amended, R.1980 d.426, effective October 2, 1980.
See: 12 N.J.R. 504(b), 12 N.J.R. 638(b).

Repeal special State aid for children resident in institutions.
As amended, R.1984 d.546, effective December 17, 1984.
See: 16 N.J.R. 2392(a), 16 N.J.R. 3429(a).

Recodified with substantive changes from 5.1.
Amended by R.1990 d.393, effective August 6, 1990.
See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

Terms and sentence structure changes.
Repealed by R.1999 d.2, effective January 4, 1999.
See: 30 N.J.R. 3613(a), 31 N.J.R. 36(a).

Section was "Law enforcement officer".

6:20-5.2 (Reserved)

As amended, R.1984 d.546, effective December 17, 1984.
See: 16 N.J.R. 2392(a), 16 N.J.R. 3429(a).

Recodified with substantive changes from 5.4.
Repealed by R.1999 d.2, effective January 4, 1999.
See: 30 N.J.R. 3613(a), 31 N.J.R. 36(a).

Section was "Additional State school building aid".

Case Notes

State grant of discretionary funds rescinded; settlement providing repayment with funds from grant by town rejected; use of state grant monies; knowing false representations. In *Matter of Rescinding of Supplement State Aid Awarded to Lyndhurst School District*. 93 N.J.A.R.2d (EDU) 621.

6:20-5.3 Method of determining the district of residence

(a) The district of residence for school funding purposes shall be determined according to the following criteria:

1. The "present district of residence" of a child in a residential State facility defined in N.J.S.A. 18A:7D-3 and referred to in paragraph one of N.J.S.A. 18A:7B-12(b) shall mean the New Jersey district of residence of the child's parent(s) or guardian(s) as of the last school day prior to October 16.

2. The "present district of residence" of a child placed by a State agency in a group home, private school or out-of-State facility also referred to in paragraph one of N.J.S.A. 18A:7B-12(b) shall mean the New Jersey district of residence of the child's parent(s) or guardian(s) as of the date of the child's initial placement by the State agency. In subsequent school years spent in the educational placement made by a State agency, the child's "present district of residence" shall be determined in the same manner as for a child in a residential State facility as set forth in (a)1.

3. The "district of residence" referred to in paragraph two of N.J.S.A. 18A:7B-12(b) shall mean the New Jersey district of residence in which the child resided with his or her legal guardian immediately prior to his or her initial admission to a State facility or placement by a State agency.

(b) The Commissioner shall determine the "present district of residence" or "district of residence" referred to in N.J.S.A. 18A:7B-12(b) based upon the address submitted by the Department of Corrections or the Department of Human Services on forms prepared by the Department of Education.

(c) The Commissioner shall notify district boards of education of the determination of the district of residence.

(d) A district board of education contesting the Commissioner's determination of district of residence shall submit a written notification that a dispute exists to the Assistant Commissioner, 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 Commissioner;

2. Written rationale for rejecting the determination of the Commissioner;

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 whether a redetermination of district of residence will 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.

(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 school district to another shall be 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.

As amended, R.1980 d.425, eff. October 2, 1980.

See: 12 N.J.R. 504(c), 12 N.J.R. 638(a).

Repeal emergency State building aid.

New Rule, R.1985 d.208, effective May 6, 1985.

See: 17 N.J.R. 344(a), 17 N.J.R. 1076(a).

Amended by R.1990 d.393, effective August 6, 1990.

See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

New (g) added defining "district of residence" for a homeless child pursuant to P.L.1989, c.290.

Amended by R.1991 d.459, effective September 3, 1991.

See: 23 N.J.R. 1733(a), 23 N.J.R. 2634(a).

Determination date of district of residence changed.

Amended by R.1999 d.2, effective January 4, 1999.

See: 30 N.J.R. 3613(a), 31 N.J.R. 36(a).

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

In (f), changed N.J.A.C. reference.

Case Notes

Failure to prove domiciliary precludes free public education. *Spruill v. School District of South Orange and Maplewood*, 97 N.J.A.R.2d (EDU) 303.

Parent ordered to pay tuition for child's education. *A.H. v. Township of Egg Harbor*, 97 N.J.A.R.2d (EDU) 281.

Parent's prior residence in school district triggers school district's financial responsibility for student's tuition. *City of Wildwood v. Department of Education*, 97 N.J.A.R.2d (EDU) 273.

Domicile within school district's community established by nonparent's legal and physical custody of child. *L.A. v. Town of West Orange*, 97 N.J.A.R.2d (EDU) 267.

Department of Education was justified in its reduction of state aid to board of education which had received large municipal donation. *Township of Lacey v. Office of Finance*, 96 N.J.A.R.2d (EDU) 868.

6:20-5.4 Address submission for determining the district of residence

(a) The address submitted to the Department of Education 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 initial admission to a State facility or placement by a State agency shall be submitted.

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. 6:20-5.3(a)1 or 2 shall be submitted.

3. If the child never resided with his or her parent(s) or guardian(s), the address of the facility, group home, or private school shall be submitted.

4. If the child's sole parent or legal guardian resides in a State facility, the address of the State facility wherein the parent or guardian resides shall be submitted.

R.1979 d.479, eff. December 7, 1979.

See: 12 N.J.R. 6(b).

R.1984 d.546, eff. December 17, 1984.

See: 16 N.J.R. 2392(a), 16 N.J.R. 3429(a).

Recodified to 6:20-5.2.

New Rule, R.1985 d.208, effective May 6, 1985.

See: 17 N.J.R. 344(a), 17 N.J.R. 1076(a).

6:20-5.5 (Reserved)

New Rule, R.1985 d.340, effective July 1, 1985.

See: 17 N.J.R. 863(a), 17 N.J.R. 1648(a).

Amended by R.1986 d.204, effective June 2, 1986.

See: 18 N.J.R. 392(b), 18 N.J.R. 1198(a).

Old (b)-(d) deleted; old (e)-(j) recodified to (b)-(g); new (h) added.

Amended by R.1990 d.393, effective August 6, 1990.

See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

New (i) added establishing two year limit on completion of projects.

Repealed by R.1999 d.2, effective January 4, 1999.

See: 30 N.J.R. 3613(a), 31 N.J.R. 36(a).

Section was "Public school asbestos removal and encapsulation State aid".

6:20-5.6 (Reserved)

New Rule R.1986 d.205, effective June 2, 1986.

See: 18 N.J.R. 393(a), 18 N.J.R. 1199(a).

Amended by R.1990 d.393, effective August 6, 1990.

See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

Deleted reference to 1984-85 and 1985-86 school years and renumbered subsections and subparts.

Amended by R.1991 d.459, effective September 3, 1991.

See: 23 N.J.R. 1733(a), 23 N.J.R. 2634(a).

Citations corrected.

Repealed by R.1999 d.2, effective January 4, 1999.

See: 30 N.J.R. 3613(a), 31 N.J.R. 36(a).

Section was "Teaching staff member minimum salary State aid".

6:20-5.7 (Reserved)

New Rule, R.1989 d.93, effective March 6, 1989.

See: 20 N.J.R. 2505(a), 21 N.J.R. 635(b).

Amended by R.1990 d.393, effective August 6, 1990.

See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

Deleted references to activities prior to July 1, 1987 and added new (m) establishing two-year completion limit.

Repealed by R.1999 d.2, effective January 4, 1999.

See: 30 N.J.R. 3613(a), 31 N.J.R. 36(a).

Section was "Nonpublic school asbestos removal and encapsulation State aid".

6:20-5.8 (Reserved)

New Rule, R.1991 d.590, effective December 16, 1991.

See: 23 N.J.R. 2818(a), 23 N.J.R. 3746(a).

Repealed by R.1997 d.372, effective September 2, 1997.

See: 29 N.J.R. 2591(a), 29 N.J.R. 3806(a).

Section was "Excess surplus calculation".

SUBCHAPTER 6. PURCHASE AND LOAN OF TEXTBOOKS

6:20-6.1 Eligibility

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

(b) Children who are enrolled in a nonpublic school whose parents or legal guardians do not maintain a residence in this State shall not be eligible to receive such textbooks.

(c) Children who are enrolled in a nonpublic school whose tuition is paid by a district board of education shall not be eligible to receive such textbooks.

Amended by R.1985 d.150, effective April 1, 1985.
See: 17 N.J.R. 148(a), 17 N.J.R. 814(a).

6:20-6.2 Responsibility of the district board of education

(a) Existing book stocks and newly purchased textbooks purchased pursuant to this statute shall be distributed among all pupils on an equitable basis.

(b) A district board of education shall not discriminate against pupils in either public or nonpublic schools.

As amended, R.1980 d.163, effective April 17, 1980.
See: 12 N.J.R. 105(a), 12 N.J.R. 251(a).
Amended by R.1985 d.150, effective April 1, 1985.
See: 17 N.J.R. 148(a), 17 N.J.R. 814(a).

(a) deleted; old (b)-(c) changed to (a)-(b).

6:20-6.3 Individual requests

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

(b) Individual requests shall be 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 shall be submitted on or before March 1 preceding the school year.

(d) Textbooks purchased shall be ordered in accordance with district board of education policy and purchasing practices.

(e) Pupils attending public schools shall not be required to submit such requests.

Amended by R.1985 d.150, effective April 1, 1985.
See: 17 N.J.R. 148(a), 17 N.J.R. 814(a).

Section substantially amended.

Amended by R.1990 d.393, effective August 6, 1990.
See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

Specified in (a) request "signed by parent or legal guardian . . ."

6:20-6.4 Ownership and storage of textbooks

(a) All textbooks purchased under the provisions of N.J.S.A. 18A:58-37.1 et seq., shall remain the property of the district board of education. Such ownership shall be indicated 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.1985 d.150, effective April 1, 1985.
See: 17 N.J.R. 148(a), 17 N.J.R. 814(a).

Section substantially amended.

Amended by R.1990 d.393, effective August 6, 1990.
See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

Specified in (b) "receipt of textbooks from the vendor".

6:20-6.5 Accounting entries

(a) Expenditures for the purchase of textbooks may include the cost of freight or postage for transporting such books from the vendor to the public school district.

(b) The cost of textbooks for pupils enrolled in the public schools shall be entered in the general current expense fund in the account designated in the minimum chart of accounts.

(c) The cost of textbooks for nonpublic school pupils shall be entered in the special revenue fund in the account designated in the minimum chart of accounts.

(d) State aid received by the district board of education pursuant to N.J.S.A. 18A:58-37.1 et seq. shall be recorded separately in the special revenue fund as State aid.

Amended by R.1985 d.150, effective April 1, 1985.
See: 17 N.J.R. 148(a), 17 N.J.R. 814(a).

Section substantially amended.

Amended by R.1990 d.393, effective August 6, 1990.
See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

Account numbers deleted and reference to minimum chart of accounts added.

6:20-6.6 Charge for textbook loss or damage

(a) District boards of education shall make reasonable rules and regulations governing the loan of textbooks, which may contain requirements for reimbursement by pupils to the school district for damage, loss or destruction of the loaned textbooks.

(b) Such rules and regulations shall be made applicable to both public and nonpublic school pupils.

Amended by R.1985 d.150, effective April 1, 1985.
See: 17 N.J.R. 148(a), 17 N.J.R. 814(a).

This section recodified with amendments from 6:20-6.7; Section was originally Textbook selection.

6:20-6.7 (Reserved)

Repealed R.1985 d.150, effective April 1, 1985.
See: 17 N.J.R. 148(a), 17 N.J.R. 814(a).

Section recodified to 6.6.

6:20-6.8 (Reserved)

As amended, R.1980 d.163, effective April 17, 1980.
See: 12 N.J.R. 105(a), 12 N.J.R. 251(a).
Repealed by R.1985 d.150, effective April 1, 1985.
See: 17 N.J.R. 148(a), 17 N.J.R. 814(a).
Section was originally "State aid".

SUBCHAPTER 7. QUALIFICATION, DEBARMENT, SUSPENSION AND DISQUALIFICATION OF PERSON(S) CONCERNING CONTRACT ADMINISTRATION

6:20-7.1 Definitions

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

"Debarment" means exclusion from contracting with district boards of education for public work and Department of Education contracting on the basis of a lack of responsibility evidenced by an offense, failure, or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure, or inadequacy of performance.

"Department of Education contracting" means any arrangement giving rise to an obligation to supply any thing to or perform any service for the Department of Education, other than by virtue of State employment, or to supply any thing to or perform any service for a private person where the Department of Education provides substantial financial assistance and retains the right to approve or disapprove the nature or quality of the goods or service or the persons who may supply or perform the same.

"Disqualification" means a debarment or a suspension which denies or revokes or fails to renew a classification to bid or otherwise engage in contracting with district boards of education or which denies or revokes a qualification to bid or otherwise engage in contracting with the Department of Education pursuant to statute or rules.

"District board of education" means and includes the district board of education of any local school district, consolidated school district, regional school district, county vocational school district and any other board of education or other similar body other than the State Board of Education, established and operating under the provisions of Title 18A of the New Jersey Statutes and having authority to engage contractors for the performance of public works for the board.

"District board of education contracting" means any arrangement giving rise to an obligation to supply any thing to or perform any service for district boards of education, other than by virtue of contracts of employment, or to supply any thing to or perform any service for a private person where the district board of education provides substantial financial assistance and retains the right to approve or disapprove the nature or quality of the goods or service or the person who may supply or perform the same.

"Person" means any natural person, company, firm, association, corporation, or other entity.

"Qualification" is the procedure whereby all prospective bidders for public work with district boards of education are classified as to the character and amount of public work on which they shall be qualified to submit bids.

"Suspension" means exclusion from contracting with district boards of education for public work and from Department of Education contracting for a temporary period of time, pending the completion of an investigation or legal proceedings.

As amended, R.1984 d.545, effective December 17, 1984.
See: 16 N.J.R. 2394(a), 16 N.J.R. 3430(a).
Added the word "district".

6:20-7.2 Qualification of bidders

Pursuant to N.J.S.A. 18A:18A-27, the authority to qualify bidders for district board of education contracting or Department of Education contracting is delegated to the Department of Treasury. Such action is to be governed by rules adopted by the Department of Treasury for this purpose.

As amended, R.1984 d.545, effective December 17, 1984.
See: 16 N.J.R. 2394(a), 16 N.J.R. 3430(a).
Added "district" to section.

Case Notes

Unsuccessful bidder's omission of prequalification affidavit in bid for contract to add to and alter a school was a waivable, immaterial defect. *Tec Elec., Inc. v. Franklin Lakes Bd. of Educ.*, 284 N.J.Super. 480, 665 A.2d 803 (L.1995).

State Board of Education delegated authority to qualify bidders to the Department of the Treasury; responsibility for determining contractor qualifications absent appropriate Treasury regulations rested with the County Educational Services Commission governed by statutory requirements. *New Jersey Education Assn. v. Essex Cty. Educational Services Commission*, 5 N.J.A.R. 29 (1981).

6:20-7.3 Debarment, suspension and disqualification of person(s)

Debarment, suspension and disqualification of person(s) from district board of education contracting or Department of Education contracting is delegated to the Department of Treasury. Such action shall be taken in accordance with rules adopted by the Department of Treasury for such purpose.

As amended, R.1984 d.545, effective December 17, 1984.

See: 16 N.J.R. 2394(a), 16 N.J.R. 3430(a).

Added "district" throughout section.

Case Notes

State Board of Education delegated authority to debar, suspend and disqualify persons from contracting to the Department of the Treasury. *New Jersey Education Assn. v. Essex Cty. Educational Services Commission*, 5 N.J.A.R. 29 (1981).

SUBCHAPTER 8. PUBLIC SCHOOL CONTRACTS

6:20-8.1 Restricting the avoidance of competitive bidding for extraordinary, unspecifiable services

(a) Extraordinary, unspecifiable services (hereinafter referred to as "EUS") are those services which are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor.

(b) Any purchase, contract or agreement of the character described in N.J.S.A. 18A:18A-4, may be made, negotiated or awarded by a district board of education by resolution at a public meeting without public advertising for bids and bidding if the subject matter thereof consists of EUS. This exception shall be construed narrowly in favor of open competitive bidding where possible and in each instance of such exception, the district board of education is required to state the supporting reasons for its action in the resolution awarding the contract. The use of such exception shall be further limited by the following conditions:

1. The assertion that the service can only be provided by a single contractor ("sole source") shall not be sufficient alone to justify avoidance of competitive bidding as an EUS;

2. The fact that the service is in the nature of a personal, human, social or training services contract, or includes within its description such terms as "engineering," "technical," "management," "consultant," or similar descriptions suggesting some special nature shall not in itself be sufficient to utilize this exception. The need for expertise, extensive training and proven reputation in the field of endeavor must be critical and essential to the project, and not merely a desire to have a reliable job performed;

3. Avoidance of bids where any precedent exists (in the school district or elsewhere) demonstrating the feasibility of bidding would be an unacceptable use of this provision. Services previously bid shall be subject to the presumption that such services may not be classified as an EUS, unless the board of education can demonstrate the lack of feasibility of bidding such services;

4. If specifications can reasonably be written covering the services, then they must be bid, notwithstanding that the other criteria of the definition may be met. In cases

which may appear too technical for local school officials to prepare detailed specifications two criteria must be addressed and found to be not possible before it may be concluded that the services cannot reasonably be described by written specifications:

i. If the local school officials do not possess the technical skill to prepare specifications, they should engage consultant assistance to do so;

ii. If the services are of such a technical or massive nature as to make a description of all actions to be taken unfeasible, or if there are available various (optional or unknown) technical methodologies for achieving the desired end, then the specifications should be written in terms of required end-products and/or standards of performance rather than (or in concert with) descriptions of all technical steps to be taken;

5. Services rendered as EUS must generally be characterized as not being of a continuous ongoing nature. Services which are continued or regularly repetitive shall be subject to a presumption that specifications can be written to describe what has been done. Where this is not the case, the district board of education must specifically address this question;

6. Before awarding a contract under the EUS provisions, a designated school official of the district board of education must file a certificate with the district board of education clearly describing the nature of the work to be done, stating it is not reasonably possible to write specifications, describing the informal solicitation of quotations (if quotes not sought, or lowest responsible price is not observed explain this also) and describing in detail why the contract meets the provisions of the statute and these rules. A mere recitation of the language in the statute shall not be sufficient for this purpose. The certification must be kept with the resolution awarding the contract in the district board of education office;

7. If the estimated cost or price exceeds the minimum amount, which is calculated semi-annually, quotations as to the cost or price must be solicited by the district board of education whenever practicable, and the contract shall be made on the basis of the lowest responsible quotation, which quotation is most advantageous to the district board of education, price and other factors considered;

8. Services that meet the requirements of EUS may not be combined with other work in a contract, which is predominantly characterized as being a biddable activity, so as to avoid the necessity of bidding for the work which in its own right is subject to competitive bidding;

9. No firm, having been previously retained to study, survey, or prepare specifications for a given system, function or equipment may be selected as an EUS without competitive bidding to operate, implement or provide any material or services on the basis of intimate or specialized knowledge acquired as a result thereof. Appropriate care should be taken so that such a firm is not authorized to

participate in bidding if its earlier participation in studies, and so forth, would give it unfair advantage.

As amended, R.1984 d.204, effective June 4, 1984.

See: 16 N.J.R. 299(b), 16 N.J.R. 1347(a).

Amended by R.1985 d.88, effective March 4, 1985.

See: 16 N.J.R. 3372(b), 17 N.J.R. 584(a).

Deleted (c) and (d).

Amended by R.1990 d.393, effective August 6, 1990.

See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

Explained use of acronym EUS.

Case Notes

Bid subcontractor's nonemergency petition challenging materials in school board contract mooted by completion. *Richard Eiden Associates, Inc. v. Fair Lawn Board of Education*, 97 N.J.A.R.2d (EDU) 503.

Public Schools Contract Law allows nonadvertised negotiated changes in construction plans if successive advertised public construction bids produce unreasonable bids. *Rosenblum v. Closter Board of Education*, 96 N.J.A.R.2d (EDU) 540.

School board was not unreasonable in imposing past performance requirement on bidders for letting maintenance, custodial and grounds management service contract. *Stroh v. Hillsborough Board of Education*, 95 N.J.A.R.2d (EDU) 235.

Unexpended portion of funds received by Educational Services Commission under contracts with local school districts were subject to being refunded. *Essex County Educational Services v. Department of Education*, 95 N.J.A.R.2d (EDU) 106.

Contracting with one photographer to take photographs of pupils for school's yearbook was not discriminatory. *Santomenna v. Toms River Board of Education*, 95 N.J.A.R.2d (EDU) 42.

Board did not exceed its authority; requiring contract bidders to provide qualification information. *Michael T. Gavin, Inc., v. Lakewood Township Board of Education*, 94 N.J.A.R.2d (EDU) 307.

Contract had to be awarded to the lowest possible bidder. *Krantz & List Electric, Inc. v. Elizabeth City Board of Education*, 94 N.J.A.R.2d (EDU) 39.

Evidence established security company's responsibility; responsible low bidder. *Consec Security Group, Inc. v. Board of Education of Township of Lakewood*, 93 N.J.A.R.2d (EDU) 228.

Contractor could not recover claimed lost profit on basis of alleged wrongful rejection of bid. *Bokey, Inc. v. Board of Education of Borough of Frenchtown*, 93 N.J.A.R.2d (EDU) 117.

Contract specifications did not require specific brand name computers; successful bid was conforming. *Katinsky v. Board of Education of Township of Pennsauken*, 93 N.J.A.R.2d (EDU) 1.

Board of Education was not required to bid roof repair work on basis of separate and combined bids. *Quality Roofing Co. v. Tenafly Bd. of Educ.*, 91 N.J.A.R.2d 24 (EDU).

School board violated procedures on initiation of contract agreement for extraordinary, unspecifiable services in employment of lobbyist/consultant. (Commissioner's Final Decision). *Gibson v. Newark Bd. of Ed.*, 6 N.J.A.R. 304 (1984), affirmed 205 N.J.Super. 48 (App.Div.1985).

6:20-8.2 Certain leases of equipment and service agreements beyond the fiscal year

(a) Leases (which term includes rental agreements) and service agreements for automobiles, motor vehicles, electronic communications equipment and machinery and equipment of every nature and kind may not be renewed or extended beyond five years. Rebidding after five years should not require that the equipment be in the service of the district board of education.

(b) Such leases and service agreements may be written for any period of time not to exceed five years, or for shorter periods with provision for renewal at the option of the district board of education provided that such renewal shall not cause the cumulative length to exceed five years. Such renewals may be authorized only by resolution of the district board of education.

(c) In addition to providing for the use of equipment during the period of the lease, the lease may provide for rental payments to be credited towards the purchase price for purpose of acquisition of the equipment if the district board of education, at its sole option, decides to buy the equipment, and said option was included in the original specifications and in the original contract. Leases may not, however, provide for the acquisition of ownership at the beginning of the lease term, with installment payments to be made thereafter.

(d) All leases or service agreements authorized under this section of the law shall be subject to competitive bidding.

(e) Equipment leased may not be expanded, upgraded or otherwise materially changed or increased in cost during the term of the lease without competitive bidding, except as follows:

1. Equipment changes which were specifically described, either by itemization or by performance standards, in the original bidding specifications and for which all bidders were requested to submit proposals, when in accordance with a formal written plan of time-phased expansion, prepared prior to solicitation of bids, and when the proposals for such changes were considered in the determination of the successful bidder; or

2. An item of equipment which is discontinued by the vendor may be replaced with a comparable model which performs the same or increased workload, provided that neither the workload nor the cost exceeds that specified in the original contract or the plan expansion referred to in (e)1 above.

(f) Any such changes made in accordance with subsection (e) of this section shall be made by an amendatory contract and the procedure followed shall be in compliance with the rules regarding change orders.

Amended by R.1985 d.88, effective March 4, 1985.

See: 16 N.J.R. 3372(b), 17 N.J.R. 584(a).

Added "district".

Amended by R.1990 d.393, effective August 6, 1990.

See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

Added modifier "district" when referencing "board".

6:20-8.3 Change orders and open-end contracts

(a) Definitions include the following:

1. A change order is a lawfully prepared and properly authorized document which directs and authorizes a contractor, consultant or other vendor performing work for or supplying materials and supplies to a district board of education pursuant to a contract to change the work, service or materials to be performed, rendered or furnished from that originally specified or estimated and to correspondingly change the payment due therefor;

2. Open-end contracts are contracts for which price bids were solicited on a unit basis because exact quantities needed were not known at the time bids were sought. Such contracts, when advertised and awarded, must include a maximum number of units that can be ordered for each item under the contract. Orders placed under such open-end contracts shall not be considered as change orders for purposes of this rule, but shall be subject to the requirements specified in (f) below.

(b) No changes in quantities, work performed, services rendered, materials, supplies or equipment delivered or provided shall be authorized, permitted or accepted, except by the procedures established herein. All change orders shall be subject to the following:

1. Each change order shall be in writing and shall be numbered consecutively (beginning with the number one) for each project or contract;

2. Change orders which result in payment reduction below the originally contracted price may be made by locally established procedure, provided that any change orders increasing costs on the same contract shall include reference to such reductions;

3. Quantities of items or work shall not be changed in such a manner as to nullify the effect of the competitive determination of lowest responsible price which was made at the time of contract award, provided that at said time the changes could have been reasonably foreseen;

4. Responsibility required by this rule to be exercised specifically by the district board of education may not be delegated. In those instances in which authority is to be exercised by some school official, the authority, responsibility and required procedures should be clearly spelled out in advance, by resolution.

(c) Professional and EUS contract change orders shall be governed by the following:

1. Changes should be within the scope of activities of the original contract, and not for the purpose of undertaking new or different work or projects. Changes in payments for activities within the scope of activities of the contract shall be in accordance with a schedule of specific charges or rates contained in the contract and shall be effectuated by a written change order authorized by the appropriate school official. If such a schedule is not included in the contract, the contract should be amended to provide for same;

2. If the change is not within the scope of activities of the original contract:

i. If the contract was awarded without competitive bidding being required by law or rule (as in the case for professional services and certain authorized extraordinary, unspecifiable services per N.J.S.A. 18A:18A-5a(1) and (2), any change beyond the original scope of activities may be made by amendatory contract;

ii. If the consulting contract was not a professional service and was required to be subject to competitive bidding, any change beyond the original scope of activity should be by new contract based on new bidding;

3. Before authorizing any change order increasing costs, availability of funds should be certified by the board secretary.

4. An amendatory contract may be effectuated by the same method required for the authorization of the original contract.

(d) Change orders for contracts for materials, supplies and equipment shall be governed by the following:

1. Change orders may be used to change the number of units or items originally advertised and contracted for, provided that:

i. Unit prices were sought at the time of advertising and included in the contract; and

ii. The advertising and the contract included a provision that the unit prices could be so used;

2. Change orders may not be used to substantially change the quality or character of the items to be provided, inasmuch as such factors would have been a factor in the original bidding;

3. Such changes should not cause the originally awarded contract price to be exceeded cumulatively by more than 20 per cent net;

4. Before authorizing any change orders increasing costs, availability of funds should be certified by the board secretary;

5. Changes may be effectuated by the school official authorized to serve as contracting agent, subject to such controls or approval requirements as the district board of education may lawfully impose;

6. Change orders for materials, supplies and equipment items which are part of a contract which is primarily a construction contract shall be handled in accordance with the rules governing construction contracts. Paving (blacktopping) contracts which were awarded on a unit price basis as an open-end contract shall be handled under the section dealing with open-end contracts. Contracts awarded for the paving, construction or reconstruction of specifically described sections shall be treated as construction contracts.

7. Change orders may be authorized by the contracting agent for price adjustment for petroleum products, provided:

i. There has been a determination by the school board attorney that such a price adjustment is authorized by law;

ii. That the original bidding specifications and contract so authorize; and

iii. That an objective price benchmark not under the direct control of the supplier is utilized to establish the price changes, and that the changes are not for the purpose of correcting asserted bidding errors; and

iv. That adequate funds have been certified as being available.

(e) Change orders for construction, reconstruction and major repair contract shall be governed by the following:

1. Change orders should be limited to the following types:

i. Emergency occurrences affecting health, safety or welfare;

ii. Unforeseeable problems;

iii. Minor modifications to effect economies, improve service or resolve minor problems;

2. Change orders should not be made for the following:

i. Changes that materially expand upon the size, nature or scope of the project as it was originally described in the bid specifications;

ii. Extra work that could reasonably be effectuated by a separately bid contract without duly disrupting the basic work or imposing adverse cost consequences;

3. All change orders for construction, reconstruction, and major repair contracts must be submitted to the Bureau of Facility Planning Services for approval, except:

i. When an emergency condition requires immediate action, the school official designated by the district board of education to handle emergency purchases per N.J.S.A. 18A:18A-7 may authorize the necessary actions to be taken, but only to the extent necessary to meet the emergency;

ii. Minor field (site) modifications, to the extent normally permitted (method is at local option) may be authorized by the district board of education and appropriate school officials, provided that they do not affect the overall scope of work of the contract; however, if these change orders will result in an inability to complete the full contracted scope of services without increasing the contracted price, the Bureau of Facility Planning Services must approve in advance;

iii. If the awarded contract includes a sum for contingencies, said sum should be encumbered against the appropriation at the outset, and charges against that amount may be authorized by the district board of education, provided that the sum so included does not exceed 20 per cent of the overall contract;

4. In those instances where the Bureau of Facility Planning Services approval is necessary, the following procedures will govern:

i. The authorized school official of the district board of education shall file with the Bureau of Facility Planning Services two copies of the request for the change order, stating the facts involved and indicating that the proposed change order may be allowed under these rules. If the request and justification are prepared by other than an official of the district board of education, it must be countersigned by the authorized school official;

ii. The Bureau of Facility Planning Services shall take such steps as it may find appropriate to assure that a change is necessary and that it will actually be carried out;

iii. The Bureau of Facility Planning Services shall be assured that adequate appropriations are available;

iv. If appropriate, the Bureau of Facility Planning Services shall authorize a written amendatory contract to be entered into covering the change(s) to be made. The exact form of this amendatory contract shall be at the discretion of the district board of education;

v. A copy of the change order authorization marked "Approved" will be sent to the district board of education for its information and files.

(f) Open-end contracts will be governed by the following:

1. The issuance of purchase orders pursuant to an open-end contract shall be considered to be the carrying out of the contract and not a change order. The following requirements shall apply:

i. Orders under open-end contracts may not be used for purposes such as changing the quality or character of items to be provided, nor to exceed the maximum number(s) of items or units provided for in the original specifications and contract. Such changes would constitute a change order;

ii. The contract may not be for a period longer than the one-year requirement of the Public School Contracts Law, unless specifically authorized by law;

iii. The certificate of availability of funds shall be executed each time an order is placed, covering the amount of the order, unless the district board of education wishes to commit and certify the full amount at the outset. The certificate must be executed before the district board of education incurs a contractual liability on its part;

iv. Orders may be placed by the school official authorized to serve as contracting agent subject to such controls or approval requirements as the district board of education may lawfully impose.

(g) The requirements contained in this section shall apply to all contracts, agreements, purchase orders, or other actions which are entered into, authorized, executed, reviewed or extended on or after the day on which such rule is finally promulgated.

(h) Every district board of education shall take all steps necessary so that all appropriate school officials and employees shall be aware of and comply with this rule.

Amended by R.1985 d.88, effective March 4, 1985.

See: 16 N.J.R. 3372(b), 17 N.J.R. 584(a).

Added "district".

Amended by R.1990 d.393, effective August 6, 1990.

See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

At (c) deleted consultant and added EUS contract change orders.

Amended by R.1991 d.459, effective September 3, 1991.

See: 23 N.J.R. 1733(a), 23 N.J.R. 2634(a).

Citations corrected.

6:20-8.4 Bonds

(a) Types of bonds include:

1. "Bid bond" means a written guarantee, in the form of a certificate, payable to the district board of education, that the bidder, if awarded the contract within such time as may be specified in the invitation to bid, but in no case more than 60 days, unless such bidder has agreed to a longer period, will enter into a contract and will furnish any prescribed performance bond or other security required as a guarantee or indemnification and in default thereof providing payment for the damages suffered by

the district board of education as a result of the bidder's refusing to sign the contract.

2. "Labor and material bond" means a written guarantee, in the form of a certificate, payable to the district board of education, that the bidder will promptly make payment to all claimants, for all labor and material used or reasonably required for use in the performance of the contract between the bidder and the district board of education and in default thereof providing for payment of all unpaid labor and material bills.

3. "Performance bond" means a written guarantee, in the form of a certificate, payable to the district board of education, that the bidder will promptly and faithfully perform the contract between the bidder and the district board of education and in default thereof providing for completion of the contract or providing sufficient funds to pay the cost of completion of the contract.

(b) District boards of education may require in the notice to bidders or in the specifications that bidders guarantee that they will enter into a contract with the district board of education and will furnish any prescribed performance bond or other security required as a guarantee or indemnification. The guarantee may be given, at the option of the bidder, by certified check, cashier's check or bid bond. When the guarantee is given in the form of a bid bond, such bid bond shall:

1. Be given by a responsible surety or insurance company licensed to operate in New Jersey. District boards of education are prohibited from requiring that bidders submit a bid bond from a particular surety or insurance company.

2. Shall be given by a responsible individual residing in New Jersey. The district board of education may reject such individual bid bond if it is not satisfied with the sufficiency of the individual surety offered; or

3. Shall be in the form of a certificate, identifying the bidder, whose acts are guaranteed, the name of the surety company, insurance company or individual surety and the district board of education in whose favor the bonds are given. The "penalty" or "penal sum" on performance bonds, labor and material bonds, and all other such bonds shall be expressed in words and figures as a specific number of dollars and not as a percentage of the bid. The "penalty" or "penal sum" on performance and labor and material bonds shall be in the amount of 100 percent of the contract price.

Amended by R.1985 d.88, effective March 4, 1985.

See: 16 N.J.R. 3372(b), 17 N.J.R. 584(a).

Added "district" throughout rule.

Amended by R.1990 d.393, effective August 6, 1990.

See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

Reorganized section.

6:20-8.5 Contract or agreement due to an emergency situation

A copy of any contract or agreement for work or labor, materials, supplies or services made, negotiated or awarded by the secretary, business administrator, business manager or other such officer or employee of a district board of education pursuant to N.J.S.A. 18A:18A-7 and a copy of the written requisition for the performance of such work or labor, or the furnishing of materials, supplies or services shall be filed with the Bureau of Facility Planning Services and the office of the county superintendent of schools within three days after the awarding of the contract or agreement.

Amended by R.1985 d.88, effective March 4, 1985.
See: 16 N.J.R. 3372(b), 17 N.J.R. 584(a).
Added "district".

6:20-8.6 Contracts for behind-the-wheel driver education

(a) Contracts with private driver education schools providing behind-the-wheel driver education may be made, negotiated or awarded by a district board of education, for any term not exceeding in the aggregate three years, by resolution at a public meeting without public advertising for bids. Such resolution shall indicate that the private driver education school will provide behind-the-wheel driver education that is substantially equivalent to that provided by the district board of education at less cost than current or other proposed programs.

(b) Contracts shall only be made, negotiated or awarded with approved private driver education schools. A driver education school holding a current license or certificate of approval issued by the Director of the Division of Motor Vehicles shall be considered as being approved by the Commissioner of Education for the purpose of providing behind-the-wheel driver education. A copy of such current license or certificate of approval shall be obtained by the district board of education from the private driver education school and maintained on file with the contract.

New Rule, R.1985 d.88, effective March 4, 1985.
See: 16 N.J.R. 3372(b), 17 N.J.R. 584(a).

6:20-8.7 Cooperative pricing systems

District boards of education may by resolution establish a cooperative pricing system pursuant to N.J.S.A. 40A:11-11. No cooperative pricing system shall become effective without prior approval of the Director of the Division of Local Government Services in the Department of Community Affairs.

New Rule, R.1985 d.88, effective March 4, 1985.
See: 16 N.J.R. 3372(b), 17 N.J.R. 584(a).

SUBCHAPTER 9. (RESERVED)

Subchapter Historical Note

Pursuant to Reorganization Plan No. 002-1997, Subchapter 9, Child Nutrition Programs, was recodified as N.J.A.C. 2:36, effective February 10, 1998. See: 30 N.J.R. 870(b).