

greater than 6,500 based on the enrollment figures in the ASSA filed by the district(s) on the prior October 15. The Commissioner, upon written application by the board(s) of education and on a case-by-case basis, may approve a waiver of the maximum salary amount for any district or districts with a total enrollment of 10,000 or more based on the enrollment figures in the ASSA filed by the district(s) on the prior October 15.

“Member of immediate family” means the spouse, civil union partner pursuant to N.J.S.A. 37:1-33, domestic partner pursuant to N.J.S.A. 26:8A-1 et seq. or dependent child of the individual residing in the same household.

“National Center for Education Statistics” or “NCES” means the organization that publishes the Federal accounting manual, Financial Accounting for Local and State School Systems, that contains the financial accounting terminology and classifications required by N.J.S.A. 18A:4-14 for use in the chart of accounts prescribed by the Commissioner with the approval of the State Board of Education.

“Net budget” means the sum of the school district’s general fund tax levy, State aid payable pursuant to the provisions of N.J.S.A. 18A:7F-43 et seq. other than preschool education aid, miscellaneous revenue estimated pursuant to GAAP, and designated general fund balance.

“New Jersey Quality Single Accountability Continuum” or “NJQSAC” means the New Jersey Quality Single Accountability Continuum for evaluating local public school district performance established pursuant to N.J.S.A. 18A:7A-3 et seq.

“New school facility” means any new school facility, or new addition to an existing school facility characterized by an increase in the gross square footage of the facility, used wholly or in part for educational purposes by a district board of education, but excludes stadiums, grandstands, garages, facilities used for non-instructional and non-educational purposes, and any facility used solely for administration. It also excludes renovations to existing space that do not increase the gross square footage of the facility.

“Non-discretionary fixed costs” means fixed costs incurred by a school district in its operation that are outside the control of the district board of education.

“OFAC” means the Office of Fiscal Accountability and Compliance within the New Jersey Department of Education.

“Other capital project” means as defined at N.J.A.C. 6A:26-1.2.

“Permanent fund” means a fund used to report resources that are legally restricted to the extent that only earnings, and not principal, may be used for purposes that support the reporting district board of education’s programs.

“Prebudget year” as defined by N.J.S.A. 18A:7F-45, means the school fiscal year preceding the year in which the school budget is implemented.

“Prebudget year adjusted tax levy” means the adjusted tax levy of the prebudget year less approved waivers and/or separate question(s) unless explicitly approved to be permanent.

“Preliminary budget” means the budget approved by the district board of education as part of a waiver request submission to the Department prior to submission of the proposed budget required pursuant to N.J.S.A. 18A:7F-5(c).

“Presumptive efficient spending level” means the State median cost per pupil of the prebudget year as reflected in the Comparative Spending Guide by indicator for the applicable operating type and enrollment range adjusted by the increase in CPI, or the efficiency standards established pursuant to N.J.S.A. 18A:7F-46 and used in the calculation of the adequacy budget pursuant to the provisions of N.J.S.A. 18A:7F-51, whichever is more appropriate and comparable for the particular spending category under review as determined by the Commissioner.

“Proposed budget” means the budget required pursuant to N.J.S.A. 18A:7F-5(c).

“Proprietary funds” means the funds used to account for district board of education activities where the reporting focus is on the determination of operating income, financial position and cash flow. Proprietary funds include enterprise and internal service funds.

“Regional school district” means a limited-purpose or all-purpose public school district established on a regional basis pursuant to N.J.S.A. 18A:13-1 et seq.

“Relative” means an individual’s spouse, civil union partner pursuant to N.J.S.A. 37:1-33, domestic partner as defined in N.J.S.A. 26:8A-3, or the parent, child, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother or half-sister of the individual or of the individual’s spouse, civil union partner or domestic partner, whether the relative is related to the individual or the individual’s spouse, civil union partner or domestic partner by blood, marriage or adoption.

“Required maintenance” means as defined in N.J.A.C. 6A:26A-1.3.

“School business administrator” or “SBA” means the school business administrator appointed pursuant to N.J.S.A. 18A:17-14.1 or any other title used for the chief financial officer of the district, such as assistant superintendent for business or assistant superintendent for finance, and requiring the school business administrator endorsement pursuant to the provisions of N.J.A.C. 6A:9-12.3(d).

“School district” means any local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes or a school district under full State intervention pursuant to N.J.S.A. 18A:7A-34, but not including a charter school established pursuant to N.J.S.A. 18A:36A-1 et seq. unless specified otherwise.

“School district vehicle” means a vehicle purchased, leased, lease-purchased or acquired without cost by gift, donation or other method by the school district regardless of funding source.

“School facilities project” means as defined in N.J.A.C. 6A:26-1.2 and pursuant to N.J.S.A. 18A:7G-3.

“School Employees’ Health Benefit Program” or “SEHBP” means the School Employees’ Health Benefit Program pursuant to N.J.S.A. 52:14-17.46.1 et seq., which shall be the successor plan to the SHBP for school employees.

“School report card” means the school report card prepared and disseminated to parents and other interested taxpayers within each local school district pursuant to N.J.S.A. 18A:7E-2.

“Sending/receiving relationship” means an agreement between two district boards of education, one of which does not have the facilities to educate in-district an entire grade(s) or provide an entire program(s), and as an alternative sends such students to a district board of education having such accommodations and pays tuition, pursuant to N.J.S.A. 18A:38-8 et seq.

“Shared service” means any educational or administrative service required to be performed by a district board of education in which the district, with board approval, is able and willing to share in the costs and benefits of that service with another district board of education, municipality, or other governmental unit, as authorized by the Interlocal Services Act at N.J.S.A. 40:8A-1 et seq. and in compliance with existing school laws at N.J.S.A. 18A, but does not include sending/receiving relationships.

“Special revenue fund” means the governmental fund that accounts for the proceeds of specific revenue sources (other than trusts, or revenues for major capital projects) that are legally restricted to expenditures for specified purposes.

“Spending growth limitation” means the annual rate of growth permitted in the net budget of a school district, county vocational school district or county special services school district as measured between the net budget of the prebudget year and the net budget of the budget year as calculated pursuant to N.J.S.A. 18A:7F-5(d) (authorization for spending growth limitation adjustments) and 18A:7F-5a (authorization for cap banking).

“Standard operating procedures” or “SOPs” mean procedures that cover all business functions and are detailed with specific steps and instructions; are realistic based on the

employment structure and business system; tie with job descriptions; and are supported by management.

“State support” means as defined at N.J.A.C. 6A:26-1.2.

“Student Activity Fund” means a fund used to account for monies derived from athletic events or other activities of pupil organizations and to account for the accumulation of money to pay for student group activities.

“Subsistence” means lodging, meals and incidental expenses associated with traveling.

“Superintendent” means the superintendent of schools appointed pursuant to N.J.S.A. 18A:17-15, or where there is no superintendent the administrative principal appointed pursuant to N.J.S.A. 18A:17-20.5, or the State district superintendent appointed pursuant to N.J.S.A. 18A:7A-35 or 18A:7A-49 in the case of a school district under full or partial State intervention.

“Surplus” means the amount of undesignated, unreserved fund balance as of July 1 of each year.

“T&E” means the thorough and efficient system of free public schools for the instruction of all children in the State between the ages of five and 18 years as required by the State Constitution and defined by the Core Curriculum Content Standards and efficiency standards established pursuant to N.J.S.A. 18A:7F-46.

“Thoroughness standards” means the Core Curriculum Content Standards as approved by the State Board pursuant to N.J.S.A. 18A:7F-46a.

“Travel expenditures” means those costs paid by the school district using local, State, or Federal funds, whether directly by the school district or by employee reimbursement, for travel by school district employees and district board of education members to the following five types of travel events:

1. “Training and seminars” means all regularly scheduled, formal residential or non-residential training functions, conducted at a hotel, motel, convention center, residential facility, or at any educational institution or facility;
2. “Conventions and conferences” means general programs, sponsored by professional associations on a regular basis, which address subjects of particular interest to a school district or are convened to conduct association business. The primary purpose of employee attendance at conferences and conventions is the development of new skills and knowledge or the reinforcement of those skills and knowledge in a particular field related to school district operations. These are distinct from formal staff training and seminars, although some training may take place at such events;

3. "School district sponsored events" means conferences, conventions, receptions, or special meetings, where the school district plans, develops, implements, and coordinates the event and is the event's primary financial backer. School district employees are actively involved in working the event and other employees may attend as participants;

4. "Regular school district business travel" means all regular official business travel, including attendance at meetings, conferences and any other gatherings which are not covered by the definitions included in 1, 2 and 3 above. Regular school district business travel also includes attendance at regularly scheduled in-state county meetings and Department sponsored or association sponsored events provided free of charge and regularly scheduled in-state professional development activities with a registration fee that does not exceed \$150.00 per employee or board member. Beginning in 2009-2010, the \$150.00 limit per employee or board member may be adjusted by inflation; and

5. "Retreats" means meetings with school district employees and school board members, at which organizational goals and objectives are discussed.

"Underbudgeted revenue" means any general fund revenue realized that exceeds the amount included in the original school district budget certified for taxes.

"Unrestricted State aid" means State aid as defined in N.J.S.A. 18A:7F-37.

"Unused spending authority" means the amount pursuant to N.J.S.A. 18A:7F-5a of the difference between the net budget of a school district, county vocational school district or county special services school district, and the permitted net budget as authorized pursuant to N.J.S.A. 18A:7F-5(d).

"Weighted resident enrollment" means the differentials in costs based on the efficiency standards established pursuant to N.J.S.A. 18A:7F-46(a) of providing education at the kindergarten, elementary (grades one through five), middle school (grades six through eight) and high school levels (grades nine through 12) which are determined by dividing the elementary cost per pupil into each category. The weights are applied to resident enrollment in each category pursuant to N.J.S.A. 18A:7F-50.

Special amendment, R.2009 d.35, effective December 18, 2008.
See: 41 N.J.R. 642(a).

Added definitions "Adjusted for inflation", "Authorized membership of the school board", "Bilingual education pupil", "Capital maintenance", "Capital outlay", "Capital reserve account", "Charter school", "Combination pupil", "Concentration of at-risk pupils", "County superintendent roundtable", "Emergent circumstance", "Emergent condition", "Energy costs", "Excess costs", "Extraordinary costs", "Forensic audit", "Health care costs", "Household income", "Immediate family member", "Individualized education program", "Insurance", "Lease purchase payment", "Line item account", "Long-range facilities plan", "Net budget", "New school facility", "Non-discretionary fixed costs", "Other capital project", "Prebudget year adjusted tax levy", "Preliminary budget", "Required maintenance", "Spending growth limitation", "State support",

"Subsistence", "Travel expenditures", "Underbudgeted revenue", "Unrestricted State aid", "Unused spending authority" and "Weighted resident enrollment"; in definition "Board of trustees", substituted "seq" for "sq" at the end; in definition "Capital projects fund", inserted the third sentence; in definition "Chief school administrator", inserted ", or the lead person of a charter school as defined at N.J.A.C. 6A:11-1.2"; and deleted definition "State Health Benefits Program".

Amended by R.2011 d.054, effective February 7, 2011.

See: 42 N.J.R. 2524(a), 42 N.J.R. 2665(a), 43 N.J.R. 284(a).

Added definitions "Additional district salary increment", "Annual salary", "High School", "High school salary increment" and "Maximum salary amount".

SUBCHAPTER 2. EXECUTIVE COUNTY SUPERINTENDENT OF SCHOOLS

6A:23A-2.1 General powers and duties of Executive County Superintendent

(a) Each Executive County Superintendent shall exercise and perform the general powers and duties vested in him or her pursuant to N.J.S.A. 18A:7-8.

(b) Nothing in this section shall be construed or interpreted to contravene or modify the provisions of the New Jersey Employer-Employee Relations Act, P.L. 1941, c. 100, (N.J.S.A. 34:13A-1 et seq.), or to limit or restrict the scope of negotiations as provided pursuant to law, or to require an employer to enter into a subcontracting agreement which affects the employment of any employee in a collective bargaining unit represented by a majority representative during the time that an existing collective bargaining agreement with the majority representative is in effect.

6A:23A-2.2 School district regionalization and consolidation of services advisory committee

(a) Each Executive County Superintendent shall create a School District Regionalization and Consolidation of Services Advisory Committee (Advisory Committee) for the purpose of providing advice and consultation to the Executive County Superintendent on the issue of regionalization of school districts or consolidation of school district services. The Advisory Committee shall consist of representation from each district in the county and shall meet on a monthly basis. At least quarterly, county representatives from the New Jersey Leadership for Educational (LEE) Group will be invited by the Executive County Superintendent to attend and participate in the meetings of the Advisory Committee. The LEE Group is composed of the New Jersey Education Association, the New Jersey Principals and Supervisors Association, the New Jersey School Boards Association, New Jersey Association of School Business Officials, the New Jersey Association of School Administrators, and the New Jersey Congress of Parents and Teachers. The Executive County Superintendent may designate the county superintendent roundtable as the Advisory Committee, if appropriate. If the roundtable is used, attendance by the above organizations shall include only the portion of the roundtable meeting dedicated to the issue of regionalization and consolidation of services.

(b) The Executive County Superintendent, in his or her discretion, may create one or more advisory subcommittees that address issues by subject matter, by region or by some other method. Members of the subcommittees may be local taxpayers or residents, school board members, school district employees, school district parents, local government officials, representatives of State or local education associations, or others, as deemed appropriate by the Executive County Superintendent. The membership shall reflect the diversity of the county to the extent possible.

(c) The Executive County Superintendent, in his or her discretion, shall determine the working structure of the advisory subcommittees as he or she deems most effective and efficient.

(d) The Executive County Superintendent shall coordinate the work of the advisory subcommittees and shall report on the progress of that work to the Advisory Committee at its monthly meetings.

(e) The Executive County Superintendent shall report on the progress of the advisory committee and advisory subcommittees work at the regularly scheduled county superintendent roundtables, where appropriate.

(f) The Executive County Superintendent may, in his or her discretion where necessary, take appropriate action to engage consultants to perform the work and studies required by these rules, including assisting districts in submission of applications for funds under the SHARE program pursuant to N.J.S.A. 40A:65-30.

(g) The Executive County Superintendent shall encourage the advisory subcommittees to solicit input, to the extent possible, from current school employee representatives regarding regionalization and consolidation of services proposals.

6A:23A-2.3 Consolidation and sharing of services; joint and cooperative purchasing

(a) The Executive County Superintendent, in consultation with the Advisory Committee, shall study the consolidation of local public school districts' administrative services, to the extent practical. In particular, the Executive County Superintendent shall focus on identifying opportunities for consolidation of administrative services in the following types of districts:

(e) In any year that maintenance reserve account funds are withdrawn, the district board of education shall restore any unexpended required maintenance appropriations, up to the amount of maintenance reserve account funds withdrawn, to the maintenance reserve account at year-end.

(f) The district board of education shall, by resolution, transfer to the general fund on an annual basis any interest earned on the investments in the maintenance reserve account. Such interest may be transferred on a more frequent basis at the discretion of the district board of education.

(g) The district board of education shall ensure that the maintenance reserve account balance does not, at any time, exceed four percent of the replacement cost of the school district's school facilities for the current year. If the account exceeds this maximum amount at June 30, the district board of education shall reserve and designate such excess in the subsequent year's budget.

6A:23A-14.3 Supplementation of capital reserve and maintenance reserve accounts

(a) A district board of education or board of school estimate, as appropriate, may supplement a capital reserve account through a transfer by board resolution of any unanticipated revenue and/or unexpended line-item appropriation amounts anticipated at year end for withdrawal in subsequent school years. Any such transfer resolution shall be adopted by the board no earlier than June 1 and no later than June 30 of the respective school year.

(b) A district board of education or board of school estimate, as appropriate, may supplement a maintenance reserve account through a transfer by board resolution of any unanticipated revenue and/or unexpended line-item appropriation amounts anticipated at year end, for withdrawal in subsequent school years. Any such transfer resolution shall be adopted by the board no earlier than June 1 and no later than June 30 of the respective school year.

6A:23A-14.4 Establishment of other reserve accounts

(a) A district board of education or a board of school estimate, as appropriate, may through the adoption of a board resolution establish the following reserve accounts:

1. Current expense emergency reserve account.

i. The funds in the reserve shall be used to finance unanticipated general fund current expense costs required for T&E. For the purpose of the emergency reserve account, "unanticipated" shall mean reasonably unforeseeable and shall not include additional costs caused by poor planning or error.

ii. The account shall not exceed \$250,000 or one percent of the school district's general fund budget as certified for taxes up to a maximum of \$1,000,000, whichever is greater.

iii. A district board of education may appropriate funds to establish or supplement the reserve in the school district's annual budget or through a transfer by board resolution of any unanticipated revenue and/or unexpended line-item appropriation amounts anticipated at year end. Any such transfer resolution shall be adopted by the board no earlier than June 1 and no later than June 30 of the respective school year.

iv. Withdrawals from the reserve shall require the approval of the Commissioner unless the withdrawal is necessary to meet an increase in total health care costs in excess of four percent, for which the district did not receive an automatic adjustment for health care costs pursuant to N.J.A.C. 6A:23A-11.4. Total health care costs include medical insurance and prescription drug insurance costs.

2. Debt service reserve account in the debt service fund for proceeds from the sale of school district property. For the purposes of the debt service reserve account "property" shall mean land, buildings and other property that was incidental to the sale of land or a building. The funds in the reserve shall be used by the district first to reduce the outstanding principal amount at the earliest call date or to annually reduce the debt service principal payments. The funds may be used for any outstanding debt obligation or debt obligations of the school district. The reserve shall be liquidated within the lesser of five years from its inception or the remaining term on the obligations. Any remaining balance shall be used for tax relief.

3. Tuition adjustment reserve account in the general fund for up to 10 percent of the estimated tuition cost in the contract year for an anticipated tuition adjustment in the third year following the contract year. In such case, the district board of education shall:

i. Establish the tuition adjustment reserve account at June 30 by board resolution;

ii. Make full appropriation of the reserve for the tuition adjustment in the third year following the contract year;

iii. Exclude from the cap calculation the budgeted fund balance and appropriation of the tuition adjustment reserve in the third year following the contract year for such tuition adjustments; and

iv. Transfer to the general fund, by board resolution, any interest earned on the investments in a tuition adjustment reserve account on an annual basis. Such transfer may be made on a more frequent basis at the discretion of the district board of education.

6A:23A-14.5 Reserve accounts recorded in accordance with GAAP; audit

All reserve accounts shall be recorded in accordance with GAAP and subject to annual audit. Any capital gains or in-

terest earned shall become part of the reserve account. A separate bank account is not required; however, a separate identity for each reserve account shall be maintained.

SUBCHAPTER 15. STATE AID CALCULATIONS AND AID ADJUSTMENTS FOR CHARTER SCHOOLS

6A:23A-15.1 Definitions

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

“Average daily enrollment” for the purpose of determining the adjusted State, local and Federal aid means the sum of the days (present and absent) of all students are enrolled in the register(s) of the program for which the aid is being determined divided by the number of days school was actually in session.

“Categorical aid attributable to the student” means security categorical aid attributable to the student and a percentage of the school district’s special education categorical aid equal to the percentage of the school district’s special education students enrolled in the charter school and, if applicable, 100 percent of preschool education aid. Preschool education aid is restricted revenue, which is to be recorded in the special revenue fund-20 and is subject to the provisions of N.J.A.C. 6A:13A.

“Certification” means the endorsement of a person who is employed by a district board of education or a charter school board of trustees to perform duties that are regulated by N.J.A.C. 6A:9, 6A:11 and 6A:23, and N.J.S.A. 18A:26-2.

“Charter school rate” means an amount equal to 90 percent of the sum of the budget year equalization aid per pupil and the prebudget year general fund tax levy per pupil inflated by the CPI rate most recent to the calculation pursuant to N.J.S.A. 18A:36A-12.

“District of residence” means the school district in which a charter school facility is physically located; if a charter school is approved with a region of residence comprised of contiguous school districts, that region is the charter school’s district of residence.

“Initial recruitment period” means the period during which there are the first outreach efforts by a charter school to a cross section of the community for the application, random selection process (if applicable) and enrollment of students for the next school year.

“Local share” means that percentage of the school district’s adequacy budget supported by general fund tax levy.

“Non-resident district” means a school district outside the school district of residence of the charter school.

“Non-resident student” means a student from a non-resident district attending a charter school.

“Prebudget year” means the school fiscal year immediately preceding the year in which the school budget is implemented.

“Projected enrollment(s)” means the estimated total enrollment(s) from both the school district of residence and non-resident district(s) as follows:

1. For the first year, the projected enrollment is based on the enrollment as indicated in the New Jersey Charter School Application;
2. In subsequent years, projected enrollment is based on actual charter school enrollment as of October 15 of the prebudget year, the initial recruitment period that is submitted by January 15 and any approved change of enrollment as specified in the school’s charter or an approved amendment.

“Region of residence” means the contiguous school districts in which a charter school operates and is the charter school’s district of residence.

“Resident student” means a student who resides in the area served by the district board of education that is the same as the school district of residence of the charter school.

“School year” means July 1 to June 30 of any given academic year. If operating with an extended school year, this term means an alternate fiscal year beginning no later than September 1 and ending no later than August 31 of any given academic year.

“State share” means the percentage of the school district’s adequacy budget that is supported by State aid.

6A:23A-15.2 Per pupil calculations, notification and caps

(a) The resident and non-resident school districts shall use projected charter school aid as established by the Commissioner in a report to be distributed no later than February 15 of the prebudget year for budget purposes and to initiate school district payments to the charter school for the subsequent year. The report establishes for each resident and non-resident school district a per pupil amount for the local and State shares and categorical aids per student. Once the per pupil amount is established, it is not adjusted. Projected charter school aid is based on projected enrollments at the charter school. The number of students enrolled in the charter school is adjusted based on average daily enrollment for aid purposes throughout the school year in accordance with the prescribed adjustments listed in N.J.A.C. 6A:23A-15.3.

(b) The per pupil amount comprises local share as defined in (b)1 below and State share as defined in (b)2 below.

(j) The Commissioner may approve a higher tentative tuition rate for any year in which the approved private school for students with disabilities can prove to the satisfaction of the Commissioner that the maximum 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 claim, the approved private school for students with disabilities shall submit its request for a higher tentative tuition rate for the entire school year to the Assistant Commissioner, Division of Finance no later than January 31 preceding the beginning of the ensuing school year. The approved private school for students with disabilities shall submit such request with appropriate documentation, which shall include, but may not be limited to, the following information:

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

ii. A detailed explanation 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 ending December 31 immediately preceding the school year. This report format is available at the Division of Finance, PO Box 500, Trenton, New Jersey 08625-0500.

2. When a student's Individualized Education Program team determines the need for extraordinary services.

(k) The Commissioner will issue notification of certifying that the final tuition rates charged are based on the certified actual cost per student pursuant to (a) above.

(l) If the Commissioner determines that the tentative tuition rate for the school year established by written contractual agreement is greater than the final tuition rate charged for the school year, the approved private school for students with disabilities shall pay or credit the difference to subsequent tuition bills for each sending district board of education no later than June 30 of the school year in which the final tuition rate charged is received from the Commissioner, or not more than 30 days after an appeal on a certified amount is finally resolved. The same final tuition rate charged shall be charged to each sending district board of education.

(m) If the tentative tuition rate for the school year established by written contractual agreement pursuant to (h) above is less than the final tuition rate charged for the school year, the approved private school for students with disabilities may charge each sending district board of education all or part of the difference owed, but the same final tuition rate shall be charged to each sending district board of education. The sending district board of education shall pay the difference on a mutually agreed upon date during the second school year

following the year for which the actual cost per student is certified.

(n) The approved private school for students with disabilities shall prepare the contract and the form to establish the tentative tuition rate for the ensuing school year, and if applicable, the tentative tuition rate for extraordinary services on forms prepared by the Commissioner.

(o) An approved private school for students with disabilities shall reference as guidance the list of maximum allowable salaries by job title and county according to the job titles contained in N.J.A.C. 6A:9 which pertain to approved private schools for students with disabilities that is published by the Commissioner. Except for administrative job titles referenced in (p) below, maximum allowable salaries are based on the highest contracted salaries (not including payment of unused sick and vacation days and severance pay) of certified staff by job title in a district board of education for any prior year indexed by the average increase in salary between the two preceding school years for each job title. Such salaries are based on a 12-month contract period from July 1 through June 30 and the maximum allowable salary of an approved private school for students with disabilities staff member shall be prorated for staff employed for less than 12 months. Under no circumstances shall the maximum allowable salary calculated be less than the corresponding salary in the prior year for the same job title and county. Unrecognized job titles shall be correlated to similar job titles in public schools based on their functional activities. The maximum allowable salary of a staff member holding a part-time or split-time position shall be prorated including the salary of staff employed in entities defined in (e) and (f) above.

(p) An approved private school for students with disabilities shall reference as guidance a list of maximum allowable salaries by administrative and job titles and county according to the job titles contained in N.J.A.C. 6A:9 and 6A:23A-18.1 which pertain to approved private schools for students with disabilities that is published by the Commissioner. Maximum allowable salaries are based on the highest contracted salary (not including payment of unused sick and vacation days and severance pay) by administrative job title for the entire State in a district board of education, special services district board of education and educational services commissions with comparable average daily enrollments for any prior year, indexed by the average increase in salary between the two preceding school years for each job title. Such salaries are based on a 12-month contract period from July 1 through June 30 and the maximum allowable salary of the private school staff member shall be prorated for staff employed for less than 12 months. Each district board of education, special services district board of education and educational services commission with an ADE equal to or less than the highest approved private school for students with disabilities ADE will be considered comparable. Under no circumstances shall the maximum allowable salary calculated, be less than the corresponding salary in the prior year for the same job title.

The maximum allowable salary of a staff member holding a part-time or split-time position shall be prorated including the salary of staff employed in entities defined in (e) and (f) above.

(q) For the 2006-2007 school year and years thereafter:

1. For a staff member who was employed by the approved private school for students with disabilities prior to the 2006-2007 school year whose salary is greater than the maximum allowable salary in accordance with (o) and (p) above, such salary shall be frozen at the 2005-2006 salary level or until such time as the maximum allowable salary in accordance with (o) and (p) above exceeds the 2006-2007 salary level;

2. For a staff member who was employed by the approved private school for students with disabilities prior to the 2006-2007 school year whose salary is less than the maximum allowable salary in accordance with (o) and (p) above, the maximum salary shall be determined in accordance with (o) and (p) above; and

3. For a staff member in a new private school for students with disabilities opening on or after July 1, 2006, for a staff member whose employment commences on or after July 1, 2006 at private schools existing as of June 30, 2006 and for a staff member employed by a private school prior to June 30, 2006 whose job title changes effective July 1, 2006 or any time thereafter, the maximum salaries shall be determined in accordance with (o) and (p) above.

(r) An approved private school for students with disabilities shall employ staff pursuant to the list of the recognized job titles in accordance with N.J.A.C. 6A:9 that require certification and N.J.A.C. 6A:23A-18.1 that require a bachelor's degree, which is published by the Commissioner. An approved private school for students with disabilities shall only hire staff or consultants in job titles that require certification or a bachelor's degree if such titles are included on this list, or if such titles are unrecognized job titles that are approved annually in accordance with N.J.A.C. 6A:9-5.5. The approved private school for students with disabilities may use unrecognized administrative job titles, but maximum salaries of these titles are restricted in accordance with N.J.A.C. 6A:23A-18.5(a)9. If an approved private school for students with disabilities hires staff in administrative or support job titles such as but not limited to Chief Executive Officer or Chief Financial Officer, the maximum salaries of such job titles shall be limited to the maximum salary of a director in accordance with N.J.A.C. 6A:23A-18.2(p).

(s) For students who are transitioning back to a program of the sending district board of education for a portion of the enrolled school day, or to a third party location and require the services of an approved private school for students with disabilities staff person, the ADE for tuition rate purposes shall be computed as follows:

1. Regardless of the time period that a student is enrolled in a program outside the approved private school for students with disabilities, the student shall be considered a full time student of the private school, the student's ADE shall be considered as 1.0 and the sending district board of education shall pay the full-time tuition rate.

2. The sending district board of education shall pay all costs associated with the transition service if it involves a third party.

(t) For students who are transitioning back to a program of the sending district board of education for a portion of the enrolled school day or to a third party location, the approved private school for students with disabilities shall compute the tuition rate as follows:

1. The approved private school for students with disabilities shall calculate the student's ADE based on the number of hours enrolled in the program relative to the total number of possible hours of the program.

2. The sending district board of education shall pay all costs associated with the transition service if it involves a third party.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Rewrote the section.

Recodified from N.J.A.C. 6A:23-4.2 and amended by R.2009 d.395, effective December 21, 2009.

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

Updated the N.J.A.C. references throughout.

Case Notes

Adopting Initial Decision's conclusion that in establishing the tuition rate payable to certain private special education schools, the duties of employees holding the title of "Head Teacher," which primarily involved direct student instruction rather than direction and guidance of the work of instructional personnel, correlated to the duties of a certified Teacher of the Handicapped rather than to a Supervisor, and thus the lack of a Supervisor's certificate was not a basis for disallowing the salaries (adopting 2007 N.J. AGEN LEXIS 597, as modified). Youth Consultation Service, Inc. v. N.J. State Dep't of Educ., Office of Fiscal Policy & Planning, OAL Dkt. Nos. EDU 3573-06, 3574-06, 3575-06, 3576-06, 3577-06, 3684-06, 3685-06 and 3686-06, 2007 N.J. AGEN LEXIS 1013, Commissioner's Decision (October 4, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 286) adopted, which concluded that the Department of Education properly withheld tuition payments for the non-allowable expense related to a private special-education school's failure to provide the mandated four hours of instructional time on half-days; the school did not sustain its burden of establishing that the Department's determination was arbitrary, capricious, or unreasonable. Titusville Acad., Inc. v. N.J. Dep't of Educ., OAL Dkt. No. EDU 651-06, 2007 N.J. AGEN LEXIS 545, Commissioner's Decision (July 6, 2007).

Regulations establishing a maximum allowable salary for purposes of the tuition rate chargeable to public school districts apply to the President/CEO of Youth Consultation Service (YCS), which the Department of Education properly analogized to a Chief School Administrator/Executive Director/Director in setting the allowable salary for the position. The Department's action placed no limit on the actual salary YCS could pay to the President/CEO, only on the portion of it that could be

with disabilities shall include in the employee handbook an outline of all employee fringe benefits. All employee fringe benefits shall be adopted in a board of directors meeting and documented in the board minutes prior to implementing the fringe benefit. Employee fringe benefits that are consistent with N.J.A.C. 6A:23A-18.5(a)23 for which costs are deemed allowable are as follows:

1. Health insurance coverage (including dental and vision);
2. Life insurance;
3. Type(s) and qualification for retirement plan(s);
4. Severance pay;
5. Vacation;
6. Long term disability;
7. Sick day and personal day benefits;
8. Premium-only plans;
9. Cafeteria plans;
10. Section 125 plans;
11. Tuition reimbursement; and

12. Other benefits for which an approved private school for students with disabilities has applied and received written approval from the Commissioner.

(g) An approved private school for students with disabilities that loans funds to any party shall charge interest at a rate equal to the prime rate. The independent auditor shall compute imputed interest on those funds that are loaned at less than the prime interest rate or interest free. Such imputed interest revenue shall be netted against any short-term interest costs first, and then long term interest costs incurred by the private school. If the approved private school for students with disabilities has not incurred any interest costs, the imputed interest revenue shall be netted against costs incurred in account numbers classified as undistributed expenditures—business and other support services.

(h) An approved non-profit private school for students with disabilities that has a positive public school placement restricted working capital fund balance and a net deficit fund balance in all other fund balances (restricted and unrestricted) for more than three consecutive fiscal year-ends shall submit to the Assistant Commissioner, Division of Finance within 60 days after the end of the third fiscal year a corrective action plan to reduce the net deficit fund balance. The approved private school for students with disabilities shall be subject to monitoring by the Department to ensure implementation of and adherence to the corrective action plan. If the private school fails to decrease the deficit within three years, the private school shall be placed on conditional approval status until such time that the deficit decreases.

(i) An approved private school for students with disabilities that accumulates employee sick and/or vacation leave shall do so in accordance with Financial Accounting Standards Board Statement No. 71 (FASB; 401 Merritt 7, PO Box 5116, Norwalk, CT 06856-5116) incorporated herein by reference, and shall include these costs in program expenses only when the compensation is actually paid.

(j) An approved private school for students with disabilities shall use the job titles that are in use in the public schools in accordance with N.J.A.C. 6A:9 and the list published each year by the Commissioner, or those approved in accordance with N.J.A.C. 6A:9-5.5.

(k) An approved private school for students with disabilities shall issue compensation increases after the start of the fiscal year only in accordance with N.J.A.C. 6A:23A-18.2(q), and when the increase:

1. Is due to a staff member(s) promotion that results in additional job responsibilities;
2. Is due to a staff member(s) attaining a higher degree or certification;
3. Is due to a staff member(s) additional job responsibilities such as a coach, class or school advisor or mentor;
4. Is in accordance with (a)14 or 15 above; or
5. Has been approved by the Department after review of a formal written request to the Assistant Commissioner, Division of Finance documenting the facts supporting the increase, if none of the above applies.

(l) An approved private school for students with disabilities shall ensure that employees which are new to the positions listed below on or after July 1, 2006 possess the appropriate bachelor's degree as defined in N.J.A.C. 6A:23A-18.1. In addition, approved private schools for students with disabilities shall ensure that employees functioning in the following positions on or before June 30, 2006 either currently possess the appropriate bachelor's degree as defined in N.J.A.C. 6A:23A-18.1 or, will obtain the proper bachelor's degree no later than June 30, 2006, or will be removed from the position:

1. Director;
2. Assistant Director;
3. Executive Director; and
4. Business Manager.

(m) An approved private school for students with disabilities that incurs costs for a retirement plan(s) in accordance with N.J.A.C. 6A:23A-18.5(a)31 and/or medical benefits for retired employees in accordance with N.J.A.C. 6A:23A-18.5(a)56 shall include these costs in the certified actual cost per student on the cash basis of accounting.

(n) An approved private school for students with disabilities shall have the paraprofessional staff approved in accordance with N.J.A.C. 6A:9-7.1 and any changes to an approved job description shall be resubmitted for approval.

(o) An approved private school for students with disabilities shall comply with the maximum salaries determined in accordance with N.J.A.C. 6A:23A-18.2(o) and (p) and restricted in accordance with N.J.A.C. 6A:23A-18.5(a)6, 8 and 9 regardless of the job titles used and whether these job titles comply with the list of job titles published by the Commissioner.

(p) An approved private school for students with disabilities shall under no circumstances other than in accordance with N.J.A.C. 6A:23A-18.4(k), provide compensation increases after the start of the fiscal year.

Amended by R.2002 d.253, effective August 5, 2002.
See: 34 N.J.R. 1652(a), 34 N.J.R. 2788(a).

In (k), inserted "one or more of" following "year only in" in the introductory paragraph, substituted "none" for "one" and deleted "not" preceding "met" in 4.

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

Rewrote the section.

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

Rewrote the section.

Recodified from N.J.A.C. 6A:23-4.4 and amended by R.2009 d.395, effective December 21, 2009.

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

Updated the N.J.A.C. references throughout.

Case Notes

Initial Decision (2006 N.J. AGEN LEXIS 332) adopted, which concluded that the Department of Education properly disallowed merit pay awards from the computation of the approved tuition rates of two private schools for the disabled, because the schools failed to file copies of merit award plans with the Department until after expiration of the fiscal year, thereby depriving the Department of any opportunity to review and approve the payout (decided under former version of rule). *Cerebral Palsy League, Inc. v. N.J. Dep't of Educ.*, OAL Dkt. No. EDU 9024-04, 2006 N.J. AGEN LEXIS 670, Commissioner's Decision (June 6, 2006).

6A:23A-18.5 Non-allowable costs

(a) Costs that are not allowable in the calculation of the certified actual cost per student include the following:

1. An administrative cost in excess of and/or instructional cost less than the percentages indicated in N.J.A.C. 6A:23A-18.2(a)3;
2. The cost of maintaining an administrative office in a private home or other residence;
3. An advertising cost in excess of 0.5 percent of the private school's for students with disabilities actual allowable costs not including advertising;
4. Any cost associated with lobbying including salaries and fringe benefits;
5. Any cost 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.

6. The salary of a professional staff member, consultant or subcontractor including a member of a management company who is not certified but is functioning in a position requiring certification in accordance with N.J.A.C. 6A:9 or bachelor's degree required in accordance with this subchapter;

7. The salary and fringe benefits of a staff member for time not expended and/or services not performed except in accordance with (a)58 and 59 below;

8. A salary in excess of the associated maximum allowable salary determined in N.J.A.C. 6A:23A-18.2(o), (p) and (q) for a staff member or consultant whose position requires certification, license or a bachelor's degree including a director, assistant director, executive director, and business manager.

i. An approved private school for students with disabilities shall prorate salaries for such part-time or split-time positions including salaries in entities described in N.J.A.C. 6A:23A-18.2(e) and (f);

ii. The part-time and split-time maximum allowable salary is calculated as follows:

(1) Multiply the staff member's total salary by the percentage of time attributed to the approved private school for students with disabilities position;

(2) Multiply the maximum allowable full time salary for the position by the percentage of time attributed to the approved private school for students with disabilities position; and

(3) Subtract the amount calculated in (a)8ii(2) above from the amount calculated in (a)8ii(1) above and if the result is a positive amount this is the non-allowable part-time or split-time salary.

9. A salary of an employee not covered by (a)6 above in excess of the lowest maximum allowable salary in the same county according to the list of maximum allowable salaries determined in N.J.A.C. 6A:23A-18.2(o), (p) and (q) whose position does not require certification, license or bachelor's degree, including an individual with the director, assistant director, executive director, or business manager job title whose job function(s) are not consistent with those functions described in N.J.A.C. 6A:23A-18.1.

i. An approved private school for students with disabilities shall prorate salaries for such part-time or split-time positions including salaries in entities described in N.J.A.C. 6A:23A-18.2(e) and (f).

ii. The part-time and split-time maximum allowable salary is calculated as follows:

(1) Multiply the staff member's total salary by the percentage of time attributed to the approved private school for students with disabilities position;

(2) Multiply the lowest maximum allowable salary in the same county by the percentage of time attributed to the approved private school for students with disabilities position; and

(3) Subtract the amount calculated in (a)9ii(2) above from the amount calculated in (a)9ii(1) above and if the result is a positive amount this is the non-allowable part-time or split-time salary.

10. The cost of fringe benefits that are based on a non-allowable salary;

11. A legal, accounting or consultant fees 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 factors that include, but may not be limited to, the following:

- i. Overall merit of the claim; and
- ii. Whether the challenge serves the public interest;

12. A consultant fee for services:

i. That are not detailed in an executed written contract that includes a list of the nature of the services provided, the approximate number of days to complete the work, the charge per day and the product or outcome of the consultation; and

ii. Are performed by a consultant who does not possess the appropriate school certification when such certification exists;

13. Total contributions, donations, awards and scholarships in excess of \$1,500;

14. Depreciation that is unacceptable under N.J.A.C. 6A:23A-18.4(a)3 and (a)4, and depreciation:

- i. On donated goods and assets;
- ii. That is not based on estimated straight-line method;
- iii. On autos in excess of the dollar or percentage limitation contained under Internal Revenue Service Code Section 280F including any passenger vehicle not used in transporting students or supplies without regard to weight class exceptions defined in Section 280F(d)(5)(A);
- iv. On a stepped up basis resulting from the sale to a related party as defined in Internal Revenue Service Code Section 318 for Constructive Ownership of Stock. For a not-for-profit organization, Section 318 will apply

to the members of the Board of Directors or related parties as defined in Section 267(b) or 267(c) of the Internal Revenue Code unless the gain from such a sale was used to offset tuition for a prior year; and

v. On a stepped up basis from transfer from one spouse to another upon death as defined in Internal Revenue Code Section 1014;

15. The yearly cost of a lease for a vehicle in excess of the maximum depreciation allowed in any given year without regard to special deductions allowed by the Internal Revenue Code under Section 280F(a)(1)(A) (for example: \$4,100 for second year can be applied to all years of the lease) including the amortization of the lease down payment over the term of the lease. This applies to any passenger vehicle not used for transporting students or supplies without regard to the weight class exceptions under 280F(d)(5)(A);

16. An investment expense associated with the purchase/sale of stock, securities, other investment instruments or other investments not associated with the education of disabled children;

17. Total costs in excess of \$1,000 incurred for entertainment expenses;

18. The cost of food/beverages in excess of \$3,000 for activities such as, but not limited to staff meetings, parent/teacher meetings, workshops and professional development seminars for parents or teachers;

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 of meals:

i. For students when the meals do not meet the nutritional requirements of the Child Nutrition Program as administered by the New Jersey Department of Agriculture;

ii. Effective July 1, 2007, for students when a non-profit approved private school for students with disabilities has not applied for and received funding from the Child Nutrition Program as administered by the New Jersey Department of Agriculture except when the private school has received, on an annual basis prior to the start of the fiscal year, school board resolutions from a majority of the school districts that have contracted to send students to the private school in that fiscal year, which resolves the district board of education does not require the private school to apply for and receive funding from the Child Nutrition Program (CNP);

iii. Effective July 1, 2007, for students when the approved private school for students with disabilities has not charged students for paid and reduced meals in accordance with the income eligibility criteria established by the Child Nutrition Program as administered

by the New Jersey Department of Agriculture except when the private school has received, on an annual basis prior to the start of the fiscal year, school board resolutions from a majority of the school districts that have contracted to send students to the private school in that fiscal year, which resolves the district board of education does not require the private school to charge students for a reduced and/or paid meal; and

iv. For staff except as allowable in accordance with N.J.A.C. 6A:23A-18.5(a)18;

21. The cost of keyman insurance except where a term insurance policy is required by a lender as collateral for a loan;

22. The cost of an employee's life insurance coverage, both term and whole life policies, in excess of 3.5 times their gross salary;

23. Fringe benefits:

i. When the benefits are determined in an arbitrary or capricious manner including, but not limited to, class of employee whether by title or position rather than on an existing written uniform policy based on an equitable standard of distribution, such as years of service or education. The criteria cannot be exclusionary regardless if based on an equitable standard of distribution, such as years of service or education;

ii. When the fringe benefit has not been adopted by the school's Board of Director's at a board meeting prior to the implementation of the benefit, documented in the board minutes and the employees were not made aware of the policy; and

iii. When the benefit is not listed in N.J.A.C. 6A:23-4.4(f) or not approved by the Commissioner;

24. The cost of fund raising, such as a financial campaign, an endowment drive or solicitation of a gift and bequest that is done to raise capital or obtain a contribution;

25. Goodwill;

26. 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 and has not been repaid in accordance with the Department's approval letter; and

iii. The loan is not exclusively used to meet program needs;

27. 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; and

iii. The interest costs are on the portion of the loan term that exceeds the recovery period for depreciation of the fixed asset securing the loan;

28. A loss incurred on the sale or exchange of fixed assets between related parties;

29. The write-off of uncollected accounts receivable (bad debts) before three years has elapsed and before a reasonable effort has been made to collect such accounts receivable;

30. An ordinary living expense for a student that is normally assumed by the parent of a student attending a public day school;

31. Retirement plan costs that are:

i. Not in conformance with the Employee Retirement Income Security Act of 1974, P.L. 93-406, and its successor legislation and that exceed costs allowed by the Internal Revenue Service;

ii. For a non-qualified retirement plan(s);

iii. For a defined contribution plan in excess of the maximum percentage and maximum dollar amount, (see Internal Revenue Code Section 415(c)) as the lesser of 100 percent of the employee's compensation or \$44,000;

iv. For a defined benefit plan in excess of an amount, by employee, which would allow the defined plan to provide a benefit in excess of the percentage of the employee's number of years of service divided by 55 times the highest three year average salary and at an age prior to age 55;

v. For contributions to a retirement plan that are not applied consistently in accordance with (a)23 above even if in compliance with ERISA. Such excess contributions as determined will be deemed a non-allowable cost;

vi. Not paid to a qualified plan within nine months of the end of the fiscal tax year of the approved private school for students with disabilities;

vii. Not paid in accordance with the fringe benefits criteria in (a)23 above; and

viii. If applicable, not in conformance with a church plan as defined in ERISA;

32. The cost associated with a conference, meeting or seminar held in countries not contiguous to the United States;

33. The costs of a contingent pay increase or merit pay award when such amount(s) were not in accordance with N.J.A.C. 6A:23A-18.4(a)14 or 15 or the contingent pay increase or merit pay award(s) are not consistent with the

plan(s) submitted to and approved by the Commissioner prior to implementation;

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, in which case, the approved private school for students with disabilities shall obtain documentation from the airline or travel agent;

35. The cost for meals and hotel accommodations associated with daily or overnight travel in excess of those contained in New Jersey Office of Management and Budget (OMB) Circular Letter 98-03 OMB as amended and supplemented;

36. A payment of a bonus;

37. A loss on an investment;

38. The cost of staff salaries, supplies or printing and reproduction of a material for a research activity;

39. Payment of Federal, State and local income taxes on income other than tuition;

40. Any cost associated with travel to and from the officer's or employee's home and the school or agency;

41. All personal expenses, such as a personal travel expense or repair on a personal vehicle;

42. Personal use of a school-owned or leased vehicle, which includes to/from work commutation as determined in accordance with N.J.A.C. 6A:23A-18.4(a)18;

43. 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;

44. 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;

45. Transportation costs for a student to and from school, except where the student's IEP requires after school activities;

46. Rental costs for buildings and equipment when the lessor is not a separate legal entity;

47. 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 are not limited to:

i. Rental costs for buildings and equipment in excess of the actual allocated costs of ownership (for example, straight line depreciation in accordance with N.J.A.C. 6A:23A-18.4(a)3, 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 approved private school for students with disabilities shall include in the lease agreement 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. Profit, return on investment or windfall of any kind shall not 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/lease 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 for students with disabilities 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; and

v. Cost of the purchase of services in excess of the actual allocated costs of ownership (such as salaries, fringe benefits, insurance, operation, maintenance, straight-line 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 approved private school for students with disabilities shall include in the purchase agreement 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;

48. 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, or does not allow the Commissioner access to such information for review and audit during normal business hours. Documentation shall include, but is not limited to:

i. The related parties' tax returns; and

- ii. The related parties' paid bills and canceled checks concerning the transaction;
49. Rental costs under sale and leaseback arrangements in excess of the amount that would be incurred had the organization continued to own the property;
50. Indirect and direct costs associated with unrelated activities or enterprises as defined in N.J.A.C. 6A:23A-18.2(g);
51. Cost of the year-end audited financial statements prepared by an individual who does not meet the requirements contained in N.J.A.C. 6A:23A-18.9(a);
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 that devotes any activities to influencing legislation or state regulation(s) not directly related to the educational instruction program of disabled students and such activities are not subsidized by sources other than membership fees from approved private schools for students with disabilities;
 - 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 disabled students were funded by sources other than dues from approved private schools for students with disabilities;
53. Salary of a staff member that is not properly supported by the employee's time record in a format prescribed or approved by the Commissioner in accordance with N.J.A.C. 6A:23A-18.4(a)10;
54. A salary or payment made to a member(s) of the board of directors/trustees for services performed in their capacity as a member of the board of director/trustees;
55. Cost of a pension plan and/or medical benefits for current or retired members of the board of directors/trustees;
56. Cost of medical benefits for retired employees who have not reached the age of 55 and who were employed a combination of less than 25 years in a New Jersey public school, a New Jersey public agency or a New Jersey approved private school for students with disabilities and have less than 10 years of service in an approved private school for students with disabilities;
57. Costs of salaries and fringe benefits of unrecognized position titles that are not properly approved in accordance with N.J.A.C. 6A:9-5.5;
58. Cost of employee severance pay:
- i. In excess of four weeks' salary; and
 - ii. If, in addition, the cost of a buyout of the employee's contract;
59. Cost of a buyout of an employee contract:
- i. In excess of 90 days' salary; and
 - ii. If, in addition, the cost of the employee's severance pay;
60. Cost of a salary or consultant fee paid to a full-time employee or consultant for performing more than one administrative function in the approved private school for students with disabilities;
61. Cost to purchase or rent in a related party transaction an administrative office or business office at a location other than at the approved private school for students with disabilities location that was not approved in accordance with N.J.A.C. 6A:23A-18.4(d);
62. Cost of compensation increases paid after the start of the fiscal year not in accordance with N.J.A.C. 6A:23A-18.4(k); and
63. Start-up costs in excess of those allowed in N.J.A.C. 6A:23A-18.3(d);
64. Costs including salaries and fringe benefits of employees providing services not in compliance with N.J.A.C. 6A:23A-18.4(e)2;
65. The cost of a violation in accordance with N.J.S.A. 18A:6-7.5 for any staff member that does not have:
- i. A criminal history clearance prior to starting employment or;
 - ii. An application for employment on an emergent basis in accordance with N.J.S.A. 18A:6-7.1c;
66. Legal costs for an approved private school for students with disabilities and/or for a school representative(s), which includes an owner, employee or agent that have plead guilty and/or are found to be guilty or liable in a case involving the misuse of funds or fraud (criminal or civil);
67. The salary in excess of the associated maximum salary identified in N.J.A.C. 6A:23A-18.2(r) and determined in accordance with N.J.A.C. 6A:23A-18.4(o) and (p); and
68. Costs found to be patently unreasonable by the Commissioner or his or her representative(s) or the independent auditor/accountant.

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

Rewrote the section.

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

Rewrote the section.

Recodified from N.J.A.C. 6A:23-4.5 and amended by R.2009 d.395, effective December 21, 2009.

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

Updated the N.J.A.C. references throughout.

Petition for Rulemaking.

See: 44 N.J.R. 2966(b).

Petition for Rulemaking.

See: 45 N.J.R. 57(a).

Case Notes

Under former regulations (see now N.J.A.C. 6A:23A-18.1 et seq.), the New Jersey Department of Education acted arbitrarily, unreasonably, or improperly when it disallowed certain costs and expenses that a private school for the handicapped included in tuition rates charged to the sending public school districts; other disallowances were proper (adopting in part, rejecting in part, and remanding 2008 N.J. AGEN 812). *Archway Programs, Inc. v. N.J. Dep't of Educ.*, OAL Dkt. No. EDU 6956-00, EDU 8646-00, EDU 4834-01, EDU 4607-03, EDU 4608-03 and EDU 427-06 (Consolidated), 2008 N.J. AGEN LEXIS 1095, Final Decision (December 4, 2008).

Staff salary increase of 3% given by a non-profit corporation that operated a private school for the handicapped program was an allowable cost in the computation of tuition charged to sending districts under former regulations (see now N.J.A.C. 6A:23A-18.5, 6A:23A-18.4). The delay in the initiation of the payment of the salary increase did not convert it into a bonus, and the school-year budget contained allocated money for the salary increase (adopting in part, rejecting in part, and remanding 2008 N.J. AGEN 812). *Archway Programs, Inc. v. N.J. Dept. of Educ.*, OAL Dkt. No. EDU 6956-00, EDU 8646-00, EDU 4834-01, EDU 4607-03, EDU 4608-03 and EDU 427-06 (Consolidated), 2008 N.J. AGEN LEXIS 1095, Final Decision (December 4, 2008).

New Jersey Department of Education should not have disallowed salary payments of personnel who worked for a period of time without an emergency certification, in the computation of tuition rates charged by a private school for the handicapped to the sending public school districts. There was a shortage of appropriately certified special education personnel in New Jersey during the time period at issue, and the equitable doctrine of substantial compliance applied; the non-profit corporation operating the school filed for the certificates, lengthy processing delays occurred, and, in each case, the staff person had the necessary qualifications and eventually received the certificate, and the sending public school districts did not suffer any prejudice (decided under former rules) (adopting in part, rejecting in part, and remanding 2008 N.J. AGEN 812). *Archway Programs, Inc. v. N.J. Dept. of Educ.*, OAL Dkt. No. EDU 6956-00, EDU 8646-00, EDU 4834-01, EDU 4607-03, EDU 4608-03 and EDU 427-06 (Consolidated), 2008 N.J. AGEN LEXIS 1095, Final Decision (December 4, 2008).

Initial Decision adopted, which concluded that in order to determine whether salaries of certain individuals are properly considered in establishing tuition rates payable to private schools for students with disabilities, it is necessary to look beyond titles and determine what they actually do; because the duties of an employee whose title was School Business Administrator were more in line with an Executive Director, such salary was allowable in establishing tuition, despite the fact that the individual did not have the certification to make the salary allowable under the titled position (adopting 2007 N.J. AGEN LEXIS 597, as modified). *Youth Consultation Service, Inc. v. N.J. State Dep't of Educ., Office of Fiscal Policy & Planning*, OAL Dkt. Nos. EDU 3573-06, 3574-06, 3575-06, 3576-06, 3577-06, 3684-06, 3685-06 and 3686-06, 2007 N.J. AGEN LEXIS 1013, Commissioner's Decision (October 4, 2007).

Initial Decision adopted, which concluded that in order to determine whether salaries of certain individuals are properly considered in establishing tuition rates payable to private schools for students with disabilities, it is necessary to look beyond titles and determine what they actually do; because the duties of an employee whose title was Assistant School Business Administrator were more in line with an Assistant Director or Business Manager, such salary was allowable in establishing tuition, despite the fact that the titled position was an unrecognized position title (adopting 2007 N.J. AGEN LEXIS 597, as modified).

Youth Consultation Service, Inc. v. N.J. State Dep't of Educ., Office of Fiscal Policy & Planning, OAL Dkt. Nos. EDU 3573-06, 3574-06, 3575-06, 3576-06, 3577-06, 3684-06, 3685-06 and 3686-06, 2007 N.J. AGEN LEXIS 1013, Commissioner's Decision (October 4, 2007).

Adopting Initial Decision's conclusion that in the absence of School Psychologist certification, the salaries of two "Mental Health Clinicians" were not allowable in establishing tuition rates payable by sending districts to private schools for students with disabilities, where the job descriptions for the positions suggested a level of service beyond that of a professional counselor and no contrary evidence was presented (adopting 2007 N.J. AGEN LEXIS 597, as modified). *Youth Consultation Service, Inc. v. N.J. State Dep't of Educ., Office of Fiscal Policy & Planning*, OAL Dkt. Nos. EDU 3573-06, 3574-06, 3575-06, 3576-06, 3577-06, 3684-06, 3685-06 and 3686-06, 2007 N.J. AGEN LEXIS 1013, Commissioner's Decision (October 4, 2007).

Adopting Initial Decision's conclusion that in establishing the tuition rate payable to certain private schools for students with disabilities, a "Training Coordinator," charged with authority and responsibility for the continuing direction and guidance of the work of instructional personnel, was a Supervisor, rather than occupying an administrative position; because this individual did not hold a Supervisor's certificate, the individual's salary was properly disallowed (adopting 2007 N.J. AGEN LEXIS 597, as modified). *Youth Consultation Service, Inc. v. N.J. State Dep't of Educ., Office of Fiscal Policy & Planning*, OAL Dkt. Nos. EDU 3573-06, 3574-06, 3575-06, 3576-06, 3577-06, 3684-06, 3685-06 and 3686-06, 2007 N.J. AGEN LEXIS 1013, Commissioner's Decision (October 4, 2007).

Adopting Initial Decision's conclusion that in the absence of proof of proper certifications, the salaries of individuals holding the titles of Director of Speech, Speech Language Specialist, and Substitute Floater Registered Nurse were not allowable in establishing the tuition rate payable to certain private schools for students with disabilities (adopting 2007 N.J. AGEN LEXIS 597, as modified). *Youth Consultation Service, Inc. v. N.J. State Dep't of Educ., Office of Fiscal Policy & Planning*, OAL Dkt. Nos. EDU 3573-06, 3574-06, 3575-06, 3576-06, 3577-06, 3684-06, 3685-06 and 3686-06, 2007 N.J. AGEN LEXIS 1013, Commissioner's Decision (October 4, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 24) adopted, which concluded that \$8,778 in Social Security Integration Pension Benefits paid by a state-approved private school for learning disabled and handicapped children to its employees during the 2002-03 school year was a non-allowable fringe benefit which had to be excluded from the calculation of the school's certified actual cost per pupil for that period. Due to the social security integration, the pension contributions calculation of four of the school's directors exceeded the same benefit made available to all other full-time employees by 5.7% of their earnings, and did not conform to the requirements of the regulation requiring that an equitable standard of distribution be attainable for all full-time employees in order for a fringe benefit to be considered an allowable cost in the calculation of the actual cost per pupil. *Deron School of New Jersey v. N.J. State Dep't of Educ.*, OAL Dkt. No. EDU 3367-05, 2007 N.J. AGEN LEXIS 304, Commissioner's Decision (March 7, 2007), aff'd, 2007 N.J. AGEN LEXIS 897, SB No. 9-07 (N.J. State Bd. of Educ. August 1, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 332) adopted, which concluded that the Department of Education properly disallowed merit pay awards from the computation of the approved tuition rates of two private schools for the disabled, because the schools failed to file copies of merit award plans with the Department until after expiration of the fiscal year, thereby depriving the Department of any opportunity to review and approve the payout. *Cerebral Palsy League, Inc. v. N.J. Dep't of Educ.*, OAL Dkt. No. EDU 9024-04, 2006 N.J. AGEN LEXIS 670, Commissioner's Decision (June 6, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 172) adopted, which concluded that both the weight of the evidence and the doctrine of estoppel supported a decision in favor of a private, non-profit school for the disabled, in its appeal from a determination that salaries and benefit costs for nine of the school's teachers were required to be disallowed due to the teachers' alleged failure to obtain emergency certification (decided under former rules). *Search Day Program, Inc. v. N.J. Dep't of*

Educ., OAL Dkt. No. EDU 8569-04, 2006 N.J. AGEN LEXIS 574, Commissioner's Decision (June 2, 2006).

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

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

Initial Decision (2005 N.J. AGEN LEXIS 492) adopted, which concluded that a student luncheon away from school was a "field trip," so that the cost of the luncheon was not an "ordinary living expense" under N.J.A.C. 6A:23-4.5(a)30 [now N.J.A.C. 6A:23A-18.5(a)30]. *Bergen Center for Childhood Dev., Inc. v. N.J. Dep't of Educ.*, OAL DKT. NO. EDU 1807-05, 2005 N.J. AGEN LEXIS 1150, Commissioner's Decision (October 14, 2005).

6A:23A-18.6 Surcharge

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

(b) For profit-making schools, interest earned in accordance with N.J.A.C. 6A:23A-18.2(h) is an unrestricted revenue and is not part of the school's surcharge computation.

(c) For profit-making schools, the allowable Federal, State and local income tax liability in N.J.A.C. 6A:23A-18.5(a)39 is computed using only the public school placement tuition income and all allowable and non-allowable approved private school for students with disabilities expenses that are allowable tax deductions on the school's Federal, State and local income tax returns.

(d) Any gain or loss on the sale of fixed assets (except for buildings and/or land) or items originally purchased through funds charged in the certified actual cost per student shall be netted against or if applicable added to the total allowable costs to determine the certified actual cost per student.

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

Designated current text as (a); added (b) and (c).
Amended by R.2006 d.361, effective October 2, 2006.
See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Rewrote (c); and added (d).

Recodified from N.J.A.C. 6A:23-4.6 and amended by R.2009 d.395, effective December 21, 2009.

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

In (b) and (c), updated the N.J.A.C. references.

6A:23A-18.7 Public school placement restricted working capital fund

(a) For approved non-profit private schools for students with disabilities, the school's tuition rate may include an amount that will permit the school to establish a public school placement restricted working capital fund of up to 15 percent of the private school's allowable actual costs, for the 2006-2007 through 2007-2008 school year, but the private school shall not include an amount in excess of 2.5 percent of the private school's allowable actual costs per year.

(b) Interest and/or dividends earned from the investment of tuition funds shall be netted against the school's total allowable costs incurred in account numbers classified as undistributed expenditures—business and other support services when calculating the certified actual cost per student.

(c) Any gain or loss on the sale of fixed assets (except for buildings and/or land) or items originally purchased through funds charged in the certified actual cost per student shall be netted against or if applicable added to the total allowable costs to determine the certified actual cost per student.

(d) Interest earned in accordance with N.J.A.C. 6A:23A-18.2(h) is unrestricted revenue and is not part of the school's public school placement restricted working capital fund computation.

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

In (a), substituted "that" for "which" following "include and amount" and "the private school shall" for "annually may" following "allowable actual costs, but"; rewrote (b); added (d).

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Rewrote (a) and (c).

Recodified from N.J.A.C. 6A:23-4.7 and amended by R.2009 d.395, effective December 21, 2009.

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

In (d), updated the N.J.A.C. reference.

6A:23A-18.8 Calculation of student attendance

(a) Each approved private school for students with disabilities shall maintain a school register in accordance with N.J.A.C. 6A:32-8, to record all student attendance.

(b) Each approved private school for students with disabilities shall submit to the Commissioner by September 1 verification of the average daily enrollment for the previous school year on forms provided by the Department.

(c) Each approved private school for students with disabilities shall identify private placements in the register.

(d) Each approved private school for students with disabilities shall maintain a separate register by class type.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (b), inserted "school" preceding "year".

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Substituted "students with disabilities" for "the disabled" throughout; and in (a), substituted "6A:32-8" for "6:3-9".

Recodified from N.J.A.C. 6A:23-4.8 by R.2009 d.395, effective December 21, 2009.

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

6A:23A-18.9 Audit requirements

(a) Regardless of the fiscal year of the school, each approved private school for students with disabilities shall submit to the Commissioner audited financial statements based on the July 1 to June 30 school year which must be post-marked on or before November 1 or the following business day if November 1 falls on a weekend or holiday.

1. The approved private school for students with disabilities shall engage only an independent registered municipal accountant of New Jersey or an independent certified public accountant of New Jersey to conduct the annual audit, who holds a valid registration license as a public school accountant of New Jersey. The approved private school for students with disabilities shall ensure the independent status of the auditor in accordance with standards set forth in the Code of Professional Ethics issued by, and available from, the American Institute of Certified Public Accountants (AICPA). Additionally, upon review by the Department, 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

1. Be given by a responsible surety or insurance company licensed to operate in New Jersey. A district board of education or charter school board of trustees is prohibited from requiring that bidders submit a bid bond from a particular surety or insurance company; or

2. Be given by a responsible individual residing in New Jersey. The district board of education or charter school board of trustees may reject such individual bid bond if it is not satisfied with the sufficiency of the individual surety offered.

(c) The district board of education or charter school board of trustees shall ensure that the bond is 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 or charter school board of trustees in whose favor the bonds are given.

(d) The district board of education or charter school board of trustees shall ensure that the "penalty" or "penal sum" on performance bonds, labor and material bonds, and all other such bonds is expressed in words and figures as a specific number of dollars and not as a percentage of the bid.

(e) The district board of education or charter school board of trustees shall ensure that the "penalty" or "penal sum" on performance and labor and material bonds is in the amount of 100 percent of the contract price.

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

Rewrote the section.

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

Section was "Bonds".

Recodified from N.J.A.C. 6A:23-7.2 by R.2009 d.395, effective December 21, 2009.
See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

6A:23A-21.3 Public sale of bonds

(a) A district board of education may accept a financial surety bond in lieu of a certified, cashier's or treasurer's check as a bid deposit pursuant to N.J.S.A. 18A:24-41.a, and in accordance with the rule adopted by the Local Finance Board at N.J.A.C. 5:30-2.10.

(b) A district board of education may choose to conduct the public sale of bonds through the submission of electronic bids or proposals, as authorized at N.J.S.A. 18A:24-36.a, and in accordance with the rules adopted by the Department of Community Affairs at N.J.A.C. 5:32-9 and 10.

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

Former N.J.A.C. 6A:23-7.3, Contracts for behind-the-wheel driver education, recodified to N.J.A.C. 6A:23-7.4.
Recodified from N.J.A.C. 6A:23-7.3 by R.2009 d.395, effective December 21, 2009.
See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

6A:23A-21.4 Contracts for behind-the-wheel driver education

(a) A district board of education or charter school board of trustees shall negotiate or award by resolution at a public meeting contracts with private driver education schools providing behind-the-wheel driver education for any term not exceeding in the aggregate three years, pursuant to N.J.S.A. 18A:18A-42.i, without public advertising for bids. The district board of education or charter school board of trustees shall indicate in such resolution that the private driver education school is required to provide behind-the-wheel driver education that is substantially equivalent to that provided by the district board of education or charter school board of trustees at less cost than current or other proposed programs.

(b) A district board of education or charter school board of trustees shall negotiate or award such contracts with approved private driver education schools. A driver education school holding a current license or certificate of approval issued by the Chief Administrator of the Motor Vehicle Commission is considered approved by the Commissioner of Education for the purpose of providing behind-the-wheel driver education. The district board of education or charter school board of trustees shall obtain from the private driver education school a copy of such current license or certificate of approval and maintain the copy on file with the contract.

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

Rewrote the section.

Recodified from N.J.A.C. 6A:23-7.3 and amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (a), inserted "pursuant to N.J.S.A. 18A:18A-42.i.". Former N.J.A.C. 6A:23-7.4, Joint purchasing systems, recodified to N.J.A.C. 6A:23-7.5.

Recodified from N.J.A.C. 6A:23-7.4 by R.2009 d.395, effective December 21, 2009.
See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

6A:23A-21.5 Joint purchasing systems

A district board of education or charter school board of trustees may by resolution establish joint purchasing systems pursuant to N.J.S.A. 40A:11-11. Such joint purchasing system is effective only upon approval of the Director of the Division of Local Government Services in the Department of Community Affairs.

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

Substituted "is" for "shall become" in the second sentence.

Recodified from N.J.A.C. 6A:23-7.4 by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Former N.J.A.C. 6A:23-7.5, Multi-year leasing, recodified to N.J.A.C. 6A:23-7.6.

Recodified from N.J.A.C. 6A:23-7.5 by R.2009 d.395, effective December 21, 2009.
See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

6A:23A-21.6 Multi-year leasing

A district board of education or charter school board of trustees shall execute multi-year leases only as authorized by the Public School Contracts Law at N.J.S.A. 18A:18A-42f and in accordance with rules promulgated by the Department of Community Affairs at N.J.A.C. 5:34-3.

New Rule, R.2004 d.322, effective August 16, 2004.
 See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).
 Recodified from N.J.A.C. 6A:23-7.5 by R.2006 d.361, effective October 2, 2006.
 See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).
 Recodified from N.J.A.C. 6A:23-7.6 by R.2009 d.395, effective December 21, 2009.
 See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

SUBCHAPTER 22. FINANCIAL OPERATIONS OF CHARTER SCHOOLS

6A:23A-22.1 Definitions

The words and terms as used in this subchapter are defined in N.J.A.C. 6A:23A-15.1.

New Rule, R.2009 d.395, effective December 21, 2009.
 See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

6A:23A-22.2 Bookkeeping and accounting for charter schools

A charter school board of trustees shall comply with GAAP and other requirements and provisions as set forth in N.J.A.C. 6A:23A-16.

New Rule, R.2004 d.322, effective August 16, 2004.
 See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).
 Recodified from N.J.A.C. 6A:23-9.2 and amended by R.2009 d.395, effective December 21, 2009.
 See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).
 Updated the N.J.A.C. reference.

6A:23A-22.3 Certification

A charter school board of trustees shall employ or contract with a person who holds a New Jersey standard or provisional school business administrator certificate in accordance with N.J.A.C. 6A:9-12.7 to oversee fiscal operations of the charter school.

New Rule, R.2004 d.322, effective August 16, 2004.
 See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).
 Amended by R.2006 d.361, effective October 2, 2006.
 See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).
 Substituted "A charter school" for "The", deleted "of a charter school" following "trustees", and substituted "6A:11" for "6:11".
 Recodified from N.J.A.C. 6A:23-9.3 and amended by R.2009 d.395, effective December 21, 2009.
 See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).
 Updated the N.J.A.C. reference.

6A:23A-22.4 Financial requirements

(a) A charter school board of trustees may incur debt for a period no greater than 12 months except:

1. During the first year that the charter school is approved when the debt is incurred by the charter school board of trustees for a period no longer than January 15 of the preceding school year to June 30 of the first school year of the charter; and

2. For all other years that the charter school is approved when the debt incurred by the charter school board of trustees for a period of 12 months or greater is:

i. Fully secured by the value of the real property or other asset, so that the total value of all such debt does not exceed the total appraised value of the property or asset by which the debt is secured; and

ii. Non-recourse to the charter school.

(b) A charter school board of trustees may acquire real property by a lease or a lease with an option to purchase for use as a school facility providing that the charter school board of trustees shall ensure:

1. The term of the lease does not exceed the length of the charter;

2. The lease contains a provision terminating the obligation to pay rent upon the denial, revocation, non-renewal or surrender of the charter; and

3. The lease does not contain a provision accelerating the obligation to pay rent in the event of default.

(c) A district board of education shall only transmit State and local public funds to a charter school after the final granting of the charter by the Commissioner has occurred. If funds are withheld pending the final granting of the charter, the district board of education shall pay all withheld funds to the charter school with the first scheduled payment after the effective date of the charter.

(d) A charter school shall be subject to monitoring by the Commissioner to ensure that the percentage of school funds spent in the classroom is at least comparable to the average percentage of school funds spent in the classroom in all other public schools in the State. The calculation for this percentage in both the annual budget and the Comprehensive Annual Financial Report is based on National Center for Educational Statistics as published by the U.S. Department of Education.

(e) After completion of the school year, the district board of education may petition the Commissioner for a lower rate for the charter school's per pupil amount for the specific grade level if the charter school spends significantly less than budgeted and has accumulated a sizable surplus.

1. The Commissioner may reduce the rate based on a determination of excessive surplus. The criteria for excess surplus is determined by the Commissioner pursuant to N.J.S.A. 18A:7F-7.

2. A charter school may submit comments to the Commissioner regarding the petition for a lower rate for the