

**CHAPTER 26****EDUCATIONAL FACILITIES****Authority**

P.L. 2000 c.43; P.L. 2000 c.72; N.J.S.A. 18A:1-1, 18A:4-15; 18A:6-9; 18A:6-27, 18A:7A-11; 18A:7A-46.1 et seq.; 18A:7F-34; 18A:7G-1 through 13, 15, 20, 26, and 31 through 37; 18A:18A-16, 18, 36 and 39; 18A:17-49 et seq.; 18A:20-1.1 et seq.; 18A:20-4.2; 18A:20-36; 18A:21-1 through 5; 18A:22-18 through 20; 18A:22-27 through 30 and 39; 18A:24-1 et seq.; 18A:33-1 et seq.; 18A:46-1 et seq.; 18A:54-21; 18A:55-2; 40:55D-31; 47:1A-1 et seq.; 52:27D-130; 18A:76-15.

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### SUBCHAPTER 1. GENERAL PROVISIONS

#### 6A:26-1.1 Purpose and applicability of rules

These rules are adopted by the New Jersey State Board of Education to implement Sections 1 to 12, 57 and 58 of the Educational Facilities Construction and Financing Act (EFCFA), P.L. 2000, c.72, and to implement P.L. 2000, c.43, as well as to consolidate, conform and update other rules relating to educational facilities in this State. These rules supersede and, in part, are comprised, with amendment, of the rules adopted by the Commissioner of Education to implement Sections 1 to 12, 57 and 58 of EFCFA. These rules are adopted in order to ensure that the educational facilities in the State are safe, healthy and educationally adequate to support the delivery of the thorough and efficient education to which all students are entitled, as defined by the Core Curriculum Content Standards. These rules apply to all district boards of education "districts" in the State. To the extent these rules are inconsistent with any other rules in Titles 6 and 6A of the New Jersey Administrative Code, these rules shall take precedence.

#### 6A:26-1.2 Definitions

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

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

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

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

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

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

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

"Area allowance per FTE student" means, for the 2001-2002 and 2002-2003 school years, 125 square feet for preschool through grade five, 134 square feet for grades six through eight, and 151 square feet for grades nine through 12, and, beginning in the 2003-2004 school year, pursuant to N.J.S.A. 18A:7G-4(h), it shall be established as part of the Biennial Report issued by the Department issued pursuant to N.J.S.A. 18A:7F-4(c).

"Area cost allowance" means \$138.00 per square foot for the school year 2000-2001 and shall be inflated by an appropriate cost index for the 2001-2002 and 2002-2003 school years. Thereafter, pursuant to N.J.S.A. 18A:7G-3, it shall be established as part of the Biennial Report issued by the Department pursuant to N.J.S.A. 18A:7F-4(c). The area cost allowance used in determining preliminary eligible costs of school facilities projects shall be that of the year of application for approval of the school facilities project.

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

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

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

“Capital reserve account” means the account established pursuant to N.J.A.C. 6A:26-9.

“Commissioner” means the Commissioner of Education or his or her designee.

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

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

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

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

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

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

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

“Department” means the New Jersey Department of Education.

“District” means a district board of education, as defined below, and includes a local or regional school district established pursuant to N.J.S.A. 18A:8-1 et seq. or 18A:13-1 et seq., a county special services school district established pursuant to article 8 of N.J.S.A. 18A:46-1 et seq., a county vocational school district established pursuant to article 3 of N.J.S.A. 18A:54-1 et seq., and a State-operated school district established pursuant to N.J.S.A. 18A:7A-34 et seq.

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

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

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

“Division” means the Division of Facilities and Transportation in the Department of Education.

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

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

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

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

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

“Emergency stabilization” means actions taken by a district to correct and eliminate an actual or imminent peril to

the health and safety of students or staff designed to render a school facility fit for occupancy by students or staff.

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

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

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

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

“Excluded space” is an existing space that is neither contained in the facilities efficiency standards nor included in a district’s approved programmatic model that would, as demonstrated by the district, be structurally or fiscally impractical to convert to other uses contained in the facilities efficiency standards and that:

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

“Facility” means a school facility, temporary facility or other facility.

“Facilities efficiency standards” means, for the 2000–2001, 2001–2002 and 2002–2003 school years, the standards developed by the Commissioner pursuant to N.J.S.A. 18A:7G-4(h) and published in the New Jersey Register. For the 2003–2004 school year and thereafter, they shall be as established in the Biennial Report published by the Department.

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

“Feasibility study” means a study undertaken with respect to a school facilities project to determine if it is achievable in view of possible factors identified that may influence the project’s design or construction, including, but not limited to, applicable Federal, State and local laws, physical site conditions, market conditions costs and benefits. For example, a pre-construction evaluation undertaken by a district to determine whether, because of health and safety or efficiency, it would be more feasible to replace rather than renovate a school facility.

“Final eligible costs” means, for a school facilities project to be constructed by the authority, the final eligible costs of the school facilities project as determined by the Commissioner, in consultation with the Authority, pursuant to N.J.S.A. 18A:7G-5; for a demonstration project, the final eligible costs of the project as determined by the Commissioner and reviewed by the Authority which may include the cost of community design features determined by the Commissioner to be an integral part of the school facility and which do not exceed the facilities efficiency standards which were reviewed by the Authority and approved by the State Treasurer pursuant to N.J.S.A. 18A:7G-6; and for districts whose district aid percentage is less than 55 percent and which elect not to have the authority construct a school facilities project, final eligible costs as determined pursuant to N.J.S.A. 18A:7G-5(h)(1) and N.J.A.C. 6A:26-3.6.

“Final plans and specifications” means the plans and specifications utilized for bidding of a capital project and to undertake and complete construction of the capital project.

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

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

“Gross square footage” means the total square footage of a school facility.

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

“Land acquisition project” means a project to acquire land which at the time of the Department’s review is not part of a school facilities project or an other capital project that is funded as an other capital project at the time of purchase.

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

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

“Local funding” means the funds supplied by a district to fund the total costs of an other capital project.

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

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

“Local support” means the local share or the local portion.

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

“Local unit obligations” means school bonds, notes, refunding bonds, refunding notes, lease obligations and all

other obligations of a local unit which are issued or entered into for the purpose of paying for all or a portion of the costs of a school facilities project, including money payable to the Authority.

“Long-range facilities plan” or “LRFP” means the plan required to be submitted to the Commissioner by a district pursuant to N.J.S.A. 18A:7G-4 and N.J.A.C. 6A:26-2.

“New construction” means a school facilities project which consists of either:

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

“Non-Abbott district” means any district not included in the definition of an Abbott district in N.J.S.A. 18A:7F-3.

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

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

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

1. Capital projects for the construction or rehabilitation of other facilities;
2. Additions and improvements to leased school facilities, unless used as temporary space for a school facilities project in accordance with N.J.A.C. 6A:26-3.14;
3. Capital projects for which a district is not seeking State support;
4. Projects for which there are no costs eligible for State support; and
5. Emergency stabilization.

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

“Preliminary eligible costs” means the initial eligible costs of a school facilities project as calculated pursuant to the formulas set forth in N.J.S.A. 18A:7G-7, which shall be

deemed to include the costs of construction and other allowable costs.

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

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

“Project documents” means educational specifications, schematic plans, detailed plans and specifications, final plans and specifications, and other documents required for review and approval of capital projects by the Division.

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

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

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

“Routine maintenance” means contracted custodial or janitorial services, expenditures for the cleaning of a school facility or its fixtures, the care and upkeep of grounds or parking lots, and the cleaning of, or repairs and replacements to, movable furnishings or equipment. Routine maintenance is not an eligible cost of a school facilities project.

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

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

“School facility” means and includes any structure, building or facility used wholly or in part for educational purposes by a district or community provider, and facilities that physically support such structures, buildings and facilities, such as district wastewater treatment facilities, power generating facilities, steam generating facilities and other central service facilities, including central kitchens and maintenance shops, but shall exclude other facilities as defined in this section.

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

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

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

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

“State debt service aid percentage” means the district aid percentage multiplied by 1.15, or 40 percent, whichever is greater.

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

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

“Temporary facility” means a facility used for educating students on a temporary basis while awaiting completion of a school facilities project that will permanently house students.

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

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

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

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

## SUBCHAPTER 2. LONG-RANGE FACILITIES PLANS

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

(a) In every school year ending in a “0” or “5,” every district shall submit, on software made available by the Commissioner, and in accordance with the instructions for completing the software, a LRFP to the Commissioner detailing the district’s school facilities, other facilities and temporary facilities and the district’s plan for meeting school facilities needs over the ensuing five years.

(b) Except as provided in N.J.A.C. 6A:26-3.16, no school facilities project shall be considered or approved unless the district’s LRFP has been submitted to and approved by the Commissioner.

(c) Each district shall submit its LRFP to the local planning board or boards of the municipality or municipalities in which the district is situated, no later than the date the district submits the LRFP to the Commissioner, to afford the local planning board or boards the opportunity to prepare and submit findings to the district. In the case of a regional district, all municipalities comprising the regional district shall be considered districts in which the regional district is situated for purposes of this subsection. A district shall provide to the Commissioner proof of the date that it submitted its LRFP to the local planning board. The local planning board shall submit its findings, if any, to the Commissioner, within 45 days of its receipt of the LRFP. No LRFP will be considered complete until comments have been received from the local planning board(s) or until 45 days have passed from the planning boards’ receipt of the LRFP.

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

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

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

(g) ECPA districts shall amend their LRFP annually, immediately following approval of the district’s ECPA plan, to ensure that it is consistent with their approved ECPA plan required pursuant to N.J.S.A. 18A:7F-16 and N.J.A.C. 6A:24-3 or 6:19-3.

(h) A district’s approved LRFP shall remain in effect until an amended LRFP is approved or a new five year LRFP is submitted and approved.

Amended by R.2001 d.367, effective October 1, 2001.  
See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).  
Rewrote the section.

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

(a) Each LRFP shall include:

1. Enrollment projections for the district for the five years covered by the plan, by grade level, as set forth in the Fall Survey Report for grades K through 12 and the ASSA for preschool programs, and utilizing enrollment figures as of October 15 of the previous year as the base enrollment figures. Students enrolled in the district who are attending charter schools and students attending the schools of the district pursuant to the school choice program shall be included in enrollment projections.

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

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

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

iv. Where a district does not believe a five year projection utilizing a cohort survival method will accurately predict future enrollment, the district shall submit additional data and justification for consideration by the Commissioner;

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

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

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

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

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

ii. All facilities, or portions thereof, owned by a district that are leased or otherwise conveyed to another entity shall be included if the facility, or portion thereof, will become available for use by the district in the ensuing five years. Only the terms of leases currently in effect shall be considered when determining whether a space will be available to the district in the ensuing five years.

iii. All facilities, or portions thereof, acquired by the district through a leasehold agreement, or to which the district is otherwise entitled to possession by any legal arrangement, shall be included for the period covered by the plan during which the district is entitled to use of the facility;

4. An inventory of all systems within each facility, including structure, enclosure, mechanical, plumbing, interior walls and finishes and electrical systems;

5. A determination of the life expectancy of all systems;

6. A determination of any system deficiencies in each school facility and the required remediation;

7. The district's proposed school facilities projects and other capital projects and preliminary scopes of work in the five years ensuing, setting forth each proposed new school facility, addition and renovation, including each separate space to be constructed or renovated (for example, classrooms, art and music rooms, cafeterias, gymnasiums), the functional capacity of each proposed school facility and the priority tier pursuant to N.J.S.A. 18A:7G-5(m), and all school facilities to be sold, converted to other non-school facility uses or razed;

8. The district's proposed programmatic models for school facility types and capacities the district intends to operate in the five years ensuing;

9. A comparison of the district's proposed programmatic models with the facilities efficiency standards and identification of all types of spaces, sizes of spaces and number of spaces inconsistent with those standards. The district shall note for all spaces that are inconsistent with the facilities efficiency standards whether it intends to seek a waiver of a facilities efficiency standard, locally fund the space, or seek approval for funding of additional space;

10. A comparison of the district's programmatic models with the existing inventory and how the district proposes to convert the existing inventory to the programmatic models;

11. The district's proposed plans for new construction and renovation of other facilities in the five years ensuing, setting forth each proposed new other facility, addition and renovation, including each separate space to be constructed or renovated and all other facilities to be sold, converted to other non-school facility uses or razed;

12. For each school facility set forth in the LRFP for which the district is seeking approval of additional space or waiver of a facility efficiency standard to be approved as part of the LRFP, the district shall submit documentation supporting the request in accordance with N.J.A.C. 6A:26-2.3(c);

13. For each school facility to be replaced, a preliminary comparison of the cost of replacement of the school facility verses the cost to rehabilitate the school facility;

14. Preliminary data to support each proposed new school facility or addition, renovation to an existing school facility and the removal from the district's inventory of school facilities each school facility to be sold, converted to non-school facility use or razed;

15. A preliminary estimate of the cost of every school facilities project set forth in the LRFP;

16. A listing of all sites in the district's existing inventory and the approximate size and nature of any new sites that may be needed for school facilities projects set forth in the LRFP, listing the specific project(s) to be constructed on each site; and

17. A district board of education resolution approving submission of the LRFP.

(b) Each LRFP shall include a determination by the district of the number of unhoused students for the ensuing five year period calculated as follows:

1. The number of unhoused students shall be the number of FTE students projected to be enrolled in preschool disabled, preschool, kindergarten, grades one through 12 and special education student programs to be provided in the district in the ensuing five years that exceed the functional capacity of the district's current school facilities or school facilities that will be available within five years, excluding projects which have been approved pursuant to the N.J.A.C. 6A:26-3. Projected enrollments and functional capacity shall be separately determined for early childhood and elementary students (preschool through grade five), middle school students (grades six through eight) and high school students (grades nine through 12). For the purpose of calculating the district's unhoused students, special education students shall be considered part of the grade level to which the students' chronological age corresponds. In the event approval is granted for a school facilities project which involves the construction of a new school facility to replace an existing school facility, the calculation of the number of unhoused students shall exclude the functional capacity of the facility to be replaced.

(c) Approved area for unhoused students (AU) shall be determined according to the following formula:

$$AU = (UEC \times SEC) + (UE \times SE) + (UM \times SM) + (UH \times SH)$$

where UEC, UE, UM, UH are the numbers of unhoused students in the early childhood, elementary, middle, and high school enrollment categories, respectively; and SEC, SE, SM, SH are the area allowances per FTE student in preschool and kindergarten, grades one through five, grades six through eight, and grades nine through 12, respectively. Area allowances shall be determined based on the grade level of a student regardless of the grade configurations of the school buildings of the district. Gross square footage is to be used for these determinations.

(d) An ECPA district is encouraged to include one or more community provider early childhood education facilities projects, including projects of Head Start providers that qualify as community providers, as part of its LRFP. Superintendents are strongly encouraged to meet and collaborate with community early childhood education providers to meet the needs of unhoused students in the LRFP.

(e) The district shall incorporate the facilities efficiency standards in the LRFP.

1. If the LRFP includes a proposal for new construction or rehabilitation of a school facility that does not meet the facilities efficiency standards, the district shall seek, as part of the LRFP approval, a waiver for those components that are not consistent with the standards.

2. If the LRFP includes a proposal for new construction pursuant to N.J.S.A. 18A:7G-7(a), or rehabilitation pursuant to N.J.S.A. 18A:7G-7(b), of a school facility that exceeds the facilities efficiency standards, the district may seek Commissioner approval of that additional space and, if approved, such space will be deemed eligible for State funding. If the district does not seek Commissioner approval for the additional space, the district shall state that fact in its submission and that space will be deemed ineligible for State support at the time of approval of the LRFP.

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

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

In (a), substituted "previous six" for "five most recent" in liii, inserted "interior walls and finishes" in 4, rewrote 7, inserted "for funding" in the last sentence of 9, updated N.J.A.C. reference in 12 and rewrote 16; in (b), rewrote the first sentence of 1; in (d), rewrote the first sentence; and in (e), rewrote the last sentence of 2.

### 6A:26-2.3 Review and approval of long-range facilities plans

(a) Within 90 days of receipt of a LRFP from a district that has not previously submitted a LRFP, the Division shall determine whether the plan is fully and accurately completed and whether all information necessary to review the plan has been filed by the district.

1. When a LRFP is determined to be complete, the Division shall notify the district in writing that the plan is deemed complete.

2. When a LRFP is determined to be incomplete, the Division shall notify the district in writing and require the submission of additional information as detailed in the notification. A district shall submit the requested information. Only after the Division determines that all requested information has been submitted and determines that the information is accurate shall the Division determine a plan to be complete.

(b) Within 60 days of the date of the notification that a plan is complete, the Commissioner shall notify the district of the final determination of the LRFP. A final determination shall set forth:

1. Reasonable five-year enrollment projections;
2. A complete facility inventory;
3. A complete inventory of physical conditions/deficiencies of every facility;
4. A final determination of programmatic models designed by the district to support the achievement of the Core Curriculum Content Standards by the FTE students in the district;
5. Spaces approved as additional space pursuant to (d) below;
6. Spaces for which a waiver is approved pursuant to (e) below;
7. Spaces in excess of the facilities efficiency standards and not eligible for State support;
8. Facilities not eligible for State support;
9. Identification of school facilities for which new construction was proposed in lieu of rehabilitation and for which it appears from the information presented that new construction is justified but, for school facilities so identified, a feasibility study will need to be submitted as part of the application for the school facilities project;
10. Identification of school facilities for which new construction was proposed in lieu of rehabilitation and for which the information presented is insufficient to conclude that new construction appears to be justified, provided that, for school facilities so identified, the district is not precluded from submitting a feasibility study as part of an application for the school facilities project or from seeking an amendment to its approved LRFP with the submission of additional information;
11. A listing of all proposed new construction projects for unhoused students; and
12. A listing of all proposed capital projects included in the LRFP.

(c) A district shall amend its approved LRFP whenever it seeks to undertake a capital project that is inconsistent with the approved LRFP then in effect.

1. In the case of an emergent project, the LRFP will be deemed amended by the approval of the emergent project, with no further action by the Division.

2. In the case of a school facilities project requiring amendment to the district's applicable approved programmatic model in the district's approved LRFP, approval of the school facilities project shall result in the programmatic model being deemed amended with no further action by the Division unless amending the programmatic model would affect the capacity of one or more of the district's school facilities. In the event that amending the programmatic model would affect the capacity of one or more of the district's school facilities, the district shall fully document the impact of amending the programmatic model on each school facility in the district, and Division review and approval of the programmatic model amendment shall be required prior to Division approval of the school facilities project.

3. In the case of a school facilities project involving capital maintenance, the district shall amend its LRFP by submitting a school facilities project application to the Division and updating the Division's software to:

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

4. Upon approval of a school facilities project involving capital maintenance, and the updating by the district of the Division's software as indicated in (c)3 above, the amendment to the district's LRFP will be deemed approved with no further action by the Division.

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

(d) The Commissioner shall, as part of the approval of the LRFP, approve requests for additional or inconsistent space if the district can demonstrate (d)1 through 3 below. Spaces approved pursuant to this subsection shall be aided pursuant to N.J.S.A. 18A:7G-5(g)(4).

1. School facility needs related to the required programs, including programs approved pursuant to N.J.A.C. 6:19-3, 6:19-4, 6A:24-3 and 6A:24-5, cannot be addressed within the facilities efficiency standards and that all other spaces are consistent with those standards;

2. Such spaces are necessary to comply with Federal or State laws concerning educating students with disabilities to the greatest extent possible in the same building or classes with their non-disabled peers and the additional or inconsistent spaces will:

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

ii. Permit the retention of students with disabilities who would otherwise be placed in out-of-district facilities;

iii. Provide space for regional programs in a host school facility that houses both disabled and non-disabled students; or

iv. Provide space for the coordination of regional programs by a county special services district, educational services commission, jointure commission or other agency authorized by law to provide regional special education services in a school facility that houses both disabled and non-disabled students; and

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

i. The proposed administrative offices will be housed in a school facility;

ii. The existing central administrative offices are obsolete or it is more practical to convert those offices to instructional space; and

iii. The space sought does not exceed an increase of the approved areas for unhoused students of 2.17 square feet for each FTE student in the projected total district school enrollment.

(e) If the Commissioner does not approve the request for additional or inconsistent space as part of the LRFP review, those spaces shall be deemed ineligible for State funding at that time. As part of an application for a specific school facilities project, the district may seek approval of additional or inconsistent space that was not approved as part of the LRFP pursuant to N.J.S.A. 18A:7G-5(g) and, if approved, such space shall be deemed eligible for State funding and the district's LRFP shall be deemed amended consistent with such approval.

(f) The Commissioner shall not approve an LRFP that includes any programmatic models for school facilities that do not meet the facilities efficiency standards unless the district demonstrates that the waiver of the standard or standards will not adversely affect the educational adequacy of the school facility, including the ability to deliver the programs and services necessary to enable all students to

achieve the Core Curriculum Content Standards. If the district seeks but does not receive a waiver of the facilities efficiency standards as part of the LRFP review, the Commissioner shall not approve the LRFP until the district revises its proposed programmatic models to meet the standards. As part of an application for approval of a specific school facilities project, a district may seek a waiver of the facilities efficiency standards or the applicable approved programmatic model in the approved LRFP pursuant to N.J.A.C. 6A:26-3.3(h) and, if granted, the applicable model in the district's approved LRFP shall be deemed amended consistent with such waiver.

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

(h) Any district that has an approved LRFP may begin undertaking feasibility studies for new construction identified pursuant to (b)10 above, site acquisition, development, remediation and design work, and acquire temporary facilities, provided that such activities are consistent with its approved LRFP and this chapter, and, for districts required to use the Authority, are undertaken under the auspices of the authority and in accordance with N.J.S.A. 18A:7G-5 and this chapter.

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

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

Rewrote the section.

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

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

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

Section was "Appeals of Commissioner's determinations".

### SUBCHAPTER 3. CAPITAL PROJECT REVIEW

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

(a) Capital projects include school facilities projects, other capital projects and land acquisition projects. All capital projects shall be undertaken in accordance with this subchapter.

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

capital projects shall be reviewed in accordance with N.J.A.C. 6A:26-3.12.

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

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

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

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

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

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

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

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

1. New construction;
2. Rehabilitation;
3. Acquisition of existing buildings to accommodate unhoused students; and
4. Furnishings, fixtures and equipment, when they are included in a school facilities project, but they shall be eligible for State support only as follows:
  - i. Furnishings and equipment with a useful life of 10 years and greater when part of a school facilities project which is either new construction or rehabilitation that also qualifies as reconstruction. The cost of furnishings and equipment shall not exceed the cost of the item if purchased through a State contract, if applicable. For purposes of this subsection, reconstruction is to be defined as defined in the UCC, N.J.A.C. 5:23-6.3; and
  - ii. Fixtures when part of a school facilities project.

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

1. All information set forth in N.J.A.C. 6A:26-5.2, 5.3 and 5.4 and, if the school facilities project includes the acquisition of land, N.J.A.C. 6A:26-7.1;
2. Necessary updates to the enrollment projections in the district's approved LRFP to support the project;
3. A delineation and description of each of the functional components of the school facilities project;

4. The number of unhoused students to be housed in the school facilities project;

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

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

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

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

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

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

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

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

13. A resolution of the district board of education approving the application; and

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

(c) Where required by N.J.S.A. 40:55D-31(a), each district shall submit applications for school facilities projects to the local planning board or boards of the municipality or municipalities in which the district is situated, no later than the date the district submits each school facilities project application to the Commissioner, to afford the local planning board or boards the opportunity to prepare and submit findings to the Department. A district shall provide to the Commissioner proof of the date that it submits each school facilities project application to the local planning board or boards. The local planning board or boards shall submit the findings, if any, to the Division, within 45 days of its receipt of each project application. No school facilities project application will be considered complete until comments have been received from the local planning board(s) or until 45 days have passed from the planning board's receipt of each school facilities project application, whichever is earlier.

(d) Except as provided in N.J.A.C. 6A:26-3.16, a district shall not initiate a school facilities project without an approved LRFP.

Amended by R.2001 d.367, effective October 1, 2001.  
See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

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

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

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

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

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

shall notify the district in writing of the approval and preliminary eligible costs.

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

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

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

1. School facility needs related to the required programs, including programs approved pursuant to N.J.A.C. 6:19-3, 6:19-4, 6A:24-3 and 6A:24-5, cannot be addressed within the facilities efficiency standards and that all other spaces are consistent with those standards;
2. Such spaces are necessary to comply with Federal or State laws concerning educating students with disabilities to the greatest extent possible in the same building or classes with their non-disabled peers and the additional or inconsistent spaces will:
  - i. Allow for the return of students with disabilities from out of district facilities;
  - ii. Permit the retention of students with disabilities who would otherwise be placed in out of district facilities;
  - iii. Provide space for regional programs in a host school building that houses both disabled and non-disabled students; or
  - iv. Provide space for the coordination of regional programs by a county special services district, educational services commission, jointure commission or other agency authorized by law to provide regional special education services, in a school facility that houses both disabled and non-disabled students;
3. Such spaces are necessary to house the district's central administration and:
  - i. The proposed administrative offices will be housed in a school facility;
  - ii. The existing central administrative offices are obsolete or it is more practical to convert those offices to instructional space; and

iii. The space sought does not exceed an increase of the approved areas for unhoused students of 2.17 square feet for each FTE student in the projected total district school enrollment.

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

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

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

(i) The Division shall not approve any school facilities project for new construction or rehabilitation that is not consistent with the facilities efficiency standards or the applicable programmatic model in the approved LRFP unless the district demonstrates that waiver of the standard or standards will not adversely affect the educational adequacy of the facility, including the ability to deliver the programs and services necessary to enable all students to achieve the Core Curriculum Content Standards. If the Division approves a waiver, the applicable model in the district's approved LRFP shall be deemed amended. If the Division does not approve a waiver request, the district shall conform the school facilities project to the facilities efficiency standards and resubmit the school facilities project.

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

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

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

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

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

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

(m) When a district demonstrates to the satisfaction of the Division that replacement is more feasible than rehabilitation and the proposed school facilities project is otherwise approvable, the Division shall approve the school facility project for new construction in lieu of rehabilitation, and the preliminary eligible costs shall be determined pursuant to subsection N.J.A.C. 6A:26-3.4(a).

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

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

(p) Upon approval of a school facilities project and determination of the preliminary eligible costs pursuant to N.J.A.C. 6A:26-3.4, the Division shall notify the district that the school facilities project has been approved and of the preliminary eligible costs and the excess costs, if any. A district that is not required to have the Authority construct the school facilities project shall notify the Division as to whether it elects to have the Authority construct the project or, if the district shall construct the project, whether the district will seek a grant pursuant to N.J.S.A. 18A:7G-15 or debt service aid pursuant to N.J.S.A. 18A:7G-9.

Amended by R.2001 d.367, effective October 1, 2001.  
See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).  
Rewrote the section.

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

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

Preliminary eligible costs = AU x C  
Where  
AU is the approved area for unhoused students; and  
C is the area cost allowance.

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

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

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

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

Preliminary eligible costs = (ACP - PC) x (C ÷ CP)  
where  
ACP is the preliminary eligible costs for the facilities purchased pursuant to (a) above;  
PC is the purchase cost for the facility;  
C is the area cost allowance at the time of application for the school facilities project; and  
CP is the area cost allowance at the time of purchase of the facility.

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

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

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

Amended by R.2001 d.367, effective October 1, 2001.  
See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).  
Rewrote (b) as (b) and (c); recodified former (c) through (e) as (d) through (f); and updated N.J.A.C. references throughout.

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

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

(b) Any district that is not required to use the Authority pursuant to (a) above may elect to have the Authority undertake the construction of a school facilities project in the district and the State share shall be determined pursuant to N.J.S.A. 18A:7G-5(k).

(c) After approving a project that shall be constructed by the Authority, or being notified that the district has elected to use the Authority pursuant to (b) above, the Division shall promptly prepare and submit to the Authority a preliminary project report which shall consist, in addition to any other information deemed relevant by the Commissioner, of the following information:

1. A complete description of the school facilities project;
2. The actual location of the school facilities project;
3. The total square footage of the school facilities project together with a breakdown of total square footage by functional component;

4. The preliminary eligible costs of the school facilities project;

5. The project's priority ranking determined pursuant to N.J.S.A. 18A:7G-5(m);

6. Any other factors to be considered by the Authority in undertaking the school facilities project; and

7. The name, address and phone number of the person from the district to contact concerning the school facilities project.

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

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

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

i. Calculate the final eligible costs to equal the preliminary eligible costs;

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

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

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

i. Calculate the final eligible costs to equal the sum of the preliminary eligible costs plus the increase recommended by the Authority;

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

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

3. When the Commissioner is notified by the Authority that the Authority has determined that the additional costs are the result of factors that are within the control of the district or are the result of design factors that are not required to meet the facilities efficiency standards or approved pursuant to N.J.A.C. 6A:26-3.2(d), the Authority shall recommend to the Commissioner that the preliminary eligible costs be accepted, whereupon the Division shall:

i. Calculate the final eligible costs to equal the preliminary eligible costs unless those preliminary eligible costs are determined to be insufficient to meet the educational needs of the district, in which case they shall be adjusted upward as appropriate, and specify the excess costs which are to be borne by the district;

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

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

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

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

(h) The Authority will not commence the acquisition or construction of a school facilities project until the Division transmits to the Authority a final project report except as provided in N.J.A.C. 6A:26-3.9 and 3.10.

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

1. The final eligible costs;

2. The excess costs, if any;

3. The total costs which equals the final eligible costs plus excess costs, if any;

4. The State share of the final eligible costs; and
5. The local share of the total costs.

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

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

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

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

(a) Prior to a determination of final eligible costs, a district that is not using the Authority for construction of a school facilities project may appeal to the Commissioner for an increase in the preliminary eligible costs that were approved pursuant to N.J.A.C. 6A:26-3.3 if the detailed plans and specifications prepared in accordance with N.J.A.C. 6A:26-5.4 by a licensed architect or engineer for the school facilities project indicate that the cost of constructing that portion of the school facilities project which has been approved for State support exceeds the preliminary eligible costs as determined by the Commissioner for the project by 10 percent or more. The district shall file its appeal within 30 days of the preparation of the detailed plans and specifications.

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

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

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

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

1. If a district does not appeal the determination of preliminary eligible costs, the preliminary eligible costs become the final eligible costs;
2. If a district successfully appeals the determination of preliminary eligible costs pursuant to (b) above, the

final eligible costs shall be the preliminary eligible costs as adjusted by the Commissioner, but in no case shall the adjustment to preliminary eligible costs be more than 10 percent; and

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

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

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

(g) A district shall not seek approval of the local share or the total costs of a school facilities project receiving State debt service aid through a bond referendum for the school facilities project until the Division has notified the district of the final eligible costs for the project. A district may seek approval of the estimated local share in its annual budget prior to a determination of final eligible costs. In the event the local share estimate in the annual budget is less than the actual local share, the district shall proceed in accordance with the provisions of N.J.A.C. 6A:26-4. A district may seek approval of local share utilizing capital reserve pursuant to N.J.A.C. 6A:26-9.

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

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

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

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

(a) No school facilities project shall be constructed unless, if there is local support, such local support plus any other local revenue sources utilized to fund the total costs of a school facilities project receiving State debt service aid has received approval as set forth in this section. Districts shall notify the Commissioner and county superintendent of schools, and for school facilities projects to be constructed by the Authority, or for which a district elects a grant pursuant to N.J.S.A. 18A:7G-15, the Authority, when approval is obtained, and, if applicable, provide each the schedule for issuance of school bonds. Districts shall also notify the county superintendent of the issuance of school bonds within 30 days of the issuance of the school bonds and, for school facilities projects to be constructed by the Authority, or where a district elects to receive a grant pursuant to N.J.S.A. 18A:7G-15, the district shall notify the Authority.

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

(c) If the district determines to issue school bonds to fund all or any part of the local support, the district shall proceed in accordance with (e), (f) or (g) below, as applicable. If the district determines to fund the entire local support through a means other than school bonds, it shall obtain approval of necessary line-items in the budget, obtain separate voter or board of school estimate approval of the expenditure of local support, make withdrawals from capital reserve in accordance with N.J.A.C. 6A:26-9, or, for non-Authority school facilities projects, a district may fund the local support for additions or improvements to an existing school facility or equipment through a lease purchase agreement of not in excess of five years duration if the district obtains approval of the lease purchase agreement in accordance with N.J.S.A. 18A:20-4.2(f) and N.J.A.C. 6A:26-10.

(d) If a district submits a separate proposal to the voters pursuant to N.J.S.A. 18A:7F-5 and N.J.A.C. 6:19-2.4(a), such amounts shall not be utilized as the local share or to reduce the total costs of a school facilities project receiving State debt service aid of a school facilities project.

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

(f) Whenever the undertaking of any school facilities project or projects to be paid for from the proceeds of an issue of school bonds is submitted to the voters of a Type II district at an annual or special school election for their approval or disapproval, the board shall frame and adopt the question or questions to be submitted so that each

school facilities project is submitted in a separate question, or all or any number of them are submitted in one question, which shall state the school facilities project or projects so submitted and the amounts to be raised for each of the school facilities projects so separately submitted or for each or for all of the school facilities projects so jointly submitted, as the case may be, but any proposal for the purchase of land shall be sufficient to authorize the taking and condemning of such land. If the board determines to use a combination of school bonds and other revenue sources, the question shall also include the portion of the local share of total costs of a school facilities project receiving State debt service aid to be raised through other revenue sources, listing separately each source and the amount from that source.

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

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

i. The State debt service aid percentage shall be stated as a percentage of the annual debt service of the final eligible costs.

3. When a school facilities project is framed in more than one question, a summary shall be included in the explanatory statement which accompanies the questions that includes the total costs of the project, the State share or the State debt service aid percentage, the final eligible costs of the project, the local share, if applicable, and excess costs, and the revenue source for the local share or total costs of a school facilities project receiving State debt service aid.

4. The statement of excess costs in any ballot question and in any explanatory statement that accompanies a ballot question shall describe the excess costs as follows: "This school facilities project includes \$(insert amount) for school facility construction elements in addition to the facilities efficiency standards developed by the Commissioner of Education, or that are not otherwise eligible for State support pursuant to N.J.S.A. 18A:7G-5(g)".

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

(h) Upon completion by the Authority of a school facilities project, if the cost of construction and completion of the project is less than the total costs, the district shall be entitled to receive a portion of the local share based on a pro-rata share of the difference based on the ratio of the State share to the local share in accordance with N.J.A.C. 6A:26-4.6(d).

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

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

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

3. In addition to the amount of taxes determined by the legal voters of the district at the annual school election, the secretary of the district board of education shall certify the amount required for the repayment of the

interest and principal of the school bonds required to fund the local share approved by the Division in the same manner required for interest and debt redemption charges pursuant to N.J.S.A. 18A:22-33, and the amount so certified shall be included in the taxes assessed, levied and collected in the municipality or municipalities comprising the district for those purposes.

4. Any school facilities project authorized pursuant to this subsection shall be constructed by the Authority pursuant to the provisions of N.J.A.C. 6A:26-3.9. Final eligible costs of the project shall be determined in accordance with the provisions of N.J.A.C. 6A:26-3.5 prior to the Commissioner approving the issuance of school bonds by the district and the Authority undertaking construction of the school facilities project.

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

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

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

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

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

(l) All school facilities projects approved pursuant to (j) and (k) above shall be constructed by the Authority pursuant to the provisions of N.J.A.C. 6A:26-3.9. Final eligible costs of the project shall be determined in accordance with the provisions of N.J.A.C. 6A:26-3.5 prior to the Authority undertaking construction of the school facilities project.

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

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

Rewrote the section.

**6A:26-3.8 Determination of State support for school facilities projects**

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

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

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

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

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

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

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

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

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

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

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

Aid is the sum of A where

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

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

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

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

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

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

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

(1) All grants and the corresponding local share shall be accounted for separately by project in the capital projects fund in accordance with N.J.A.C. 6A:26-4;

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

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

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

In (a), deleted "school" preceding "district" throughout 1 and 2, and inserted N.J.A.C. reference in 3i(1).

**6A:26-3.9 Design and construction of Authority school facilities projects**

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

(b) After approval of the LRFP for a district that is required to use the Authority, the district, Department and Authority shall meet and agree upon a schedule for undertaking the school facility projects in the approved LRFP and identify the need for temporary facilities, if any.

(c) A district that is required to use the Authority and has an approved LRFP may begin undertaking feasibility studies for new construction identified pursuant to N.J.A.C. 6A:26-3.2(b)10, remediation, site development, design work and acquire temporary facilities, provided that such activities are consistent with its approved LRFP and are undertaken under the auspices of the Authority.

1. Districts shall submit to the Division a pre-development application setting forth all activities, including feasibility studies, remediation, site development, design work, acquisition of temporary facilities and acquisition of land, which need to be undertaken prior to submission of a school facilities project application. The Division will review each application for consistency with the approved LRFP, and, if approved, forward the application to the Authority which shall undertake such activities pursuant to procedures developed by the Authority. Any costs incurred pursuant to this subsection shall be allocated to the applicable school facilities project and shall be deemed eligible for a State share.

2. For districts in which the State share of final eligible costs of a school facilities project is 100 percent, the Authority shall provide the funding for these pre-development costs. For all other districts required to use the Authority, the pre-development costs shall be funded locally and the district shall comply with N.J.A.C. 6A:26-3.3 and any additional procedures established by the Authority; once these costs have been allocated to the applicable school facilities project and that project has been approved pursuant to N.J.A.C. 6A:26-3.3, the district shall receive credit toward the local share of that project.

3. Non-Abbott districts required to use the Authority may apply to the Authority to have the Authority engage an architect in order to develop school facilities project applications for the district, and, if approval is obtained, the cost of developing the applications shall be allocated to the applicable approved project and deemed eligible for a State share.

(d) A district that is required to use the Authority shall seek approval to acquire land from the Commissioner pursuant to N.J.A.C. 6A:26-7. The Commissioner may approve the purchase of land if the site is capable of supporting the applicable school facility in the approved LRFP. If the Commissioner approves the request, he or she shall notify the district and the Authority. Any costs incurred pursuant to this subsection shall be allocated to the applicable school facilities project and shall be deemed eligible for a State share. For districts in which the State share of eligible costs for the school facilities projects is 100 percent, the Authority shall provide the funding for the cost of the land if approved by the Commissioner and the Authority. For all other districts required to use the Authority, the costs shall be funded locally and the district shall comply with N.J.A.C. 6A:26-3.13 and any additional procedures established by the Authority; once the costs have been allocated to the applicable school facilities project and that project has been approved pursuant to N.J.A.C. 6A:26-3.3, the district shall receive credit toward the local share of that project.

(e) The Authority will submit detailed plans and specifications to the Department for review and approval pursuant to N.J.A.C. 6A:26-5.4. In addition, whenever the final plans and specifications prepared by the Authority change the number, size, location, configuration or use of educational spaces as set forth in the detailed plans and specifications required by N.J.A.C. 6A:26-5 submitted to the Department when a school facilities project was approved, the Authority will submit the final plans and specifications to the Department for review and approval pursuant to N.J.A.C. 6A:26-5. For purposes of N.J.A.C. 6A:26-5.5, the detailed plans and specifications submitted by the Authority shall constitute final plans and specifications.

(f) For all school facilities projects constructed by the Authority, or which the district is constructing under delegation of the Authority pursuant to N.J.S.A. 18A:7G-13(a),

the Authority shall notify the Department of any change order affecting the number, size, location, configuration or use of educational spaces and submit the change order to the Department for review and approval.

(g) The Authority will provide a copy to the Division of the final plans and specifications utilized when soliciting bids for a school facilities project and certify that no changes were made between the detailed plans and specifications and final plans and specifications affecting educational adequacy.

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

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

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

Rewrote (c) through (f); in (g), inserted reference to configuration of educational spaces; and added (h) and (i).

Amended by R.2003 d.266, effective July 7, 2003.

See: 35 N.J.R. 1379(a), 35 N.J.R. 2865(b).

Deleted (b); recodified existing (c) through (i) as (b) through (h).

#### **6A:26-3.10 Design and construction of non-Authority school facilities projects**

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

(b) Prior to UCC approval for construction of a school facilities project, a district shall submit the final plans and specifications to the Division for final approval pursuant to N.J.A.C. 6A:26-5.4.

(c) Upon completion of a school facilities project by a district, the district shall submit a plan for the maintenance of the school facility to the Commissioner, in accordance with the Commissioner's regulations to be adopted pursuant to N.J.S.A. 18A:7G-9(b)(3). All such plans will include a provision for a maintenance reserve fund. All maintenance reserve funds created in accordance with the Commissioner's regulations to be adopted pursuant to N.J.S.A. 18A:7G-9(b)(3) shall be funded annually with two tenths of

one-percent of the net replacement cost of the school facility, which amount shall be included in the annual budget of the district. The funds in the maintenance reserve fund may be withdrawn at any time during the year to fund the maintenance mandated by the Commissioner's regulations to be adopted pursuant to N.J.S.A. 18A:7G-9(b)(3). The net replacement cost of the school facility shall equal the area cost allowance multiplied by the gross square footage of the building.

Amended by R.2001 d.367, effective October 1, 2001.  
See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

In (b), inserted "UCC approval for" and updated N.J.A.C. reference; deleted (c); recodified (d) as (c); and in new (c), deleted "school" preceding "district" in the third sentence.

**6A:26-3.11 ECPA district community early childhood education facilities projects**

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

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

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

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

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

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

1. A complete description of the project;
2. The actual location of the project;

3. The total square footage of the project together with a breakdown of total square footage by functional component;
4. Any other factors to be considered by the Authority in undertaking the project;
5. The names and addresses of the people to contact from the district and the community provider;
6. The amount of the State share for the project; and
7. The amount of local share required from the community provider.

Amended by R.2001 d.367, effective October 1, 2001.  
See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

In (a), substituted "preschool" for "three and/or four year old" and added 10; in (b), substituted "standards for early childhood education programs" for "early childhood expectations" in the first sentence; in (c), substituted "share" for "support"; rewrote (d); and in (e), substituted "share" for "support" in 6 and rewrote 7.

#### **6A:26-3.12 Initiation of other capital projects**

(a) Other capital projects are not eligible for State support pursuant to EFCFA and this subchapter, but shall be reviewed by the Division based on the following criteria:

1. Whether they are consistent with the district's approved LRFP;
2. The total amount of funds the district intends to expend to complete the other capital project;
3. The type of facility to be constructed; and
4. Whether the facility, if it is to house students, conforms to educational adequacy requirements at N.J.A.C. 6A:26-5.2.

(b) Other capital projects that require educational adequacy reviews are subject to the provisions of N.J.A.C. 6A:26-5. Land acquisition projects shall be reviewed pursuant to N.J.A.C. 6A:26-7. Other capital projects shall conform to all other applicable statutes and regulations, including N.J.S.A. 18A:18A-1.1 et seq.

(c) A district may annually transfer unbudgeted fund balance up to one percent of the district's annual budget certified for taxes or \$50,000, whichever is higher, by board resolution to capital outlay to fund other capital projects, except land acquisition projects, that received approval in accordance with (a) and (b) above. Once it exceeds the annual maximum transfer amount, the district shall receive approval for local funding for other capital projects as set forth below.

1. If the district determines to issue school bonds to fund all or any part of the local funding, the district shall proceed in accordance with (c)2, 3 or 4 below, as applicable, and (c)5 below. If the district determines to fund the entire local funding through a means other than school bonds, it shall obtain approval of necessary line-items in the budget, obtain separate approval of the expenditure of local funds, make withdrawals from capital reserve in accordance with N.J.A.C. 6A:26-9, or a district may fund the local funding for additions or improvements to an existing facility or equipment through a lease purchase agreement of not in excess of five years duration if the district obtains voter or board of school estimate approval of the lease purchase agreement in accordance with N.J.S.A. 18A:20-4.2(f) and N.J.A.C. 6A:26-10.

2. Whenever the district board of education in a Type I or Type II district having a board of school estimate shall determine that it is necessary to sell school bonds to raise money for the local funding for an other capital project, it shall, by board resolution, estimate the amount necessary to be raised for such other capital project or other capital projects, itemizing such estimate so as to make it readily understandable, and the secretary of the district board of education shall certify a copy of such resolution to each member of the board of school estimate of the district. The resolution shall include the amount needed to be raised by school bonds. If the board determines to use a combination of school bonds and other funding sources, the resolution shall also include the portion of the local funding to be raised through other

funding sources, listing separately each source and the amount from that source.

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

4. Whenever a State-operated district shall determine that it is necessary to sell school bonds to raise local funding for an other capital project, the district shall estimate the amount necessary to be raised for such other capital project or other capital projects, itemizing such estimate so as to make it readily understandable, and the State district superintendent shall certify a copy of such resolution to each member of the Capital Project Review Board of the district. The resolution shall include the amount needed to be raised by school bonds. The Capital Project Review Board shall review the project in accordance with the procedures in N.J.S.A. 18A:7A-46.2. If the district determines to use a combination of school bonds and other funding sources, the resolution shall also include the portion of the local funding to be raised through other funding sources, listing separately each source and the amount from that source.

5. If the district issues school bonds for an other capital project under (c)2, 3 or 4 above, the resolution or question to the voters shall specifically state that the other capital project is not eligible for State support and, in the case of a school facilities project for which a district determines not to seek State support, the resolution or question shall state as follows: "The other capital project to be funded herein was potentially eligible for State support, in whole or in part, at a minimum amount of 40 percent for eligible components of the project. However, (add name of district) determined not to seek State support for this other capital project." If a district has not received approval of its LRFP, or has not included an other capital project in its approved LRFP, the district's other capital project shall be reviewed as set forth above and, if the project receives all necessary approvals, the district's LRFP shall be amended to include the approved other capital project.

Amended by R.2001 d.367, effective October 1, 2001.  
See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).  
Rewrote the section.

### 6A:26-3.13 Acquisition of land by districts

(a) Every acquisition of land shall comply with N.J.A.C. 6A:26-7 and receive approval thereunder. Land acquisition projects are either an eligible cost for a school facilities project or, when utilized for a project other than a school facilities project, an other capital project not eligible for funding pursuant to EFCFA.

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

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

(d) If a district intends to utilize funds in its capital reserve account to fund a purchase of land for a school facilities project in its approved LRFP, voter approval of the withdrawal from capital reserve is not required if the appropriation to the capital reserve account for the acquisition of land receives voter approval pursuant to N.J.A.C. 6A:26-9.1.

(e) If a district utilizes funds other than either school bonds or funds from the capital reserve account to purchase the land, the district shall include as a line item in its annual school budget submitted to the voters the appropriation of funds for the land acquisition.

Amended by R.2001 d.367, effective October 1, 2001.  
See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

Rewrote (a); in (c), added the last sentence; inserted a new (d); recodified former (d) as (e) and rewrote the paragraph.

### 6A:26-3.14 Use of temporary facilities

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

(b) All temporary facilities shall be approved by the Division pursuant to N.J.A.C. 6A:26-8.

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

Amended by R.2001 d.367, effective October 1, 2001.  
See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

In (b), substituted "All temporary" for "Temporary" and updated N.J.A.C. reference; and in (c), inserted reference to EFCFA.

### 6A:26-3.15 Demonstration projects

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

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

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

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

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

(e) The cost of the community design features approved by the Commissioner shall be reviewed by the Authority. The district shall submit the documentation required by the Authority for the Authority to make its determination. The Authority will, in its recommendation to the Commissioner pursuant to N.J.S.A. 18A:7G-5, include its recommendation with respect to the cost of the community design features. The Commissioner shall make the final determination with respect to the inclusion of the cost of community design features in the final eligible costs. Any approved community design feature whose cost is not approved by the Commissioner to be part of the final eligible costs shall be deemed an excess cost.

(f) Upon completion of a demonstration project by a redevelopment entity, the district shall submit to the Commissioner a plan for the maintenance of the school facility, in accordance with the provisions of N.J.A.C. 6A:26-3.10(c), 12 and the Commissioner's rules to be adopted pursuant to N.J.S.A. 18A:7G-9(b)(3).

Amended by R.2001 d.367, effective October 1, 2001.  
See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

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

#### 6A:26-3.16 Emergency stabilization and emergent projects

(a) Emergency stabilization must qualify as an emergency pursuant to N.J.S.A. 18A:18A-7 and the rule promulgated pursuant thereto at N.J.A.C. 5:34-6.1. Emergency stabilization is an other capital project, and is not eligible for State support.

(b) When a district determines that an emergency exists pursuant to N.J.S.A. 18A:18A-7, it shall undertake emergency stabilization as follows:

1. The district shall, if possible, immediately undertake the actions necessary, including temporary repairs to alleviate the emergency and render the facility safe and fit for occupancy;
2. The district shall conform to the Public Schools Contract Law and the applicable rule at N.J.A.C. 5:34-6.1 when undertaking such emergency stabilization; and
3. The district shall proceed as set forth in (d) or (e) below if, after undertaking emergency stabilization, it is necessary to undertake an emergent project.

(c) Emergent projects can be either school facilities projects eligible for State support or other capital projects. Emergent projects that are school facilities projects shall proceed in accordance with (d) and (e) below. Emergent projects that are other capital projects shall proceed in accordance with (f) below.

(d) Prior to the approval of a district's LRFP, a district may, on a form provided by the Commissioner, apply directly to the Commissioner for approval of a school facilities project when an emergent condition exists.

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

2. If a school facilities project for an emergent condition is approved by the Commissioner, the school facilities project application shall be forwarded to the Division for review, pursuant to N.J.A.C. 6A:26-3.3(a) through (o), on an expedited basis. The scope of work contained in the application shall be limited to action required to rectify the emergent condition.

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

(e) After approval of a district's LRFP, when an emergent condition exists, a district may, on a form provided by the Department, apply directly to the Division for approval of a school facilities project when an emergent condition exists.

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

2. If a school facilities project for an emergent condition is approved by the Division, the school facilities project application shall be forwarded to the Division for review, pursuant to N.J.A.C. 6A:26-3.3(a) through (o), on an expedited basis. The scope of work contained in the application shall be limited to those actions determined by the Division to be reasonable considering the emergent condition and the capital projects in the district's approved LRFP.

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

(f) If a district determines that an emergent condition exists after undertaking an emergency stabilization, and the emergent project is an other capital project, the district shall submit the information required by N.J.A.C. 6A:26-3.12, and the Division shall perform all required reviews on an expedited basis. The scope of work contained in the application shall be limited to those actions determined by the Division to be reasonable considering the emergent condition and the capital projects in the district's approved LRFP.

New Rule, R.2001 d.367, effective October 1, 2001.  
See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

#### 6A:26-3.17 Insurance

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

(b) Insurance proceeds received by a district shall be applied as follows: if the district applies for approval of a school facilities project involving a facility for which there are insurance proceeds, the insurance proceeds shall be applied to reduce the amount of State support, as follows:

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

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

ii. Multiply that percentage by the amount of insurance proceeds to which the district is entitled; and

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

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

i. Calculate the percentage of total costs that, if no insurance proceeds were received by the district, would be funded by local share;

ii. Reduce the total costs by the amount of insurance proceeds to which the district is entitled;

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

iv. Add the amount of insurance proceeds to the revised local share amount determined in (b)2iii above. The amount determined in this subparagraph shall be provided to the Authority before a school facilities project will be undertaken by the Authority.

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

New Rule, R.2001 d.367, effective October 1, 2001.  
See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

#### SUBCHAPTER 4. MANAGEMENT OF CAPITAL PROJECTS

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

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

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

1. Sale of school bonds;

2. Issuance of temporary notes or loan bonds pursuant to N.J.S.A. 18A:24-3;

3. Issuance of certificates of participation for a lease purchase agreement greater than five years approved prior to EFCFA;

4. Grants received pursuant to N.J.S.A. 18A:7G-15; and

5. All revenue sources identified in the referenda or resolution authorizing the issuance of school bonds pursuant to N.J.A.C. 6A:26-3.7 and 3.12.

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

(d) All revenue sources identified in the referenda or resolution pursuant to N.J.A.C. 6A:26-3.7 or 3.12 shall be transferred to the capital projects fund upon voter, board of school estimate or capital project review board approval, and shall be accounted for separately with, and accorded the same accounting treatment as, the corresponding school bonds.

##### 6A:26-4.2 Use of capital projects fund to account for a capital project funded in part or in whole by school bonds, short term notes, or pre-EFCFA lease purchase agreements of greater than five years duration

(a) The cost of a capital project covered by bond proceeds includes costs associated with architects, lawyers and construction managers even if not specifically stated in the referendum question approved by the voters or in the resolution approved by the board of school estimate or capital project review board. A district board of education that budgeted and charged such costs to the general fund prior to the referendum has the option to reimburse these costs from the capital projects fund after approval of the referendum or resolution.

(b) Use of the capital projects fund to account for bond proceeds and short term notes is limited to the following:

1. Type I districts and Type II districts with boards of school estimate are limited to the amount fixed by the board of school estimate pursuant to N.J.A.C. 6A:26-3.7(e) for each capital project, or projects when jointly submitted, under N.J.S.A. 18A:22-19 and 30, and 18A:24-55.

2. Type II districts without a board of school estimate are limited to the amount approved by the voters for each capital project, or projects when jointly submitted, pursuant to N.J.S.A. 18A:22-39 and 18A:24-55.

3. State Operated Districts are limited to the amount approved by the capital project review board.

(c) Use by a district board of education of the capital projects fund to account for a lease purchase agreement (LPA) greater than five years is limited to the expenditures in the approved pre-EFCFA LPA agreement greater than five years.

(d) A district board of education cannot transfer capital project cost overruns to general fund current expense or capital outlay and cannot fund capital project cost overruns by general fund appropriations or surplus pursuant to N.J.S.A. 18A:22-8.2, unless such transfer is approved by the Commissioner to supplement proceeds from a school bond authorization or pre-EFCFA LPA agreement pursuant to N.J.S.A. 18A:22-8.2(c). The Commissioner shall approve that transfer only if it is in the best interests of both the students and the taxpayers after consideration of alternative corrective actions according to N.J.A.C. 6A:26-4.4(a)3.

(e) Interest earned on the investments in the capital projects fund cannot be used to supplement the school bond authorization, unless expressly authorized in the referendum or resolution pursuant to N.J.A.C. 6A:26-3.7, or expressly authorized in the pre-EFCFA LPA.

1. All transfers of interest shall be:

- i. Made by board resolution to either the debt service fund or the general fund at the discretion of the district board of education; and
- ii. Completed annually and at the end of the project.

**6A:26-4.3 Use of capital projects fund to account for a school facilities project not funded in part or in whole by school bonds or short term notes**

(a) Districts shall use the capital projects fund to account for an approved school facilities project where the district elects to receive a grant pursuant to N.J.S.A. 18A:7G-15 and to fund the entire local share through a means other than school bonds or short term notes.

(b) Local share budgeted in capital outlay and/or withdrawn from capital reserve for a school facilities project not funded by school bonds or short term notes shall be transferred to the capital projects fund upon execution of the grant agreement with the authority in accordance with N.J.A.C. 6A:26-3.8(a)3 and 9.1.

(c) A district board of education may utilize general fund surplus up to 20 percent above the awarded project cost by board resolution in response to change orders allowed pur-

suant to N.J.A.C. 6A:26-4.9 and in accordance with N.J.A.C. 6A:26-4.4(b).

**6A:26-4.4 Options where there are insufficient funds to complete a capital project**

(a) A district board of education has the following options for referenda authorized projects upon opening initial bids for the project, or at any other time, when it is determined that there are not sufficient funds to complete the referenda authorized project or projects. The board of education shall:

1. Reject all bids pursuant to N.J.S.A. 18A:18A-36 and re-advertise based on the same specifications, or modified specifications which do not materially impact the nature and scope of the project and which have been approved by the Division pursuant to N.J.A.C. 6A:26-5;
2. Seek approval of the board of school estimate or voters, as applicable, for additional funds to complete the project. Sources which may be utilized are:
  - i. The sale of additional bonds;
  - ii. The transfer of general fund surplus;
  - iii. Additional tax levy;
  - iv. Capital reserve; and/or
  - v. The unexpended proceeds of a capital project authorization according to procedures in N.J.A.C. 6A:26-4.6(b); or

3. Apply to the Commissioner for a transfer of general fund surplus to the capital projects fund to supplement the proceeds from a bond authorization or pre-EFCFA lease purchase agreement greater than five years if determined and approved by the Commissioner that such transfer is in the best interests of both the students and the taxpayers of the district after consideration of alternative corrective actions.

i. The district application shall include a narrative on the need for the transfer and analysis of alternative corrective actions, including steps to reduce the scope of the project and steps set forth in (a)1 and 2 above, a copy of the referenda question and detailed cost analysis of the capital project to support the need for the transfer request. The project cost analysis shall include at a minimum a comparison of the itemized budget as approved by the Division (including the determination of final eligible costs for a school facilities project), the itemized budget as approved by the voters (including pre-referenda and post-referenda costs), the itemized budget for the project upon bid award, and any change orders approved pursuant to this subchapter or change orders pending approval.

ii. The Commissioner's approval will be based upon:

(1) A recommendation from the county superintendent that no further alternative corrective actions can be made after the county superintendent's review, in consultation with the Division of Finance, of the district's application;

(2) A recommendation from the Division that the capital project is within the facilities efficiency standards and necessary for educational adequacy after the Division review of the district's application. If the Division determines the project scope is beyond the facilities efficiency standards and the excess costs are greater than the transfer request, the Division shall take into consideration in its recommendation whether the excess costs are outside the control of the district;

(3) District certification that the transfer request is not due to contractor malfeasance subject to legal recourse. If the transfer request is due to architect, engineer or contractor malfeasance, then the district shall certify its intent to pursue all legal options and if the transfer request is approved by the Commissioner, any subsequent awards on the legal action shall be recorded as revenue in the general fund; and

(4) Other considerations as appropriate.

iii. The Commissioner shall not approve a transfer request if the district board of education did not include an adequate level of contingency at the time of contract award in accordance with N.J.A.C. 6A:26-4.8(c).

iv. If a capital project contains excess costs or is an other capital project, no transfer of general fund surplus shall be approved by the Commissioner prior to a district board of education submission of the capital project for bids on at least two separate occasions.

(b) A district board of education has the following options for a school facilities project when the district elects to receive a grant pursuant N.J.S.A. 18A:76-15 and elects to fund the entire local share through a means other than school bonds if, upon opening initial bids for the project, or at any time thereafter, there are insufficient funds to complete the project. The board of education shall:

1. Seek approval of the board of school estimate or voters, as applicable, for additional funds to complete the project. Sources which may be considered are:

- i. The sale of bonds;
- ii. The transfer of general fund surplus;
- iii. A tax levy;
- iv. Capital reserve; and/or

v. The unexpended proceeds of a capital project authorization according to procedures under N.J.A.C. 6A:26-4.6(b);

2. Transfer by board resolution general fund surplus in an amount not to exceed 20 percent of the school facilities project award price in response to change orders allowed pursuant to N.J.A.C. 6A:26-4.9; or

3. Transfer from capital reserve pursuant to N.J.A.C. 6A:26-9.1.

#### 6A:26-4.5 Over-expending a capital project

(a) Under the New Jersey Code of Criminal Justice, Title 2C of the New Jersey Statutes, it is a crime for a public official or employee to knowingly disburse, order or vote for the disbursement of moneys or incur obligations in excess of appropriations or an amount limited by law. The Department will notify the Office of Inspector General and may notify the Director, Division of Criminal Justice if an over-expenditure/deficit is detected in a capital project.

(b) A district board of education over-expending the capital projects fund is also subject to a reduction in its State aid and other actions pursuant to N.J.A.C. 6A:23-2.11 and 6A:26-14.1, if applicable.

#### 6A:26-4.6 Unexpended bond proceeds

(a) A capital project is considered completed for the purposes of determining unexpended bond proceeds under this section when:

1. The project has received its certificate of completion from the contractor;
2. All retainage has been liquidated; and
3. A permanent certificate of occupancy has been received, if applicable.

(b) Any proceeds of school bonds issued by the district for a school facilities project prior to July 18, 2000, the effective date of EFCFA, and where the district received no funding pursuant to EFCFA except for funding received pursuant to N.J.A.C. 6A:26-13.1(b), or issued for an other capital project, which remain unspent upon completion of the capital project, shall be disposed of by the district in accordance with N.J.S.A. 18A:24-47 et seq.

1. Unexpended balances may remain in the capital projects fund for six years after the time of issuance or sale of bonds pursuant to N.J.S.A. 18A:24-48 and 51.

2. Within six years of issuance or sale, if a new purpose(s) for the unexpended balances is determined, the board of school estimate, capital project review board, or voters may approve the change in purpose by resolution or ballot question pursuant to N.J.S.A. 18A:24-48 through 52.

i. The resolution or ballot question for the new purpose shall receive Commissioner approval pursuant to N.J.S.A. 18A:24-49 through 52 if the bonds mature beyond the period prescribed for the new purpose(s) by N.J.S.A. 18A:24-5.

3. If no new purpose for the unexpended balances is determined within the six years from issuance or sale, the district board of education shall transfer the funds to either the general fund or debt service fund by board resolution.

i. In order to establish that there is no new purpose, the district's budgeted appropriations and actual expenditures for the year of the transfer may not reflect capital outlay spending.

4. After six years from issuance or sale, unexpended balances shall be transferred to either the general fund or the debt service fund by board resolution.

(c) Any proceeds of school bonds issued by the district for the purpose of funding a non-Authority school facilities project which remain unspent upon completion of the school facilities project shall be used by the district to reduce the outstanding principal amount at the earliest call date or to annually reduce the debt service principal payments.

1. If the unexpended proceeds are used to annually make debt service principal payments, the proceeds shall remain in the capital projects fund and be appropriated in each subsequent year's budget certified for taxes to reduce the debt service principal payment in full each year until the proceeds are exhausted.

2. Use of unexpended bond proceeds to make principal payments shall be used in the determination of state debt service aid pursuant to N.J.A.C. 6A:26-3.8, if applicable.

(d) Upon completion by the Authority of a school facilities project, any local share required to be returned to the district pursuant to N.J.A.C. 6A:26-3.7(h) shall be used by the district to reduce the outstanding principal amount of any school bonds issued by the district for said local share. The principal amount shall be reduced at the earliest call date or annually through the reduction of the principal debt service payments in accordance with (c) above. If school bonds were not issued for said local share or the principal amount has been fully repaid, the local share returned shall be recorded as revenue in the district's general fund.

**6A:26-4.7 Oversight of non-Authority constructed school facilities projects**

(a) Every district board of education shall be subject to the following for every approved school facilities project receiving funding under this chapter:

1. To provide the Commissioner assurance that the contracting process for design and construction contracts for school facilities projects conforms to all requirements of Title 18A of the New Jersey Statutes and all other applicable laws and rules, the district shall, in a separate certification for each contract awarded for a school facilities project pursuant to (a)3 below, certify that, for each

contract awarded for a school facilities project, the district has followed the provisions of law related to:

- i. Authorization to prepare plans and specifications;
- ii. Preparation and contents of bid specifications;
- iii. Approval of plans and specifications;
- iv. Advertising for bids;
- v. Review and evaluation of proposals; and
- vi. Award and execution of contracts.

2. The design and construction contracting process, contract administration and the payment of claims, and change orders for school facilities projects shall be subject to audit by the Commissioner.

3. Upon the award of each design or construction contract, the district shall submit a form, to be provided by the Commissioner, certified by the School Business Administrator, and approved by resolution of the district board of education, certifying that the procurement process conformed to all requirements of statute and rules, including, but not limited to, the matters covered in (a) above, and that all contracts procured for the school facilities project conformed to Title 18A of the New Jersey Statutes and all other applicable laws.

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

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

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

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

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

(3) Issues of debt, such as general, series and supplemental bond resolutions, trust indentures, trust agreement, preliminary official statement, all disclo-

sure materials, Official Notice of Sale or Purchase Contract, arbitrage certificate, tax regulatory agreement, IRS Form 8083, as appropriate, Disclosure Agreement, and TEFRA Notice, if applicable;

iii. All documents related to the bidding process, evaluation of bids, award and execution of contracts, the specifications, request for proposal ("RFP") or other invitations to bidders, the advertisements or public notices of the opportunity to bid, logs of the bids received and the bids opened, bid evaluation worksheets, notices of contract award, and the executed construction contract documents;

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

v. All payroll certifications filed with the district by all contractors and subcontractors; and

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

(b) The documents in (a) above shall be maintained in a readily accessible place for review and inspection by the Department, the Authority, the Department of Community Affairs and the Office of the Inspector General for the duration of the school facilities project and three years thereafter or, if litigation concerning any aspect of the school facilities project is instituted, until completion of all litigation. Destruction of these documents shall be accomplished consistent with the record retention schedule adopted pursuant to N.J.S.A. 47:3-15 et seq.

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

2. Change orders are defined in N.J.A.C. 6A:23-1.2, and are subject to the provisions of N.J.A.C. 6A:23-7 and 6A:26-4.9.

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

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

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

(c) Districts are encouraged to report to the Division of Wage and Hour Compliance, Department of Labor, on the failure to receive from contractors and subcontractors certified payroll records, required pursuant to the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. Districts receiving certified payroll records with suspected inaccuracies or receiving other indications of noncompliance with the New Jersey Prevailing Wage Act are also encouraged to report to the Division of Wage and Hour Compliance, Department of Labor, and, as well, to take other steps such as verifying the accuracy of these certified payroll records by comparing them against other payroll-related records and gathering site inspection information from construction managers on a spot check basis.

#### **6A:26-4.8 Bidding and awarding of contracts for non-Authority capital projects**

(a) Bids shall be advertised, received, and contracts awarded only after final approval of plans and specifications from the Department of Community Affairs, Division of Codes and Standards or the local enforcing agency if it performs the Uniform Construction Code review.

(b) In accordance with N.J.S.A. 18A:18A-36, districts shall award contracts within 60 days of receipt of bids, and may apply to the municipal construction enforcing official for the required building permits.

(c) At the time of contract award, districts shall encumber a contingency in an amount equal to no less than five percent of the total costs of construction of a capital project, against which change orders may be approved in accordance with N.J.A.C. 6A:26-4.9, but shall not encumber an amount that would result in the total contract award plus any contingency totaling more than the approved referenda amount if the capital project is funded wholly or in part by bond proceeds.

(d) Districts shall award one or more contracts for the entire approved scope of the capital project, unless there is prior Division approval in accordance with the following:

1. The bid documents include one or more bid alternates that the district may opt not to award, provided that there is no impact on the educational adequacy or the total costs of a capital project; or
2. The district demonstrates to the Division that extraordinary circumstances require an award of the entire approved project scope in separate phases, and the district has demonstrated that adequate funds are available to complete the entire approved project scope.

#### 6A:26-4.9 Submission of change orders for non-Authority projects

(a) Contract change orders for capital projects are governed by the provisions of N.J.A.C. 6A:23-7 and the following:

1. Change orders may be approved by district boards of education, in an amount up to and including 20 percent of the award amount, which includes the amount encumbered pursuant to N.J.A.C. 6A:26-4.8(c), but for no more than the approved referendum amount for a capital project funded in whole or in part by bond proceeds, when necessitated by one of the following:

- i. Emergencies consistent with N.J.S.A. 18A:18A-7;
- ii. Unforeseeable physical conditions; or
- iii. Minor modifications to project scope that achieve cost savings, improve service or resolve construction conditions.

2. All other change orders including, but not limited to, the following, shall be approved by the Division, which approval shall be granted only upon a determination by the Division that an extraordinary circumstance exists:

- i. Change orders that, in the aggregate, increase the amount of the original award of each individual contract, or of the entire project, by greater than 20 percent, but for no more than the approved referendum, including changes funded by project contingency in N.J.A.C. 6A:26-4.8(c);
- ii. Change orders that eliminate or affect the project scope that was the basis of the Division's determination of the final eligible costs of a school facilities project pursuant to N.J.A.C. 6A:26-3.6; or
- iii. Change orders that affect the number, size, configuration, location or use of educational spaces.

3. Before the district or Division may authorize a change order that increases the contract amount, the availability of funds shall be certified by the board secre-

tary, on a form prescribed by the Commissioner, that indicates:

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

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

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

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

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

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

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

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

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

### 6A:26-5.1 General provisions

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

1. New school facilities including pre-fabricated facilities;
2. Additions to existing school facilities;
3. Alterations to the total number, dimension in volume and/or area, configuration or location of educational spaces or the number of any one kind of educational space;
4. Change-of-use that requires alterations per (a)3 above, or that requires mechanical or electrical changes pursuant to N.J.A.C. 5:23 or this chapter.
5. Installation of temporary facilities; and
6. Any site or school facility change or alteration for the purpose of making the site and school barrier free and accessible to disabled persons pursuant to N.J.A.C. 5:23 and Section 504 of the Federal Rehabilitation Act of 1973, 29 U.S.C. § 794 and the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.

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

1. For an Authority school facilities project, districts shall apply for the review and approval for educational adequacy in conjunction with the application for approval of a school facilities project pursuant to N.J.A.C. 6A:26-3, and prior to the review and approval of capital projects for compliance with the Uniform Construction Code, N.J.A.C. 5:23, by the Division of Codes and Standards in the Department of Community Affairs, and prior to local share authorization. The educational adequacy review shall cover three and in certain circumstances (see N.J.A.C. 6A:26-5.4) four types of project documents: educational specifications, schematic plans and related documents, detailed plans and specifications, and final plans and specifications. The educational specifications and schematic plans and related documents shall be submitted by the district at the time of project application; the detailed plans and specifications, and final plans and specifications are forwarded by the Authority to the Division after project approval but prior to UCC approval.

2. For a non-Authority school facilities project, districts shall apply for the review and approval for education adequacy as in (b)1 above. The educational adequacy review shall cover three types of documents: educational specifications, schematic plans and related documents, and final plans and specifications. The educational specifications and schematic plans and related documents shall be submitted by the district at the time of project application; final plans and specifications shall be submitted by the district after project approval but prior to UCC approval and local share or total costs of the school facilities project for a debt service aid authorization.

3. For other capital project, districts shall apply for the review and approval for educational adequacy prior to the Division review for consistency of the other capital project with the district's approved LRFP. The educational adequacy review shall cover educational specifications, schematic plans and related documents, and final plans and specifications. The educational specifications and schematic plans and related documents shall be submitted by the district at the time the project is reviewed for consistency with the district's approved LRFP; final plans and specifications shall be submitted by the district after the consistency review but prior to UCC approval and local funding authorization.

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

### 6A:26-5.2 Educational specifications

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

1. Educational specifications shall be prepared in writing describing in detail the educational program activities and requirements for each space proposed in the capital project, and shall refer to the Core Curriculum Content Standards wherever appropriate;

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

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

4. Educational specifications shall contain a building space program that indicates the number and area in square feet of each instructional, specialized instructional, administrative and support space in each existing or proposed building included in the capital project.

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

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

1. Three sets of schematic plans showing the entire existing and proposed building drawn to a scale of not less than  $\frac{1}{16}$  inch per foot shall be submitted. The approved use of each space, and the proposed number of occupants, shall be clearly labeled;

2. Schematic plans shall be reviewed for conformance with the educational specifications and shall include layouts of the built-in and moveable furniture and equipment for examples of all occupied spaces drawn to a scale of not less than  $\frac{1}{8}$  inch per foot;

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

4. Paths of travel for disabled persons shall be clearly indicated;

5. Whenever site work is required, a completed plot plan shall be submitted and on it shall be shown the intended location of the school and a layout of the locations of all other structures, play and recreation areas, athletic fields, walkways, roadways, access roads, buffer and set back zones, and parking areas; and

6. Schematic plans shall be signed and sealed by a New Jersey registered architect or licensed engineer and signed by the president of the district board of education and chief school administrator.

(b) Other project documents to be submitted with the schematic plans shall include:

1. A project cost estimate on a form provided by the commissioner;

2. A project schedule;

3. A copy of the dated transmittal letter indicating project document submission to the county superintendent; and

4. A copy of the transmittal letter indicating the date of plan submission to the local planning board, whenever the building footprint, volume, pedestrian or vehicular access are altered by the project.

(c) The Director of the Office of Bilingual Education and Equity Issues must receive a completed OEEQ questionnaire, in accordance with Title 6 of the Civil Rights Act of 1964, (42 U.S.C. §§ 2000a et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and Title 2 of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.), from the district and must make a positive recommendation in writing to the Division before schematic plans can be approved for any project that affects the capacity of individual buildings or their sending areas in the district.

#### **6A:26-5.4 Detailed plans and specifications and final plans and specifications**

(a) In the case of an Authority school facilities project, upon completion of detailed plans and specifications, the Authority on behalf of the district shall apply for final approval of the educational adequacy of the project. Detailed plans and specifications shall be considered adequate for calculations of final eligible costs if the plans and specifications are 60 percent or more complete. Such application shall include:

1. Two sets of detailed plans, drawn to a scale of not less than  $\frac{1}{8}$  inch per foot, signed and sealed by a New Jersey registered architect or licensed engineer and signed by the president of the district board of education and chief school administrator, and specifications, to sufficiently demonstrate that the school facilities project conforms to schematic plans approved by the Division;

2. The fee calculated according to the fee schedule unless exempted pursuant to N.J.A.C. 6A:26-5.5; and

3. In the event there is a change affecting the number, configuration, size, location or use of educational spaces as set forth in the detailed plans and specifications submitted to the Department, the Authority shall submit such application to the Division with two sets of final plans and specifications, as set forth in (b)1 below and no additional fee will be imposed.

(b) In the case of a non-Authority school facilities project or another capital project, upon the completion of final plans and specifications, the district shall apply for final approval of the educational adequacy of the project. Such application shall include:

1. Two sets of detailed plans, drawn to a scale of not less than inch per foot, signed and sealed by a New Jersey registered architect or licensed engineer and signed by the president of the local district board of education and chief school administrator, and specifications, to sufficiently demonstrate that the capital project conforms to schematic plans approved by the Division;

2. A properly executed copy of a "Release Form for School Construction Plans" for a district which chooses to have a municipal code enforcing agency review its plans for conformance with the UCC. The district's chief school administrator and municipal code enforcing agency chief must sign this form. This form may be obtained from the Division;

3. Copies of letters of approval from all other State agencies having jurisdiction over the project; and

4. A check, payable to the "Treasurer, State of New Jersey," for the fee calculated according to the fee schedule pursuant to N.J.A.C. 6A:26-5.5.

Amended by R.2003 d.266, effective July 7, 2003.

See: 35 N.J.R. 1379(a), 35 N.J.R. 2865(b).

In (b)4, deleted "unless exempted" preceding the N.J.A.C. reference.

**6A:26-5.5 Fee schedule**

(a) The Division shall collect fees for its reviews of detailed/final plans and specifications for educational adequacy in the case of Authority school facilities projects and for its reviews of final plans and specifications for educational adequacy in non-authority school facilities projects and other capital projects according to the following schedule:

Construction Cost Estimate (CCE)	Educational Adequacy Project Review Fee
Up to \$1,000,000	0.5 percent of the CCE
\$1,000,001 to 10,000,000	\$5,000 plus 0.25 percent of the amount over \$1,000,000
Over \$10,000,000	\$27,500 plus 0.1 percent of the amount over \$10,000,000

(b) For purposes of the table in (a) above, the construction cost estimate shall be as set forth in the detailed plans and specifications, or final plans and specifications, as applicable.

(c) The Division shall calculate the final educational adequacy review fee for a school facilities project when the Division reviews and approves the school facilities project application pursuant to N.J.A.C. 6A:26-3.3. If the Division approves an award of the project scope in separate phases, pursuant to N.J.A.C. 6A:26-4.8(d), the entire final educational adequacy review fee shall be remitted to the Division at the time the Division reviews the first phase of the school facilities project requiring final approval of the educational adequacy of the project, pursuant to N.J.A.C. 6A:26-5.4.

Amended by R.2003 d.266, effective July 7, 2003.

See: 35 N.J.R. 1379(a), 35 N.J.R. 2865(b).

In (a), substituted "\$5,000" for "\$5,500" in the Educational Adequacy Project Review Fee for construction costs estimates of \$1,000,001 to 10,000,000; rewrote (c).

**SUBCHAPTER 6. PLANNING AND CONSTRUCTION STANDARDS FOR SCHOOL FACILITIES**

**6A:26-6.1 Application of the Uniform Construction Code**

(a) All school construction shall be done in accordance with the State Uniform Construction Code at N.J.A.C. 5:23, hereafter referred to as the UCC, as administered and enforced by the Department of Community Affairs, and with this subchapter.

(b) The UCC enhancements, enumerated at N.J.A.C. 5:23-3.11A(d), shall be required of all capital projects at public schools, and shall be administered and enforced by the Department of Community Affairs. Charter schools shall not be required to comply with the UCC enhancements except where the health and safety of the building occupants are affected.

(c) The educational facility planning standards, at N.J.A.C. 6A:26-5.2, shall be administered by the Department and cooperatively enforced by the Department and by the Department of Community Affairs. Charter schools shall not be required to comply with the educational facility planning standards except where the health and safety of the building occupants are affected.

**6A:26-6.2 Educational facility planning standards**

(a) The educational facility planning standards delineated in (b) through (h) below, in conjunction with the Uniform Construction Code, shall form the requirements for the design and construction of public schools.

(b) General design and construction requirements are as follows:

1. School facilities shall afford space for general instruction, specialized instruction, administration and student services, the adequacy of which shall be pursuant to the requirements of this section. In addition, school facilities shall afford accommodations for approved vocational and special education programs;

2. Instructional rooms with windows shall have no exterior obstructing wall within 20 feet of the major window wall;

3. Inner courts shall have a minimum width of 20 feet;

4. Concrete floors in all instructional areas, except shops, shall be covered with a resilient floor covering;

5. Power tools and machines in shops which generate dust shall be provided with dust collecting equipment. Such equipment shall be either single or multi-use vacuum packs or a central dust collection system. Installed systems shall comply with National Fire Protection Association (NFPA) Standard 664 "Standards for the Prevention of Fire and Explosion in Wood Processing and Woodworking Facilities" (1998), incorporated herein by reference, as amended and supplemented, and New Jersey Department of Environmental Protection rules at N.J.A.C. 7:27-8. Copies of the NFPA Standard 664 may

be obtained by contacting NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.

6. The ceiling height of an academic classroom or other instructional space containing more than 300 square feet in area shall average nine feet six inches, and no part of the ceiling or other obstruction shall be lower than eight feet. Instructional spaces of less than 300 square feet and areas of larger spaces devoted to clothing alcoves, storage or work space shall have a minimum ceiling height of eight feet;

7. Height of the ceiling or other obstruction in other areas shall provide a minimum clearance as listed below:

Gymnasium	22 feet
Auxiliary Gymnasium	14 feet
Weight Room	12 feet
Music Room (Vocal or Instrumental)	12 feet

The minimum height from overall highest riser to ceiling shall be eight feet.

Multipurpose Room	18 feet
Cafeteria	12 feet
Industrial Arts and Vocational Shop	12 feet
Library/Media Center	9½ feet

8. Public school corridors shall have a minimum ceiling height of eight feet;

9. A health unit shall be provided and shall include a nurse's area, a waiting area, an examination area, a rest area with privacy, drinking water and toilet facilities sized and arranged so that physically disabled persons requiring assistance will be able to receive such aid;

10. Instructional greenhouses shall meet the following standards in addition to the requirements of the UCC and the Fire Prevention Code (N.J.A.C. 5:23-3.17):

- i. All doors shall be a minimum of three feet wide;
- ii. Drinking fountains shall not be located inside greenhouses;
- iii. Greenhouses may be either attached to a school building or located no less than 20 feet from the school building; and
- iv. The storage of pesticides shall be in a locked metal cabinet and vented to the exterior;

11. Wherever chemicals are stored or used, an eye-wash fountain or similar device, capable of providing a 15-minute continuous water flow, shall be provided. Eye-wash devices shall also be provided per N.J.A.C. 6A:26-11.4; and

12. The minimum dimension of any instructional space or specialized instructional space shall be 10 feet.

(c) Exit requirements are as follows:

1. Minimum clear widths for egress corridors serving more than 100 students in pre-kindergarten and elementary schools (kindergarten through fifth grade) shall be:

- i. Seven feet, wall to wall without lockers or wardrobes;
- ii. Eight feet, wall to locker face with lockers or wardrobes on one side; and
- iii. Nine feet six inches, locker face to locker face with lockers or wardrobes on both sides.

2. Minimum clear widths at any point in middle and high schools, grades seven through 12, shall be:

- i. Seven feet six inches, wall to wall without lockers;
- ii. Eight feet six inches, wall to locker face with lockers or wardrobes on one side; and
- iii. Ten feet, locker face to locker face with lockers or wardrobes on both sides.

3. Minimum clear widths for secondary egress corridors serving 100 or fewer occupants shall be five feet.

4. Doors from all spaces used by students and school staff, excluding lavatories, storage rooms, janitors' closets, instructional spaces under 300 gross square feet, and locker rooms, shall swing into the corridor and shall have a safety vision panel of ¼ inch glazing which is not less than 100 square inches.

(d) The environment requirement is as follows:

1. Windowless classrooms and other occupied instructional spaces (excluding gymnasiums, auditoriums and cafeterias) which do not have operable windows equal to at least four percent of the floor space shall be air conditioned.

(e) Safety requirements are as follows:

1. Glazing in fire-rated assemblies shall be in accordance with the UCC. All other interior glazing shall be safety glazing;

2. A check valve shall be installed in the line supplying gas to each classroom, laboratory, shop or the other area where gas is used by students, except home economics rooms;

3. Science rooms, laboratories, shops and other instructional spaces, with the exception of home economic rooms, in which an open flame and/or the use of hazardous chemicals occurs shall be equipped with an emergency safety cold-water shower and a floor drain or a self-contained water receptacle or catch basin;

4. Materials provided at the base of playground equipment shall be of a soft composition such as sand or synthetic composition materials in order to prevent injuries;

5. When provided, a ceiling paddle fan shall be located so as to provide a minimum of eight feet clear above the floor and be enclosed with a metal guard; and

6. Playground equipment shall be in accordance with the playground safety rules per N.J.A.C. 5:23-11.

(f) Electrical power and communications requirements are as follows:

1. Push-type emergency cut-out switches shall be provided at appropriate locations within shops to de-energize the electrical supply to non-portable machinery and shall

have a clear unobstructed access of a minimum of 36 inches. These switches shall be provided on the basis of one for each 1,000 square feet or fraction thereof of floor area in the shop, but in no case less than two per shop. Reset of the interrupted service shall be by a key-operated switch located within the shop. The cut-off and reset circuits shall be designed and installed to negate the possibility of the control circuit being de-energized, thereby being inoperative;

2. All non-portable motorized equipment and machinery shall be provided with magnetic-type switches to prevent machines from automatically restarting upon restoration of power after an electrical failure or activation of the above emergency cut-off;

3. Instructional spaces shall be provided with sufficient electrical power, communication and data outlets to satisfy the district's program and equipment needs as defined in the district's approved technology plan, with not less than two duplex outlets remotely located per space; and

4. Large group areas such as assembly rooms, auditoriums and other large group instructional spaces shall be provided with electrical power, data, and communications outlets at appropriate locations and at the location of portable projectors and built-in speaker cables at stage and platform areas.

(g) Lighting requirements are as follows:

1. Installed artificial lighting intensity shall comply with the following minimum footcandles which shall be maintained on the task at any time:

Installed Lighting Intensity Locations	Minimum Acceptable Footcandles
Classrooms and instructional areas—study halls, lecture rooms, art rooms, offices, libraries, conference rooms, work rooms, shops, laboratories and secondary school cafeterias	50
Drafting, typing and sewing rooms	70
Reception rooms, gymnasiums, auditoriums, primary school cafeterias, all-purpose rooms and swimming pools	30
Locker rooms, washrooms, toilet rooms, corridors containing lockers, stairways	10
Corridors without lockers and storerooms	5
Classrooms for the partially sighted	70

2. As an alternative to compliance with the above requirements, instructional spaces shall comply with the American National Standards Institute standard number ANSI/IES RP3-00, Guide for Educational Facilities Lighting (2000), incorporated herein by reference, as amended and supplemented, which is available for review at the Division of Facilities and Transportation. This document may be purchased from the American National Standards Institute, Inc., 11 West 42nd Street, New York, New York 10036.

(h) Plumbing requirements are as follows:

1. The number of plumbing fixtures and ventilation requirements shall be in conformance with the provisions of this chapter and be calculated according to the UCC;

2. General student toilet rooms are those which are designed and labeled for student use, contain at least two of each required fixture and are directly accessible from a corridor or an open plan instructional space. Students housed within an instructional space which is in excess of 300 square feet shall not be required to travel through any other space except a corridor to reach a general pupil toilet room;

3. There shall be at least one general toilet room for each sex on each floor occupied by students, or all instructional rooms shall have individual toilet rooms. Where classrooms, shops or physical education rooms are provided with self-contained individual facilities (water closet, lavatory and drinking fountains), the pupil capacity of these rooms shall not be counted in computing the number of fixtures required in the general pupil toilet rooms;

4. Toilet facilities for pre-kindergarten and kindergarten classrooms shall be provided as follows:

i. An individual toilet room shall be provided in each classroom and shall:

(1) Be located and equipped in such a way as to ensure privacy for the students;

(2) Be accessible to physically disabled students and barrier free in design as per N.J.A.C. 5:23-7;

(3) Meet all other provisions of this chapter and N.J.A.C. 5:23 which pertain to toilet room design;

(4) For early intervention, pre-kindergarten and kindergarten classrooms, contain a juvenile size water closet suitable for children's use, equipped with an open front seat with a flood rim height no greater than 14 inches from the floor, and a lavatory (sink) with a flood rim height no greater than 26 inches from the floor; and

(5) For facilities for early intervention programs, provide a diaper/clothes changing area.

ii. In lieu of providing an individual toilet room in each classroom as required in (h)4i above, toilet rooms may be provided adjacent to or outside the classroom if the following criteria are satisfactorily addressed:

(1) No child or group of children shall be left unsupervised at any time when traveling to or from the facilities. Provisions shall be made for adult supervision in a manner that will not infringe upon instructional time;

(2) Toilet facilities shall be readily accessible and the toilet room and signage shall be visible to a child from the classroom door;

(3) Toilet facilities for pre-kindergarten students shall be designated for their exclusive use and shall be so identified; and

(4) Toilet facilities shall be provided for both boys and girls and shall meet the requirements of (h)4i(4) above.

iii. If a district chooses to provide toilet rooms adjacent to or outside the classroom in conformance with (h)4ii above, the chief school administrator shall certify to the county superintendent how the alternate method of compliance shall be addressed, on forms prescribed by the Commissioner. The completed form and a copy of a resolution by the local district board of education approving the alternate method of compliance shall be submitted to the county superintendent for approval. Annually, thereafter, the chief school administrator shall resubmit the form certifying how the alternate method of compliance shall be addressed. Any changes to the approved alternate method of compliance shall be submitted to the county superintendent for approval;

5. Entrance to toilet rooms and locker rooms shall be designed to prevent visibility into the room;

6. Water closets shall be separated by individual stall partitions including doors which are of a smooth impervious material to permit effective cleaning;

7. Floors of all toilet rooms, shower rooms and drying rooms shall be water-tight and impervious to moisture. Floors shall be provided with an integral cove base at least four inches high;

8. Flooring materials, except for use in showers, of ceramic tile, quarry tile, sheet vinyl and plastic coatings designed for this purpose shall be deemed to meet the requirements of this subchapter. Resilient tiles or exposed concrete are not acceptable in toilet rooms;

9. Where showers are provided, shower heads shall be at least 30 inches apart, one shower head for each 10 students, with a shower head height of six feet, and 12 square feet of floor area shall be provided per shower head;

10. Pre-kindergarten and kindergarten classrooms shall be equipped with a drinking water facility; and

11. Arts and crafts classrooms shall be equipped with a water source, sink and appropriate sink trap.

**6A:26-6.3 Private schools for disabled students and schools for disabled students operated by the New Jersey Department of Human Services**

(a) This section shall govern review of project documents for capital projects at private schools for disabled students

which are approved or seeking approval pursuant to N.J.A.C. 6A:14-7 and schools for disabled students operated by the Department of Human Services. Review and approval by the Division is required for the type of work set forth in N.J.A.C. 6A:26-5.1(a).

(b) Submission and review of plans and specifications shall be conducted as follows:

1. Educational specifications shall be prepared and submitted pursuant to N.J.A.C. 6A:26-5.2, except that they shall be signed by designated officials of the private schools for disabled students or the New Jersey Department of Human Services.

2. A New Jersey registered architect or licensed engineer, as required by N.J.A.C. 5:23-2.15, shall submit project documents for the temporary and permanent construction, alteration, and rehabilitation of facilities to the Division on behalf of either the private schools for disabled students or the New Jersey Department of Human Services for review and subsequent approval for compliance with this chapter.

3. For review and subsequent approval for compliance with the Uniform Construction Code (UCC), N.J.A.C. 5:23, plans and specifications shall be submitted to the local construction official of the municipality in which the facility will be constructed or to the New Jersey Department of Community Affairs.

4. The project documents shall be submitted to the Division and reviewed pursuant to N.J.A.C. 6A:26-5.

(c) Variances to the requirements of this subchapter shall be by written application to the Assistant Commissioner of the Division, provided that the physical need for the variance is satisfactorily demonstrated and that the spirit and intent of the standards are observed.

(d) Acquisition of land shall be according to N.J.A.C. 6A:26-7.

(e) Disposal of land shall be according to N.J.A.C. 6A:26-7.4.

(f) Reviews of project documents for facilities of private schools for disabled students and schools for disabled students operated by the New Jersey Department of Human Services shall be done by the Division to assure that the design adheres to:

1. School site sizes, N.J.A.C. 6A:26-6.1; and

2. Educational facility planning standards, N.J.A.C. 6A:26-6.2.

(g) Provisions for accommodation of students in substandard school facilities operated by private schools for the disabled or the New Jersey Department of Human Services shall be according to N.J.A.C. 6A:26-8.

## SUBCHAPTER 7. ACQUISITION, CLOSING, AND DISPOSAL OF LAND

### 6A:26-7.1 Approval of the acquisition of land

(a) A district may obtain voter approval pursuant to N.J.A.C. 6A:26-3 or 9 for funding the acquisition of land prior to Division approval of the purchase of land, but shall not take any action to acquire land prior to obtaining Division approval.

(b) A district, or the Authority on behalf of a district, shall submit the following information to the Division to obtain approval under (a) above:

1. A written request for approval from the district, which shall include a statement, signed by the board president and the chief school administrator, indicating the immediate and ultimate proposed uses of the site, in terms of building use, grade organization and potential maximum enrollment, and whether the land is, or will be, part of a school facilities project indicated in the district's LRFP;

2. A statement from a local or county water/sewerage agency certifying that:

i. The land can be adequately provided with the necessary water for the proposed maximum enrollment;

ii. The land can be adequately provided with the necessary and acceptable sewerage disposal system for the proposed maximum enrollment; and

iii. Water and sewer infrastructure is, or is not, in place to service the site;

3. A statement from New Jersey Department of Environmental Protection or a licensed architect, engineer or professional planner, indicating whether:

i. The land is subject to regulation under wetlands, pinelands, or the waterfront development acts, the Greenacres Act, or other statutes, regulations or Executive Orders administered by agencies of State or Federal government;

(1) If so subject, the steps necessary to obtain approval from such agencies, and adequate documentation to demonstrate to the Division that such approvals will be obtainable and not affect the adequacy of the site; and

ii. The land is in an area designated for growth under the New Jersey State Development and Redevelopment Plan;

4. A statement from a New Jersey registered architect or licensed engineer indicating that the land to be acquired is suitable for the proposed use;

5. A completed plot plan of the land to be acquired showing topographical and contour lines, all adjacent properties and access roads. The acreage and dimensions of the tract proposed for acquisition shall be included as per the application of the standards for minimum acceptable school site sizes in (c) below;

6. A map of the district showing the location of the land and the location of existing schools in the district;

7. A map showing the attendance area to be served by the school and the number of students who reside therein;

8. Data regarding the impact of the acquisition upon racial balance within the district's public schools;

9. If existing buildings are located on the land to be acquired, the intended use and/or disposition of these buildings. Any building to be acquired and used must comply with the requirements of the Uniform Construction Code for educational occupancy, and the requirements of N.J.A.C. 6A:26-5 which apply to the construction of a new building;

10. Recommendations of the local planning board of the municipality in which the site is situated and which has an approved master plan, as required by N.J.S.A. 40:55D-31, 18A:18A-49 and 18A:18A-16;

11. Prior approvals of other agencies, such as the New Jersey Departments of Agriculture and Environmental Protection and the Pinelands Commission, where such approval is reasonably obtainable prior to acquisition;

12. Documentation that available data on soil conditions have been examined by the architect or engineer;

13. Reports by the architect or engineer of actual soil test borings and percolation tests on any site located less than one mile from a landfill;

14. A full, detailed appraisal of the market value of the property prepared by a licensed professional; and

15. The recommendation of the county superintendent of schools based on the requirements specified in this subchapter.

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

(d) All school sites require sufficient acreage for the following:

1. The placement of the school facility;

2. Expansion of the building to its maximum potential enrollment;

3. The placement of all other structures such as greenhouses, storage buildings, school bus maintenance buildings or garages and any other structure, above or below ground, which is to be placed thereon;

4. Multi-purpose physical education and recreation field(s) required to support the achievement of the Core Curriculum Content Standards as defined by the educational specifications under N.J.A.C. 6A:26-5;

5. Disabled-accessible pedestrian walkways, roadways and parking areas on which people and vehicles access the building;

6. Public and service access roads onto the site including, where warranted, a one-way school bus road of 30 foot width and a two-way road of 36 foot width; a school bus drop-off area; and 18 foot wide posted fire lanes for fire apparatus; and

7. A 30 foot wide access around the entire building.

(e) Land owned by a district board of education which does not meet the standards of this section may be supplemented by adjacent municipally-owned land if such land is formally leased on a long-term basis to the district board of education for exclusive use during school hours.

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

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

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

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

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

(b) Off-site facilities which are to be procured for temporary, emergency use must comply with N.J.A.C. 6A:26-8, Substandard School Facilities.

#### **6A:26-7.4 Approval for the disposal of land**

(a) If an approved school site is to be altered or disposed of through sale, transfer or exchange of all or part of the total acreage, including facilities if applicable, a written request for approval of the disposal shall be made to the Division by the district.

1. A copy of the request shall be sent by the district to the county superintendent of schools who shall make recommendations to the Division, and the county superintendent will provide a copy of the recommendations to the local district board of education.

2. The request shall indicate whether the district intends to convey the site under an exception to the public auction requirements per N.J.S.A. 18A:20-9.

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

(c) The Division shall notify the district of its approval or disapproval with a copy to the county superintendent.

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

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

1. The proposed closing is consistent with the district's approved LRFP, demonstrating that sufficient school building capacity exists to house district students following such closing for the succeeding five years;

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

3. The re-assignment of students to other schools in the district does not produce, sustain nor contribute to unlawful segregation, separation or isolation of student populations on the basis of race or national origin.

(b) A letter of approval from the Division, based on the information in (a) above, is required before the closing of a school.

## **SUBCHAPTER 8. SUBSTANDARD SCHOOL FACILITIES**

### **6A:26-8.1 Accommodation of school students in substandard school facilities**

(a) Substandard facilities shall be defined as:

1. All on-site facilities which have never received:

i. Approval of the Department as having met the requirements of this chapter for permanent school facilities, the rules in effect at the time the facilities were constructed, or the requirements of N.J.A.C. 5:23; or

ii. Approval of the local municipal construction official and subcode officials as having met the State

Uniform Construction Code which was in effect at the time the facilities were constructed or altered;

2. All off-site facilities being provided by local district boards of education or approved private schools for the disabled for use by public school students;

3. All facilities not planned and constructed as school facilities which are rented or leased from private owners by local district boards of education or approved private schools for the disabled for use as school facilities by public school students; and

4. Temporary classroom units installed on existing school sites, whether or not they are part of a school facilities project.

(b) All substandard educational facilities shall be initially approved by the county superintendent of schools in which the local district board of education or approved private school for the disabled is situated. Such approval shall be given for a period of two years. No substandard educational facility shall be approved unless inspected by the Division to ensure that:

1. The facilities meet health, safety and educational adequacy standards for temporary, substandard facilities, as specified in this subchapter; and

2. A plan has been developed by the local district board of education or approved private school for the disabled and approved by the county superintendent of schools to upgrade the facilities to standard, fully-approved conditions.

(c) The Division and the county superintendent of schools, when considering educational adequacy, shall apply the minimum standards of square feet per space as contained in this chapter. In cases where a local district board of education or approved private school for the disabled seeks relief from the minimum square feet requirements, such relief shall be determined upon application to the county superintendent of schools. The county superintendent of schools will make recommendations to the Assistant Commissioner of the Division, who may grant relief if appropriate.

(d) County superintendents of schools will annually monitor the plans of local district boards of education or approved private schools for the disabled to upgrade facilities to fully approved status. Local district boards of education or approved private schools for the disabled shall provide funds in the next immediate annual budget to correct deficiencies about which they are notified by the county superintendent of schools on or before October 1 annually. Failure to budget for the correction of deficiencies and to implement the corrections by the next September 1 following the October 1 notice, shall result in the Division ordering that the facility be abandoned immediately.

(e) In making a determination upon any application for the use of emergency substandard facilities, the following factors shall be taken into account:

1. Accommodations in an existing public school:

i. Safety factors:

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

(2) Each instructional room housing more than 10 students and containing more than 300 square feet shall have a door opening directly into the corridor or an exit door opening directly to the exterior;

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

(4) Doors opening into the corridor, transoms and sidelights shall be glazed with one-quarter inch wire plate glass; replacement vision panels may be the same material as originally approved;

(5) Every enclosed space shall be protected by an approved automatic fire or smoke detector or a fire suppression device tied into the total public school fire alarm system;

(6) Each instructional space shall have an approved exitway;

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

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

ii. The average ceiling height shall be at least eight feet for instructional spaces.

iii. Heating and ventilation:

(1) The room shall be heated to a temperature as established by the district board of education; and

(2) Each instructional room shall have natural light with one or more operative window sashes, or the room shall have mechanical air supply and exhaust sufficient to provide not less than 10 cubic feet per minute (cfm) per person of tempered outside air and 15 cfm per person of recirculated air;

iv. Toilet facilities shall be available within a reasonable distance, not more than one floor away, and shall be equipped with an exterior operating window sash or mechanical exhaust ventilation. Toilet facilities shall be provided for students in pre-kindergarten and kindergarten programs as per N.J.A.C. 6:26-5.2(h)4;

- v. Potable water shall be available;
  - vi. At least 50 footcandles of uniformly distributed artificial illumination shall be provided in all instructional areas;
  - vii. Furniture and equipment which is in good condition and suitable for the age and size of the students and purposes of instruction shall be provided;
  - viii. Each instructional space shall provide at least 20 net square feet of open floor area per pupil with no dimension less than 10 feet; and
  - ix. Instruction:
    - (1) Chalkboard, or other appropriate writing surface, and a display board suitable for the instructional program shall be provided; and
    - (2) Sufficient electrical duplex outlets shall be provided to satisfy the program need.
2. Emergency provisions for accommodation of students in off-site, rented or leased buildings:
- i. Required documentation:
    - (1) A copy of the certificate of occupancy for the facility, indicating the current BOCA Use Group, issued by the local construction official shall be on file in the office of the county superintendent of schools, prior to occupancy; and
    - (2) A copy of the current annual inspection report from the local fire official and/or health official approving use of the facility shall be on file in the office of the county superintendent of schools prior to occupancy;
  - ii. Safety factors:
    - (1) Floors, walls and ceilings of spaces used for instruction shall be free from moisture, peeling paint, plaster and potentially hazardous materials;
    - (2) Provision shall be made for the storage of students' clothing in other than a corridor or exitway;
    - (3) Each instructional space containing more than 300 square feet shall have a door opening directly into the corridor or an exit door opening directly to the exterior;
    - (4) The hardware on doors of any space occupied by students shall permit egress from the room at all times. Key-operated locks, hasps or similar types of locking devices shall not be permitted;
    - (5) Concrete floors in all instructional areas, except shops, shall be covered with a resilient floor covering;
    - (6) An off-site, rented or leased building shall be provided with an automatic and manual fire detec-

tion system which is interconnected to every space in use installed prior to occupancy by students and staff;

(7) Adequate and approved units of exit and exitways as required by the Uniform Construction Code shall be provided. The minimum clear width for corridors shall be six feet. Directions for exiting the facility under emergency conditions shall be posted by the exit in every instructional room;

(8) The boiler room interior entrance shall be equipped with a self-closing "C" label fire door lettered "Fire Door Keep Closed";

iii. The average ceiling height shall be at least eight feet for instructional spaces.

iv. Heating and ventilation:

(1) The room shall be heated to a temperature as established by the local district board of education; and

(2) Each instructional room shall have natural light with one or more operative window sashes or the room shall have mechanical air supply and exhaust sufficient to provide not less than 10 cfm per person of outside air and 15 cfm per person of recirculated air. Air conditioning is required for a windowless space;

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

vi. Toilet facilities shall meet existing UCC requirements for the Use Group as determined by the construction official. Toilet facilities shall be available within a reasonable distance, not more than one floor away, and shall be equipped with an exterior operating window sash or mechanical exhaust ventilation. Toilet facilities shall be provided for students in pre-kindergarten and kindergarten programs as per N.J.A.C. 6A:26-6.2(h)4;

vii. At least one drinking fountain for each 50 students shall be provided. Drinking fountains shall be provided for students in pre-kindergarten and kindergarten programs as per N.J.A.C. 5:23-4.7;

viii. The outside recreational play area for students shall include, but not be limited to, sufficient space, equipment and safe surfaces for the building enrollment and program need and be protected from hazards or traffic conditions;

ix. Furniture and equipment which is in good condition and suitable for the age and size of the students and purposes of instruction shall be provided by the district;

x. Each small group instructional space shall provide at least 20 net square feet of open floor area per pupil with no dimension less than 10 feet; and

## xi. Instruction:

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

(2) Sufficient electrical duplex outlets shall be provided to satisfy the instructional program.

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

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

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

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

(3) Meet code requirements for educational facilities as specified in the UCC and in N.J.A.C. 6A:26-6.2;

(4) A pre-manufactured temporary classroom unit in excess of 20 feet in length shall have two means of clear and unobstructed egress which are remote from each other;

(5) Have sturdy steps and be provided with a handrail and be barrier free;

(6) Have heat which provides a temperature of 68 degrees Fahrenheit;

(7) Have a ceiling height as follows:

(A) Vans and other mobile units—seven feet minimum;

(B) Temporary classroom unit—seven feet six inches minimum.

(8) Have provisions for the storage of students' clothing;

(9) Have a chalkboard and display board appropriate to the instructional program;

(10) Have floor covering of either carpet which meets the requirements of the UCC or asbestos-free resilient flooring;

(11) Have interior ceiling and wall materials which are certified free of toxic materials;

(12) Be provided with an electric smoke detection unit which has an audible alarm for each 900 square feet or portion thereof or for each instructional space and which is tied in to the main building fire alarm system; and

(13) Be situated on an approved site.

ii. Nonconformance to requirements in (e)3i(1) through (13) above which is found during an evaluation of any pre-manufactured unit placed in service after June 4, 1986 or in a subsequent future inspection of a unit approved according to (e)3i(1) through (13) above shall be corrected within 30 days of such evaluation. Staff of the Division or county offices of education shall order a unit immediately abandoned if the district fails to correct code deficiencies.

iii. A pre-manufactured temporary classroom unit being utilized as an emergency, temporary replacement for a regular classroom facility may be approved for a maximum of two school years. As a pre-condition to the approval for the use of a temporary classroom unit, a district must have a plan approved by the county superintendent of schools for the provision of permanent facilities, which includes an implementation schedule.

iv. The Division may grant up to three annual extensions of its approval of the use of temporary classroom units if the district demonstrates satisfactory progress toward the provision of permanent facilities.

v. A pre-manufactured temporary classroom unit utilized for the delivery of basic skills services to non-public school students under the Federal Education Consolidation Improvement Act, P.L. 1977, c.1, 192 and 193, shall meet the requirements of this paragraph and shall be evaluated and approved annually by the county superintendent of schools.

vi. A self-propelled van or other pre-manufactured mobile unit used for instruction shall:

(1) Have mechanical ventilation and exhaust which provides air change per occupant per hour in accordance with Section 1603.1 of the BOCA National Mechanical Code;

(2) Have interior ceiling and wall materials that are certified non-toxic and non-combustible;

(3) Contain a minimum of 100 square feet;

(4) Have electric heat which provides a temperature 68 to 72 degrees Fahrenheit;

(5) Provide at least 50 footcandles of uniformly distributed artificial illumination;

(6) Have a minimum ceiling height of seven feet;

(7) Have two means of clear and unobstructed egress which are remote from each other;

(8) Be provided with door hardware which is lever-operated and fully operable from the interior and exterior at all times;

(9) Be provided with an electric smoke detection unit which has an audible alarm that can clearly be heard within the unit;

(10) Be furnished with an electric hook-up cable which is copper, a maximum of 28 feet in length and contain a 220 volt four-prong receptacle which is plugged into an approved twist-type outlet;

(11) Be furnished with a 2A-10BC fire extinguisher which is maintained in operating order at all times;

(12) Be furnished with electrical fixtures which meet the National Electrical Code, Section 551;

(13) Have electrical wire of a minimum size to meet the National Electrical Code;

(14) Have floor covering of either carpet which meets the requirements of the Uniform Construction Code (UCC) or asbestos-free resilient flooring;

(15) Be furnished with furniture and equipment which is stabilized while in transit;

(16) Pass an annual inspection by the New Jersey Division of Motor Vehicles;

(17) Be evaluated and approved annually by the county superintendent of schools; and

(18) Be furnished with wheel chocks to assure that the unit will not move in any direction when parked.

vii. Nonconformance to requirements in (e)3vi(1) through (18) above which is found during an evaluation of any van and/or other mobile unit placed in service after June 4, 1986 or of a subsequent future inspection of a van and/or other mobile unit approved according to this subsection shall be corrected within 30 days of such evaluation. Staff of the Division or the county superintendent shall order a van and/or other mobile unit immediately abandoned if the district fails to correct deficiencies.

viii. Pre-manufactured vans or mobile units in service prior to June 4, 1986 will be evaluated by the Division. If such evaluation indicates that a unit cannot meet the provisions of this paragraph, it shall be abandoned.

ix. A pre-manufactured van or mobile unit being utilized as a replacement for a regular classroom facility may be utilized for a maximum of two school years. As a pre-condition to the approval for the use of a van or other mobile unit, a district must have a plan, including an implementation schedule, approved by the county superintendent of schools for the provision of permanent facilities.

x. Such approval may be extended on a year by year basis if the district van or other mobile unit is used for the delivery of basic skills services to nonpublic school students under the Federal Education Consolidation Improvement Act, P.L. 1977-1, sections 192 and 193, as long as it meets the standards of this section.

## SUBCHAPTER 9. CAPITAL RESERVE ACCOUNTS

### 6A:26-9.1 Capital reserve accounts

(a) Pursuant to EFCFA, boards of education or boards of school estimate were required, through the adoption of a board resolution, to have established a capital reserve account by October 15, 2000 in order to maintain such an account. If not already on file, a true copy of the establishing resolution shall be filed with county superintendent of schools.

(b) The permitted and prohibited uses of the capital reserve account shall be as follows:

1. The funds in the capital reserve account shall be used to implement capital projects in a district's LRFP required pursuant to N.J.S.A. 18A:7G-4(a) and N.J.A.C. 6A:26-2.

2. The funds in the capital reserve account may not be used for current expenses pursuant to N.J.S.A. 18A:22-8.2.

(c) Appropriations and transfers to the capital reserve account shall be permitted as follows:

1. A district board of education or a board of school estimate, as appropriate, may appropriate funds in the district's annual budget to meet the needs of its LRFP not met by State support. The district's spending growth limitation as established pursuant to N.J.S.A. 18A:7F-5 shall be adjusted by the amount of funds appropriated in the annual budget year to the capital reserve account. Funds appropriated into the capital reserve account in the annual budget certified for taxes shall not become part of the prebudget year net budget for purposes of calculating the spending growth limitation of the subsequent year pursuant to N.J.S.A. 18A:7F-1 et seq.

2. A district, at its option, may satisfy the withdrawal approval requirements set forth in (e) below when funds are deposited into the capital reserve account in the annual budget pursuant to (b)1 above using the designated line item and supporting documentation.

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

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

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

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

(d) The amount of funds held in the capital reserve account shall:

1. Not exceed the amount needed to implement the capital projects in a district's LRFP not met by State support.

i. The amount under (d)1 above shall be adjusted annually in the district's Quality Assurance Annual Report (QAAR) pursuant to N.J.A.C. 6:8-2.1.

ii. If the amount in the capital reserve exceeds the amount under (d)1 above, the district shall withdraw the excess and reserve and designate it in the subsequent year's budget.

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

(e) A district may withdraw funds from the capital reserve account at any time in accordance with the following:

1. By board resolution to the line items in the capital outlay major account/fund to fund the local share less any excess costs of a school facilities project as determined in accordance with N.J.A.C. 6A:26-3;

2. By board resolution to the capital projects fund pursuant to N.J.A.C. 6A:26-4, after receiving voter, board of school estimate or capital project review board approval, as applicable, of the capital reserve use and specific amount in an approved referendum or resolution pursuant to N.J.A.C. 6A:26-3.7;

3. By board resolution after receiving voter, board of school estimate or capital project review board approval, as applicable, to the line items in the capital outlay major account/fund to fund excess costs of a school facilities project and to fund the local funding for other capital projects as determined in accordance with these regulations;

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

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

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

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

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

4. By board resolution and after receiving Commissioner approval in accordance with N.J.A.C. 6A:26-3.13, and voter, board of school estimate or capital project review board approval pursuant to (c)2 above and this subsection, to the line items in the capital outlay major account/fund for the purchase of land; or

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

(f) Notwithstanding (e) above, a district may apply at any time to the Commissioner for approval to withdraw funds from its capital reserve account. A district may make a withdrawal pursuant to this subsection only upon receipt of written approval of the Commissioner. To obtain Commissioner approval, a district shall establish to the satisfaction of the Commissioner that an emergent condition exists necessitating an immediate withdrawal of capital reserve account funds.

(g) The capital reserve account shall be administered and accounted for as follows:

1. The capital reserve account shall be established and held in accordance with Generally Accepted Accounting Principles and is subject to annual audit pursuant to N.J.S.A. 18A:23-1 et seq.

2. If the cost to complete an approved school facilities project not funded in whole or part by school bonds exceeds the local share less excess costs, those costs up to 10 percent above the local share less excess costs may be withdrawn from capital reserve in accordance with (e)1 above.

3. Funds withdrawn for the local share of a school facilities project not using school bonds or loan bonds for all or part of the local share which received a grant pursuant to N.J.S.A. 18A:7G-15 shall be transferred to the capital projects fund and accounted for separately with the corresponding grant. Any unexpended transferred capital reserve funds remaining after completion of such school facilities projects must be reserved and designated in the subsequent year's budget.

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

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

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

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

i. Dr:Capital Reserve Account; and

ii. Cr:Reserved Fund Balance—Capital Reserve Account.

(h) Funds in capital reserve accounts in existence prior to July 18, 2000 shall be subject to EFCFA and this subchapter, and shall be utilized for the original purpose for which the funds were deposited.

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

2. If the original purpose is within the scope of the district's approved LRFP, withdrawals shall be made pursuant to (e) above except that if voter, board of school estimate or capital project review board approval of ex-

cess costs or an other capital project was obtained when the funds were deposited into the capital reserve account, such approval shall satisfy the requirement for approval of excess costs or other capital projects in (e)2 above.

## SUBCHAPTER 10. LEASE PURCHASE AGREEMENTS

### 6A:26-10.1 Use of lease purchase agreements

(a) A district may acquire improvements or additions to school facilities through lease purchase agreements of five years or less provided that the lease purchase agreement provides for the funding in full to the district upon commencement of construction of the school facilities project. Districts shall not enter into lease purchase agreements of more than five years duration.

(b) Subject to (a) above, and provided that the capital project is not an authority project, a district may utilize a lease purchase agreement of five years or less to fund the local share or total costs of a school facilities project receiving State debt service aid or to provide the local funding for an other capital project as long as there are no contingencies pursuant to which such funding could be withheld on whole or in part.

(c) Lease purchase agreements in excess of five years duration entered into prior to July 18, 2000 may continue in effect through the term of the agreement. However, as of July 18, 2000, no lease purchase agreement entered into by a district for improvements or additions to school buildings or for equipment shall exceed five years duration.

(d) A district may acquire equipment through lease purchase agreements of five years or less. Lease purchase agreements for acquisition of equipment do not require Commissioner approval, but shall be filed with the county superintendent of schools and shall include:

1. The lease purchase agreement which shall contain the following provision:

“Payments shall be subject to the annual appropriation of funds sufficient to meet the required payments or shall contain an annual cancellation clause pursuant to N.J.S.A. 18A:20-4.2(f)”; and

2. A resolution of the district board of education approving the application and authorizing submission to the county superintendent of an application form prescribed by the Commissioner.

### 6A:26-10.2 Costs of lease purchase agreements of five years or less

(a) All payments by a district, as well as other costs arising from a lease purchase agreement of five years or

less, shall not be considered to constitute debt service and shall not be eligible for State debt service aid under EFCFA and/or this chapter.

(b) Payments of lease purchase agreements of five years or less shall be recorded as an expenditure of the General Fund of the district.

**6A:26-10.3 Approval of lease purchase agreements for improvements or additions to school facilities**

(a) Districts shall submit all lease purchase agreements of five years or less to fund the local share or a portion of the total costs of a school facilities project for improvements or additions to a school facility that has no excess costs to the Division for approval pursuant to this section. No lease purchase agreement of five years or less that will fund excess costs of a school facilities project for improvements or additions to a school facility or the local funding of an other capital project shall be submitted to the Division for approval. If the Division cannot approve a lease purchase agreement, the district shall frame a separate question to authorize the lease purchase agreement and obtain voter or board of school estimate approval to enter into the agreement. No lease purchase agreement of five years or less for a capital project shall be executed by a district unless it has received written approval of the Division, or the voters or board of school estimate, as appropriate.

(b) Districts shall file with the Division a copy of all lease purchase agreements of five years or less approved by voters or the board of school estimate.

(c) A district shall not enter into a lease purchase agreement until the Division has notified it of the final eligible costs of a school facilities project or, in the case of an other capital project, the consistency of the other capital project with the district's approved LRFP and other applicable standards, as set forth in N.J.A.C. 6A:26-3.12.

(d) The Division will approve a lease purchase agreement of five years or less for local share or total costs of a school facilities project receiving State debt service aid payments that does not include excess costs only upon a demonstration by the district that the payments for a lease purchase agreement of five years or less and any operating expenses related to the agreement can be included within the district's net budget spending growth limitations and will not result in the need for approval by the voters or board of school estimate, as appropriate, of additional spending proposals to maintain existing instructional programs or extracurricular activities.

(e) All requests for approval of lease purchase agreements of five years or less for capital projects that are required to be filed with, and approved by, the Division shall include the following:

1. A copy of the Department's approval letter for the school facilities project and calculation of final eligible costs;

2. The lease agreement in accordance with N.J.A.C. 6A:26-10.4;

3. If applicable, an intercept agreement among the district, the lessor and the State, executed by the district and the lessor, providing that, in the event the district should fail to make timely payment of amounts owing under the lease purchase agreement and the agent agreement, the State shall have the right to withhold that portion of State support owing to the district necessary to make timely payments under the lease purchase agreement and the agent agreement, and apply such withheld State support to pay the obligation of the district, subject to State appropriation available therefore;

4. The ground lease in accordance with N.J.A.C. 6A:26-10.5;

5. Evidence of clear title to the proposed building site(s) and any land stated in the ground lease;

6. A resolution of the district board of education approving the application and authorizing submission to the Division of an application form prescribed by the Commissioner;

7. A copy of the newspaper advertisement for the public hearing;

8. A copy of the newspaper advertisement for request for proposals;

9. A copy of detailed board minutes for the public hearing resolution and vote on the approval of the lease purchase concept, approval of the projected maximum funding level, assurance that annual lease payments can be included within its base budget's spending growth limitation, and authorization for the chief school administrator or board secretary to advertise for proposals for the selection of underwriter/lessor; and

10. Any additional information that a district deems relevant for the Division's review of the lease purchase agreement.

(f) Upon receipt of an application for approval of a lease purchase agreement of five years or less for a capital project, the Division will review the application and inform the district in writing whether the application is complete. If the application is determined incomplete, the Division will request additional information from the district.

(g) After reviewing and assessing a complete application, the Division shall notify the district in writing whether the lease purchase is approved and, if the lease purchase is not approved, the reason(s) for not approving the lease purchase.

(h) For lease purchase agreements of five years or less that must be submitted to the Division, a district board of education shall conduct a minimum of one public hearing prior to adoption of a resolution endorsing the lease purchase concept and approving the submission of an application to the Division. All provisions of the Open Public Meetings Act (N.J.S.A. 10:4-6 through 21) shall be followed for the public hearing. In addition, notice of the public hearing shall be published in at least one newspaper published in the district and if no newspaper is published therein, then in at least one newspaper circulating in said district not less than seven days prior to the date fixed for each public hearing. The notice shall fix a date, place and time for holding the public hearing and shall include a description of the proposed capital project, the estimated cost and the proposed method of financing the project.

1. The public hearing shall provide the taxpayers and other interested persons an opportunity to present questions or other commentary to the district board of education with respect to the proposed capital project, the estimated cost thereof and the proposed method of financing.

2. After the public hearing, a district board of education shall, by affirmative vote of at least two-thirds of the full membership of the board, adopt a resolution including the following provisions:

- i. Approval of the lease purchase concept;
- ii. Approval of the projected maximum funding level;

iii. An assurance that annual lease payments and any operating expenses related to the agreement can be included within the district's net budget spending growth limitations and will not result in the need for approval by the voters or board of school estimate, as appropriate, of additional spending proposals to maintain existing instructional programs or extracurricular activities; and

iv. Authorization for the chief school administrator and board secretary to advertise and solicit proposals for the selection of a lessor and underwriter in connection with a lease purchase agreement and to request the approval of the department of a lease purchase agreement not including excess costs of five years or less.

(i) A district board of education having entered into a lease purchase agreement of five years or less for a capital project shall not terminate, materially change or alter the approved lease purchase agreement and accompanying legal documents pertaining thereto, without first obtaining the written approval of the Division.

(j) Upon completion of the transaction, the district shall file with the Division an opinion from the district's legal counsel stating the following:

1. The transaction is in conformance with local, State and Federal law; and
2. The parties hereto are properly organized; are in good standing; have the requisite power and have been properly authorized to enter into this transaction.

(k) Upon completion of a lease purchase agreement of five years or less, a district board of education shall file the Official Statement (Prospectus) of the transaction with the Division. The Official Statement (Prospectus) is a document published by the issuer which generally discloses material information on a new issue of municipal securities including the purpose of the new issue, how the securities will be repaid, and the financial, economic and social characteristics of the issuing government.

#### **6A:26-10.4 Contents of lease purchase agreement of five years or less**

(a) Lease purchase agreements of five years or less shall contain the following provisions:

1. Payments shall be subject to the annual appropriation of funds sufficient to meet the required payments or shall contain an annual cancellation clause pursuant to N.J.S.A. 18A:20-4.2(f);
2. All construction contracts let by public districts or let by developers or owners of property used for school purposes shall be competitively bid pursuant N.J.S.A. 18A:20-4.2(f); and
3. The district board of education at its sole discretion may refinance the lease purchase agreement or purchase the leased premises, by defeasance or otherwise, at any time during the leased period.

#### **6A:26-10.5 Contents of ground lease**

(a) A ground lease shall contain the following provisions:

1. A legal description of the land;
2. Lease of the land and the term of the lease;
3. A warranty that the board has good and marketable title to the land;
4. A warranty that the land is properly zoned for school purposes including the proposed project;
5. A warranty that the leased land and current uses of the land have complied with all local, State and Federal environmental law;
6. Termination; and
7. Use of land.

#### **6A:26-10.6 Approval procedures to refinance a lease purchase agreement**

(a) A district board of education proposing to refinance a lease purchase agreement entered into at any time, includ-

ing lease purchase agreements in excess of five years, shall adopt a resolution requesting the approval of the Division for the transaction.

(b) A district board of education requesting approval to refinance a lease purchase agreement shall submit to the Division an Application for Refinancing on a form prescribed by the Commissioner. A district board of education shall also file with the Division the following documents:

1. A copy of the board resolution requesting approval of the refinancing and the board's vote;
2. An opinion of counsel stating that the refinancing is permitted under the original or modified lease purchase agreement and is in conformance with local, Federal and State statutes;
3. The list of persons and/or firms the district board of education contacted concerning the refinancing, the one selected and the specific reasons for the selection;
4. A copy of the amended rent payment schedule;
5. A schedule of sources and uses of the lease purchase agreement refinancing proceeds;
6. An analysis of the escrow account under the proposed refinancing;
7. A copy of the documents in final draft form with amendments and modifications, if necessary, to the lease purchase, ground lease, trustee or agent and assignment agreements, in order to effect the refinancing;
8. A copy of the updated insurance or other credit enhancement commitment, modified to cover refinancing, if applicable;
9. Proposed credit ratings on the issue, and credit rating agencies; and
10. A detailed analysis of the percentage of net present value cost savings to the district of at least three percent using the effective interest cost method as the discount rate based on an analysis of the total refunding issue to include the following for each payment:
  - i. Date;
  - ii. Prior debt service;
  - iii. New debt service;
  - iv. Savings (prior debt service minus new debt service);
  - v. Present value factor;
  - vi. Present value savings (savings times present value factor);
  - vii. Cumulative present value savings; and
  - viii. Totals of items in (b)10ii through vii above.

(c) After the receipt of the application for refinancing form prescribed by the Commissioner, and related documents, the Division shall endorse its consent upon the application, if the Division shall be satisfied that the refinancing is in the best interest of the district.

#### 6A:26-10.7 Approval procedures for a defeasance of lease purchase agreements

(a) A district board of education proposing to seek voter or board of school estimate approval for the defeasance of a lease purchase agreement entered into at any time, including lease purchase agreements in excess of five years, through the issuance of general obligation bonds, shall adopt a resolution requesting the approval of the Division for said transaction.

(b) A district board of education requesting approval for the defeasance of a lease purchase entered into at any time, including lease purchase agreements in excess of five years, shall submit to the Commissioner an application for defeasance on a form prescribed by the Commissioner and the following documents:

1. A copy of the board resolution requesting the Division's approval of the defeasance of the lease purchase agreement through the issuance of general obligation bonds and the board's vote;
2. An opinion of counsel stating that the prepayment of the lease purchase agreement is in conformance with local, State and Federal statutes;
3. A copy of the documents in final draft form with amendments and modification, if necessary, to the lease purchase, ground lease, trustee or agent and assignment agreements, in order to effect the defeasance;
4. A schedule of sources and uses of bond issue proceeds; and
5. A detailed analysis of the percentage of net present value cost savings to the district using the effective interest cost method as the discount rate based on an analysis of the total new bond issue to include the following for each payment:
  - i. Date;
  - ii. Prior debt service;
  - iii. New debt service;
  - iv. Savings (prior debt service minus new debt service);
  - v. Present value factor;
  - vi. Present value savings (savings times present value factor);
  - vii. Cumulative present value savings; and
  - viii. Totals of items in (b)5ii through vii above.

(c) The application shall support a net present value cost savings and shall be reviewed strictly on the merits of the cost savings without consideration of any debt service aid to which the district board of education may be entitled.

(d) After the receipt of the application for defeasance form and related documents, the Division will endorse its consent upon the application, if the Division determines that the defeasance of the lease purchase agreement is in the best interest of the district. Such approval is contingent upon board of school estimate approval or voter adoption of the specific ballot question as applicable.

**6A:26-10.8 Lease purchase agreements entered into prior to July 18, 2000**

(a) Prior to the effective date of EFCFA, July 18, 2000, a district was permitted to acquire by lease purchase agreement a site and school building and receive approval of the uses set forth in the definition of a lease purchase payment in N.J.A.C. 6A:26-1.2. A lease purchase agreement in excess of five years duration was permitted subject to the approval of the Commissioner and a determination by the Local Finance Board in the New Jersey Department of Community Affairs that the cost and financial terms and conditions of the agreement were reasonable.

(b) Approved lease purchase agreements in excess of five years duration shall be accorded the same accounting treatment as school bonds. The payments by a district on such lease purchase agreements shall be considered debt service and may be eligible for State debt service aid under EFCFA.

(c) The provisions of N.J.A.C. 6A:26-10.6 and 10.7 shall apply to lease purchase agreements entered into prior to July 18, 2000.

(d) A district board of education having entered into a lease purchase agreement prior to July 18, 2000 for a capital project shall not terminate, change or alter the approved lease purchase agreement and accompanying legal documents pertaining thereto, without first obtaining the written consent of the Division.

(e) Upon completion of a lease purchase agreement entered into prior to July 18, 2000, a district board of education shall file the Official Statement (Prospectus) of the transaction with the Division. The Official Statement is a document published by the issuer which generally discloses material information on a new issue of municipal securities including the purpose of the new issue, how the securities will be repaid, and the financial, economic and social characteristics of the issuing government.

(f) Any district that entered into a lease purchase agreement prior to July 18, 2000, and that applies for a State support under EFCFA for any school facilities project relating to a site or school building subject to the lessor's lien under the lease purchase agreement, shall be required to enter into an intercept agreement with the State and the

lessor which provides that, in the event the district should fail to make timely payment of amounts owing under the lease purchase agreement and the agent agreement, the State shall have the right to withhold that portion of State support owing to the district necessary to make timely payments under the lease purchase agreement and the agent agreement, and apply such withheld State support to pay the obligation of the district, subject to State appropriation available therefore. The receipt by the Division of an intercept agreement executed by the district and lessor, and acceptable to the Division, shall constitute a prior condition for the district to receive State support under EFCFA for any school facilities project relating to a site or school facility subject to the lessor's lien under the lease purchase agreement.

**SUBCHAPTER 11. COUNTY VOCATIONAL DISTRICT FACILITIES REHABILITATION FUND**

**6A:26-11.1 County vocational district facilities rehabilitation fund**

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

Amended by R.2001 d.367, effective October 1, 2001.  
See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

Deleted designation and deleted "school" following "vocational".

**6A:26-11.2 Application for funds**

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

1. A description of the school facilities project to be undertaken with the funds;
2. A schematic drawing of the project or, at the option of the district, preliminary plans and specifications for the project to be funded;
3. A delineation and description of each of the functional components of the project to be funded;
4. The number of students and previously unhoused students to be housed in the project;
5. The approved area for unhoused students;

6. The estimated cost to complete the project as determined by the district on a form prescribed by the Commissioner; and

7. Any additional information the Commissioner deems relevant for the Commissioner's review of the project.

(b) The Division shall review an application for funds and, if the project conforms with the requirements of EFCFA and these regulations for approval of school facilities projects, notify the county vocational district of the amount of any grant within 90 days of receiving a grant application.

(c) Any county vocational district which receives grant funding pursuant to N.J.S.A. 18A:7G-32 and N.J.A.C. 6A:26-11.1 shall not be eligible to receive State support pursuant to any other provision of EFCFA for a period of five years from the district's receipt of the grant, except that the district may receive debt service aid pursuant to N.J.S.A. 18A:7G-10; and any county vocational district which receives aid under any provision of EFCFA other than N.J.S.A. 18A:7G-10, shall not receive a grant pursuant to this subsection for five years after approval of a project which is otherwise funded under EFCFA.

Amended by R.2001 d.367, effective October 1, 2001.  
See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

In (a), deleted "school" following "vocational" in the introductory paragraph; in (b), deleted "school" following "vocational" in the first sentence and deleted the second sentence; rewrote (c).

## SUBCHAPTER 12. OPERATION AND MAINTENANCE OF FACILITIES

### 6A:26-12.1 Facilities maintenance requirements

(a) All facilities and structures and parts thereof, both in existence as of July 18, 2000 and those constructed thereafter pursuant to EFCFA, shall be maintained in a safe and healthy and energy efficient condition. All service equipment, means of egress, devices and safeguards which are required by the UCC in a building or structure, when erected, altered, or repaired, shall be maintained in good working order.

(b) The district board of education shall develop and implement a five-year comprehensive maintenance plan. The plan shall incorporate the requirements of N.J.A.C. 6A:26-3.9(i) or 3.10(c), as applicable, and be submitted in accordance with the regulations to be adopted by the Commissioner pursuant to N.J.S.A. 18A:7G-9(b)(3). The comprehensive maintenance plan shall be both corrective and preventative. It shall include interior and exterior conditions of each building, and shall address each of the major systems in each facility in the district, including architectural, structural, mechanical, plumbing and electrical systems. The comprehensive maintenance plan shall conform to the requirements of the Commissioner's rules to be adopted pursuant to N.J.S.A. 18A:7G-9(b)(3).

(c) For each facility, the plan shall itemize anticipated annual expenditures for routine maintenance, required maintenance, and capital maintenance.

1. Capital maintenance expenditures shall be consistent with the district's approved Long Range Facilities Plan.

2. Districts shall budget a minimum of 0.2 percent of the replacement cost of each facility per year.

(d) The plan shall itemize costs for the remediation of all approved substandard facilities present in the district, and these costs shall be budgeted as required by law.

New Rule, R.2001 d.367, effective October 1, 2001.  
See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

### 6A:26-12.2 Policies and procedures for school facility operation

(a) District boards of education shall adopt written policies and procedures regarding the following:

1. Safe and sanitary operation and maintenance of school facilities and grounds according to the provisions established in this chapter and the regulations to be adopted by the Commissioner pursuant to N.J.S.A. 18A:7G-9(b)(3);

2. Supervision of pupil safety in school facilities in the school district which shall include:

i. Safe storage and use of potentially hazardous materials on school property;

ii. Compliance with community right-to-know requirements;

iii. Prevention of accidents, panic, and fire; and

iv. Provision and maintenance of suitable and safe equipment;

3. Organization of school safety patrols pursuant to N.J.S.A. 18A:42-1, if the decision is made to organize safety patrols; and

4. Prohibition of smoking in public school buildings pursuant to P.L. 1989, c.96.

Amended by R.2001 d.367, effective October 1, 2001.  
See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).  
Rewrote the section.

### 6A:26-12.3 Health facilities, equipment and supplies

District boards of education shall provide the necessary facilities, equipment and supplies for the performance of the duties required, under State law and rule, by the health services personnel.

**6A:26-12.4 Safe drinking water**

(a) District boards of education shall assure the availability of potable drinking water through sanitary means in school facilities or upon school grounds in accordance with the Safe Drinking Water Act, N.J.S.A. 58:11-1 et seq. the rules promulgated pursuant thereto, N.J.A.C. 7:10 and N.J.A.C. 6A:26-6, Planning and Construction Standards for School Facilities.

(b) Testing of school drinking water quality shall be in accordance with the Safe Drinking Water Act, N.J.S.A. 58:11-1 et seq. the rules promulgated pursuant thereto, N.J.A.C. 7:10 and N.J.A.C. 6A:26-6, Planning and Construction Standards for School Facilities.

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

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

In (a) and (b), inserted internal chapter references.

**6A:26-12.5 Eye protection in schools**

(a) Each district board of education shall require each student, staff member and visitor in its schools, including those present for evening adult school programs, to wear appropriate eye protective devices while participating in any educational activities and programs as defined in N.J.A.C. 6:4-1.2 in which caustic or explosive chemicals or materials, hot liquids or solids, molten materials, welding operations of any type, repairing or servicing of vehicles, heat treatment or tempering of metals, the shaping of solid materials and laser device operation and experimentation or any similar process or activity is engaged in, exposure to which might have a tendency to cause damage to the eyes.

(b) The term "appropriate eye protective device" shall include plain or prescription lenses provided the lenses and other portions of the device meet or exceed the prescribed specifications for the device. Specifications for appropriate eye protection for various activities shall meet or exceed standards described in (b)1 and 2 below. The standards, with all subsequent amendments and supplements, are hereby adopted as rules and incorporated herein by reference.

1. American National Standard Practice for Occupational and Educational Eye and Face Protection, ANSI Z87.1-1989.

2. American National Standard Practice for the Safe Use of Lasers, ANSI Z136.1-1986 and eye protective procedures recommended by the manufacturer of the laser device.

(c) The documents in (b)1 and 2 above are available for review at the Division of Facilities and Transportation, 329 West State Street, Trenton, New Jersey. These documents may be purchased from the American National Standards Institute, Inc., 11 West 42nd Street, New York, New York 10036.

(d) Emergency eye wash fountains or similar devices, capable of a minimum 15 minutes continuous flow of eye

wash solution shall be provided in classrooms, shops, laboratories or other area where pupils or instructors are exposed to caustic materials that can cause damage to the eyes.

(e) The following types of eye protective devices shall be used to fit the designated activities or processes:

1. Caustic or explosive—Goggles, flexible fitting, hooded ventilation; add plastic window face shield for severe exposure;

2. Dust producing operations—Goggles, flexible fitting, hooded ventilation;

3. Electric arc welding—Welding helmet in combination with spectacles with eye cup or semi or flat-fold side shields;

4. Oxyacetylene welding—Welding goggles, eye cup type with tinted lenses; welding goggle, coverspec type with tinted lenses or tinted plate lenses;

5. Hot liquids and gases—Goggles, flexible fitting, hooded ventilation; add plastic window face shield for severe exposure;

6. Hot solids—Clear or tinted goggles or spectacles with side shields;

7. Molten materials—Clear or tinted goggles and plastic or mesh window face shield;

8. Heat treatment or tempering—Clear or tinted goggles or clear or tinted spectacles with side shields;

9. Glare operations—Tinted goggles; tinted spectacles with side shields or welding goggles, eye cup or coverspec type with tinted lenses or tinted plate lenses;

10. Shaping solid materials—Clear goggles, flexible or rigid body; clear spectacles with side shields; add plastic window face shield for severe exposure;

11. Laser device operation or experimentation—Appropriate for specific hazard;

12. Repair or servicing of vehicles—Clear goggles, flexible or rigid body; clear spectacles with side shields;

13. Other potentially eye hazardous processes or activities—Appropriate for specific hazard.

(f) Each district board of education shall establish and implement a specific eye protective policy and program to assure that:

1. No staff member, student or visitor shall be subjected to any hazardous environmental condition without appropriate eye protection;

2. The detection of eye hazardous conditions shall be continuous;

3. Eye protection devices shall be inspected regularly and adequately maintained;

4. Shared eye protective devices shall be disinfected between uses by a method prescribed by the local school medical inspector;

5. All eye protective devices shall meet or exceed the appropriate specifications for the various types of devices and suppliers of eye protective devices shall certify, in writing, that the devices meet or exceed said specifications;

6. Specific policy and procedures shall be established to deal with individuals who refuse to abide by established eye safety practices and procedures;

7. The use of contact lenses shall be restricted in learning environments which entail exposure to chemical fumes, vapors or splashes, intense heat, molten metals, or highly particulate atmospheres. Contact lenses, when permitted, shall only be worn in conjunction with appropriate eye protective devices and the lens wearer shall be identified for appropriate emergency care in eye hazardous learning environments;

8. All spectacle type eye protective devices shall have side shields of the eye cup, semi or flat-fold type; and

9. Pupils, staff members or visitors wearing personal corrective eyewear shall be required to wear cover goggles or similar devices unless it can be certified, by competent authority, that the personal eyewear meets or exceeds standards identified in (b) above.

(g) Each district shall provide annual training and appropriate supplies and equipment to all school personnel responsible for implementing the eye safety policies and program. The training shall cover all aspects of eye protection in schools as described in (a) through (f) above.

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

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

Rewrote (c); in (e), deleted heading "Potential Eye Hazard-Eye protective Device(s)"; and in (a) and (f)1, substituted "student" for "pupil".

## SUBCHAPTER 13. APPLICATIONS FOR RETROACTIVE FUNDING OF PROJECTS

### 6A:26-13.1 General provisions

(a) Any district may apply, on a form provided by the Commissioner, for funding of school facilities projects initiated prior to July 18, 2000. Districts shall cooperate with all requests for additional filings and information necessary to render applications for funding pursuant to this subchapter complete. New applications for retroactive funding shall have been filed no later than May 1, 2001 and must have been complete by June 30, 2001 in order to receive funding pursuant to this subchapter. Preliminary eligible costs for purposes of computing debt service aid under N.J.S.A. 18A:7G-9 shall equal preliminary eligible costs as defined under N.J.A.C. 6A:26-3.4, as may be increased by the Commissioner pursuant to an appeal approval under N.J.A.C. 6A:26-3.6.

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

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

1. Commissioner approval for the school facilities project was obtained, including the date of the approval;
2. The district has not issued debt, other than short-term notes, for any portion of the school facilities project;
3. The approval of the Commissioner is still valid. The Commissioner's approval remains valid unless:
  - i. Changes have been made to the educational specifications or schematic plans;
  - ii. One year has passed from the date of educational specification approval if no further activity is recorded on the school facilities project;
  - iii. One year has passed from the date of schematic plan approval if no further activity is recorded on the school facilities project;
  - iv. One year has passed from the date of approval of preliminary plans if no further activity is recorded on the school facilities project;
  - v. Six months has passed from the date of approval of final plans for the school facilities project; or
  - vi. Any subcode in the UCC governing the plan is amended; and

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

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

1. The calculation of debt service payable shall be made pursuant to N.J.A.C. 6A:26-3.8;

2. No State debt service aid under N.J.S.A. 18A:7G-9 shall be provided for debt service payments made by a district prior to a determination of final eligible costs and calculation of the amount of State debt service aid payable to the district; and

3. Grant amounts shall be determined pursuant to N.J.S.A. 18A:7G-15 and these regulations, utilizing final eligible costs for the school facilities project as determined in this subchapter.

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

Amended by R.2001 d.367, effective October 1, 2001.  
See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

Rewrote (a) and (b); in (c), inserted "for the school facilities project prior to July 18, 2000" following "issued debt" and substituted "subchapter" for "subsection" in the introductory paragraph; in (d)1, amended the N.J.A.C. reference.

#### SUBCHAPTER 14. WITHHOLDING OF STATE SUPPORT FOR NON-COMPLIANCE

##### 6A:26-14.1 Withholding of State support for non-compliance

(a) Pursuant to N.J.S.A. 18A:55-2, the Commissioner shall direct the State Treasurer to withhold funds payable by the State from any district that fails to obey the law or the rules or directions of the State Board or the Commissioner. "Funds payable by the State" include State support under EFCFA. A failure to obey the rules includes non-compliance with this chapter. The non-compliance may either:

1. Constitute an event of default under the grant agreement between the Authority and the district for the district receiving State support under N.J.S.A. 18A:7G-15 and subject the district to reimbursement of State support under EFCFA and, if the district does not either reimburse such State support if required to do so or cure the

default, to a withholding of State support under EFCFA; or

2. In the case of a district receiving debt service aid under N.J.S.A. 18A:7G-9 or 10, subject the district to a withholding of State support under EFCFA.

(b) Pursuant to the supervisory authority vested in the Commissioner under N.J.S.A. 18A:4-23, the Commissioner shall enforce these rules by any means permitted by law, including, but not limited to, issuing an order to the district to show cause under N.J.A.C. 6A:3-3.1 why the reimbursement or withholding of State support should not be imposed.

(c) A district may appeal a final determination by the Commissioner of non-compliance with this chapter pursuant to N.J.A.C. 6A:26-16.1.

#### SUBCHAPTER 15. STATE SCHOOL FACILITIES DOCUMENTS

##### 6A:26-15.1 Right-to-know requests

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

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

Amended by R.2001 d.367, effective October 1, 2001.  
See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

#### SUBCHAPTER 16. CERTIFIED EDUCATIONAL FACILITIES MANAGER

##### 6A:26-16.1 Certified educational facilities manager

(a) Effective September 1, 2002, no person shall be employed by a district board of education to supervise build-

ings and grounds unless, pursuant to N.J.S.A. 18A:17-49 et seq., the candidate meets one of the following criteria:

1. Has completed a minimum of two years experience in the field of buildings and grounds supervision and has graduated from the New Jersey Educational Facility Management Program at Rutgers, the State University, as a certified educational facilities manager, or has graduated from an equivalent program offered at either a regionally accredited institution of higher education or an approved post-secondary institution located within or outside the State;

2. Is a code enforcement official licensed by the Department of Community Affairs and was serving as a supervisor of buildings and grounds on January 10, 2000; or

3. Has served as a supervisor of buildings and grounds in a district continuously for five years prior to September 1, 2002.

(b) Any applicant for certification as an educational facilities manager shall submit documentation to the Division demonstrating compliance with one of the above criteria in (a) above. After verifying compliance with one of the criteria in (a) above, the Division will issue an authorization to serve as an educational facilities manager to the applicant and add the applicant to a master list of certified educational facilities managers to be maintained by the Division.

(c) When a vacancy occurs in a position in which the duties of a supervisor of buildings and grounds are performed, a board may select, for a period not to exceed two years, and commencing on the date of the vacancy, a person who is not a certified educational facilities manager to perform on an interim basis the duties of a supervisor of buildings and grounds. At the expiration of the two year period, the board shall employ a person certified by the Division as an educational facilities manager to supervise its buildings and grounds.

## SUBCHAPTER 17. APPEALS

### 6A:26-17.1 Appeals of Commissioner's determinations

(a) All appeals of final determinations made by the Commissioner pursuant to EFCFA and this chapter shall be to the New Jersey State Board of Education pursuant to N.J.A.C. 6A:4.

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

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

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

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

Rewrote (a).

Petition for Rulemaking.

See: 34 N.J.R. 3868(a), 34 N.J.R. 4474(a).