

CHAPTER 19A
IMPLEMENTATION OF COURT DECISION
IN ABBOTT V. BURKE

Authority

P.L. 1998, c.45.

Source and Effective Date

R.1998 d.418, effective July 20, 1998.
 See: 30 N.J.R. 3019(a).

Executive Order No. 66(1978) Expiration Date

Chapter 19A, Implementation of Court Decision in *Abbott v. Burke*, expires on June 30, 1999.

Chapter Historical Note

Chapter 19A, Implementation of Court Decision in *Abbott v. Burke*, was adopted as R.1997 d.377, effective July 23, 1997. See: 29 N.J.R. 3721(b). Pursuant to Executive Order No. 66(1978), Chapter 19A expired on June 30, 1998.

Chapter 19A, Implementation of Court Decision in *Abbott v. Burke*, was adopted as new rules by R.1998 d.418, effective July 20, 1998 (to expire June 30, 1999). See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

6:19A-1.1 Purpose and applicability of rules

These rules are adopted pursuant to P.L. 1998, c.45, in order to implement the remedial measures prescribed in the decision of the New Jersey Supreme Court in *Abbott v. Burke*, decided May 21, 1998, thus ensuring that public school children from the poorest urban districts receive the educational entitlements guaranteed them by the Constitution. Consistent with the decision of the Court, the rules apply to "Abbott districts" as defined in section 3 of the Comprehensive Educational Improvement and Financing Act of 1996 (CEIFA), N.J.S.A. 18A:7F-1 et seq., and are adopted to ensure the provision of a thorough and efficient system of education (T&E), as defined in section 4 of that Act, to the students attending public school in those districts. The rules apply to Abbott districts in addition to the requirements of CEIFA and rules otherwise promulgated to implement that Act; except that where differences in rules occur, the rules herein shall take precedence.

6:19A-1.2 Definitions

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

"Abbott district," as defined by N.J.S.A. 18A:7F-3, means one of the 28 urban districts in district factor groups A and B specifically identified in the appendix to *Raymond Abbott, et al. v. Fred G. Burke, et al.*, decided by the New Jersey Supreme Court on June 5, 1990 (119 N.J. 287, 394) as follows: Asbury Park City, Bridgeton City, Burlington City, Camden City, East Orange City, Elizabeth City, Garfield City, Gloucester City, Harrison Town, Hoboken City, Irvington Township, Jersey City, Keansburg Borough, Long Branch City, Millville City, New Brunswick City, Newark City, City of Orange Township, Passaic City, Paterson City, Pemberton Township, Perth Amboy City, Phillipsburg Town, Pleasantville City, Trenton City, Union City, Vineland City, and West New York Town, and shall not include a charter school within any of these districts.

"Board of education" or "board" means the local board of education, or the State district superintendent in the case of a State-operated school district, of an Abbott district.

"Chief school administrator" means the superintendent or administrative principal of a local district as set forth in N.J.A.C. 6:3-2.1, or the State district superintendent in the

case of a State-operated school district, of an Abbott district.

“Core curriculum content standards” means the standards of achievement established for the provision of a thorough and efficient education pursuant to N.J.S.A. 18A:7F-4.

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

“Department” means the State Department of Education.

“Developer” means an expert or team of experts that has effectively integrated research-based programs and strategies to develop a Department-approved whole school reform model.

“Early childhood expenditures” means those expenditures related to the provision of full-day kindergarten for five-year-olds and half-day preschool programs for three and four-year-olds.

“School Management Team (SMT)” means a building based planning and decision-making team established pursuant to N.J.A.C. 6:19A-1.4.

“School Review and Improvement (SRI) Team” means a team of Department of Education staff assigned by the Commissioner to work with Abbott districts in implementing the Court’s decision pursuant to N.J.A.C. 6:19A-1.3.

“Secondary” means middle and high school grades six through 12, except in districts having an elementary structure incorporating grades six through eight, in which case it means grades nine through 12.

6:19A-1.3 Assignment of DOE School Review and Improvement Teams

The Commissioner shall designate Department staff to serve on School Review and Improvement (SRI) Teams. An SRI Team shall be assigned to each elementary school implementing Whole School Reform pursuant to N.J.A.C. 6:19A-3 and to each secondary school. The primary role of such teams shall be to work with the School Management Teams established pursuant to N.J.A.C. 6:19A-1.4(a), and with the developers and experts identified by the Department, in order to implement the directives of the Court. SRI Teams shall additionally serve as liaisons between schools and the Department and as sources of technical assistance in programmatic and fiscal areas.

6:19A-1.4 Establishment of School Management Teams

(a) Prior to August 30, 1998, the chief school administrator shall submit to the Department for approval, with a copy to the board, a procedure for the selection and training of a building based School Management Team (SMT) at every elementary school implementing Whole School Reform pursuant to N.J.A.C. 6:19A-3 and at every secondary school.

1. The submission shall also provide for the internal organization of the team and establish a mechanism for removal of team members.

2. The SMT shall consist of the building principal and representatives of parents, teachers and the community, and such other persons as will best enable the team to implement a sound program of school based decision making.

3. Upon recommendation of the SRI Team, a member of the SMT may be removed in accordance with the procedure established pursuant to (a)1 above.

(b) The chief school administrator shall ensure that the SMT is in operation prior to October 1, 1998, and that sufficient time and resources are allocated to the team to enable it to perform its work, including development of a whole school reform implementation plan pursuant to N.J.A.C. 6:19A-3.2.

(c) In those schools participating in Whole School Reform (WSR) pursuant to N.J.A.C. 6:19A-3.1(b), the SMT shall, in addition to the specific duties set forth elsewhere in this chapter, have the authority to undertake the following in consultation with its assigned SRI Team:

1. Oversee faculty selection of the WSR model to be used by the school in accordance with the requirements of N.J.A.C. 6:19A-3.1;

2. Develop curriculum and instruction designed to ensure achievement of Core Curriculum Content Standards;

3. Design a program of professional development to assist staff in the implementation of all aspects of WSR;

4. Prepare a school based budget in accordance with the requirements of N.J.A.C. 6:19A-3.3;

5. Make recommendations for the appointment, transfer or removal of teaching staff members, other than the building principal, and of instructional aides for early childhood programs. Such recommendations shall be presented by the chief school administrator to the board of education pursuant to N.J.S.A. 18A:27-4.1;

6. Make recommendations for appointment of a building principal, providing not less than three candidates to the chief school administrator, who shall select one of the three candidates for recommendations to the board pursuant to N.J.S.A. 18A:27-4.1;

7. Develop and submit to the Department for approval, with a copy to the chief school administrator and the board, a school level educational technology plan demonstrating how educational technology will be infused throughout the selected WSR model, in all aspects of curriculum and instruction, to support achievement of the Core Curriculum Content Standards, and providing for acquisition and maintenance of necessary equipment and infrastructure, appropriate professional development activities and designation of staff to implement technology activities;

8. Provide for the programs to address the Cross-Content Workplace Readiness standards of the Core Curriculum Content Standards, including, at the secondary level, school-to-college transition programs, vocational instruction, structured learning experiences including work-based and volunteer programs, links to employers and post-secondary training programs, and career development services; and

9. Develop a plan for accountability, including a system of rewards and sanctions consistent with the requirements of WSR as set forth in N.J.A.C. 6:19A-3.1.

6:19A-1.5 Responsibilities of local district

(a) The board, administration, teaching staff and support staff of each district shall cooperate fully with the Department and its assigned SRI Team(s) in effectuating the directives of the Court, including, but not limited to, implementation of whole school reform, site-based decision making/budgeting, identification of reallocations necessary for the implementation of required or approved new programs and services, and effectuation of reallocations identified by SRI Teams pursuant to N.J.S.A. 18A:7F-6. The chief school administrator shall ensure that each school is led by an effective principal; where a principal is not effective, the chief school administrator shall recommend the principal's transfer or removal to the board.

(b) The board shall accord the programs and services required pursuant to this chapter the highest priority in development of the school budget and shall make such reallocations and dedicate such resources as are necessary to ensure their full implementation within the prescribed time frames. To the extent resources are insufficient after all possible reallocation at the school and district levels, the board shall apply for additional funding pursuant to N.J.A.C. 6:19A-4.3.

(c) The board shall seek from the Commissioner such authorizations, equivalency determinations or waivers as are necessary to permit it to implement required or approved programs in an efficient and effective manner, or to effectuate necessary reallocations.

(d) Prior to October 1, 1998, each secondary school and each elementary school implementing whole school reform pursuant to N.J.A.C. 6:19A-3 shall have access to a full-time technology coordinator who shall assist with the development and integration of educational technology consistent with the requirements of N.J.A.C. 6:19A-3.1. The coordinator shall, in addition to such other duties as he or she may be assigned, provide assistance to the SMT as needed. Any district may apply for a waiver of the requirement to appoint a full-time technology coordinator at each school based on a demonstration that a full-time coordinator is not necessary under the circumstances present at a particular building.

(e) Prior to October 1, 1998, there shall be appointed for each secondary school within the district a full-time dropout prevention officer and a full-time staff member responsible for the coordination of health and social services and the referral of students to such services. These staff members

shall, in addition to such other duties as they may be assigned, provide assistance to the SMT as needed.

(f) Prior to December 1, 1998, the chief school administrator shall submit to the Department a district-wide security plan appropriate to the district's circumstances and needs. At a minimum, such plan shall provide for development of a Code of Student Conduct and review of any existing student behavior policies to ensure maximum effectiveness; appointment of one security guard for each elementary school building and one for each 225 students at the secondary level; and acquisition and maintenance of such protective devices as may be necessary based upon the circumstances and needs of each building and the district overall. Any district may apply for a waiver of the required number of security guards based on a demonstration that the full number is not necessary to ensure safety under the circumstances present at a particular building.

(g) Prior to December 1, 1998, the chief school administrator shall develop and submit to the Department for approval, with a copy to the board, a plan providing for the establishment of an alternative middle and high school or other comparable program to meet the needs of students who are disaffected or disruptive or who have not been successful in traditional learning environments. Such plans shall include access to necessary support services, provide for coordination with the work of SMTs so as to identify and meet the needs of each school's students, and provide for full implementation of programs and services by the 2000-2001 school year.

(h) Prior to March 1, 1999, the chief school administrator shall establish a districtwide accountability system that includes both a system of rewards to recognize teachers, parents, and administrators who contribute to helping students attain the Core Curriculum Content standards, and a system of sanctions to be applied when an individual school fails to meet State standards.

(i) Prior to March 1, 1999, the chief school administrator shall develop and submit to the Department for approval, a plan to accommodate the transition to, and eventual full implementation of, school based management. Such plan shall specify changes in the structure and function of central administrative staff as will be necessitated by the decentralization of planning, budgeting and decision making in the district.

(j) Any early childhood program aid (ECPA) or demonstrably effective program aid (DEPA) awarded to a district, including ECPA funds placed in a reserve account, and neither expanded or encumbered, nor anticipated as revenue, in the original approved 1998-99 budget, shall be appropriated at the direction of the Commissioner. The board shall provide an explanation for all such balances, and the Commissioner shall consider such explanation prior to directing appropriation of funds. The Commissioner shall further consider such balances during review of any application from the district for additional funds pursuant to N.J.A.C. 6:19A-4.3.

(k) The Commissioner shall deduct from the district's State aid, and the board shall budget for this purpose, an amount equal to two percent of the district's *Abbott v. Burke* Parity Remedy funding. Such deduction shall support expenses required to manage, control, supervise and implement the effective and efficient expenditure of State aid, including implementation of the educational reforms directed by the Court. Such expenses may include but shall not be limited to the cost of SRI Teams assigned to the district and such consultants, developers, investigators or experts as may be required for this purpose.

SUBCHAPTER 2. EARLY CHILDHOOD EDUCATION

6:19A-2.1 Full-day kindergarten

(a) The board shall offer a full-day kindergarten program to all five-year-old students beginning in the 1998-99 school year or advise the Commissioner of the reasons full implementation is not occurring in the 1998-99 school year.

(b) The board shall offer a full-day kindergarten program to all five-year-old students by the commencement of the 1999-2000 school year.

6:19A-2.2 Preschool programs

(a) The board shall offer a half-day preschool program to all three- and four-year-old students by the commencement of the 1999-2000 school year.

1. The board shall determine age eligibility for enrollment in preschool programs provided pursuant to this section using the same date it uses in determining age eligibility for kindergarten programs.

2. The board shall offer preschool programs, once implemented, for the duration of the school year.

(b) The board shall undertake a community planning process to enable the integrated and efficient provision of services to preschool students. As part of this planning process, the board shall contact every child care provider located within the district and licensed by the Department of Human Services (DHS), and other community providers of age-appropriate health and social services, to determine options for collaboration and coordination. The board shall cooperate with or utilize a DHS-licensed child care provider whenever practical to implement required preschool programs and shall not duplicate programs or services otherwise available in the community. In utilizing community providers, the board may rely upon DHS licensure requirements, including, but not limited to, requirements for staff qualification and student-to-staff ratios, as sufficient to ensure an appropriate level of program quality.

Amended by R.1999 d.84, effective February 16, 1999.

See: 31 N.J.R. 762(a).

In (b), added a fourth sentence.

6:19A-2.3 Fiscal requirements and application for additional funds

(a) In the 1998-99 school year, any board planning to expand its preschool programs for three-year-olds must demonstrate prior full implementation of full-day kindergarten for five-year-olds and half-day preschool for four-year-olds.

(b) Early childhood expenditures may include the provision of transportation services pursuant to N.J.S.A. 18A:39-1.1 and facilities for preschool and kindergarten students enrolled in programs required pursuant to this subchapter. Early childhood expenditures also may include any early childhood transportation costs not already included in the 1998-99 district budget.

(c) Any board may apply, using a format prescribed by the Commissioner, for additional early childhood program aid to implement kindergarten or preschool programs.

1. Any board that applies for such additional aid for the 1998-99 school year shall demonstrate compliance with the provisions of N.J.A.C. 6:19A-1.5(j) and shall further demonstrate that proposed early childhood expenditures exceed early childhood program aid received pursuant to N.J.S.A. 18A:7F-16. Where early childhood program aid has been dedicated to other purposes, the board may apply for additional funds for those other purposes pursuant to the provisions of N.J.A.C. 6:19A-4.3(c).

2. If proposed early childhood expenditures include expenditures for facilities, the board shall demonstrate that it has reviewed alternatives for the provision of adequate space and estimates of their associated costs. The board shall further demonstrate its consideration of private and municipal community resources and options for leasing temporary facilities, and shall indicate the board's selected method for providing the necessary space. In the event that the chosen method is not the least costly, the board shall provide justification for elevating such method above each less costly option considered. Temporary facilities shall comply with the following minimum standards:

i. The gross classroom area shall be no less than 600 square feet;

ii. Toilet rooms shall be located in the classroom or visible from the classroom door; and

iii. The facility shall be free of violations of the Uniform Construction Code (N.J.A.C. 5:23-6) and of the rules governing substandard educational facilities (N.J.A.C. 6:22-6).

3. Any application for additional aid shall include:

- i. A detailed budget of all existing and proposed kindergarten and preschool programs district-wide;
 - ii. An analysis demonstrating that no additional reallocations are possible within the district budget to fund the needed programs and facilities; and
 - iii. A specification of those expenditures that would need to be eliminated to make existing funds available for the programs and services to be supported by the requested additional aid.
4. The Commissioner may order the reallocation of funds within the district budget in accordance with the standards of N.J.A.C. 6:19A-4.3(c) to accommodate any request for additional aid.

6:19A-2.4 Operational plan

The board shall submit to the Department by November 2, 1998 an amended operational program plan. The plan shall provide for the full implementation by the commencement of the 1999-2000 school year of all early childhood programs required pursuant to this chapter, in addition to any other requirements specified in N.J.A.C. 6:19. Such plans must include provisions for reducing class sizes of in-district programs to a maximum of 15 preschool students, and 21 kindergarten students, per class staffed by one teacher and an aide. Nothing in this subchapter shall preclude a board from making application, in accordance with the procedures set forth in N.J.A.C. 6:19A-4.3, for approval to provide full-day preschool program(s) as a supplement to the half-day programs required under N.J.A.C. 6:19A-2.2 to provide other non-mandated supplemental programs and services. Programs or services to be provided through such applications may not be submitted as part of, or included within, the operational plan required of the board pursuant to this section; however, if an application is granted, the additional programs or services may be incorporated into the operational plan as appropriate.

Amended by R.1999 d.84, effective February 16, 1999.
See: 31 N.J.R. 762(a).

Inserted "in-district programs" following "sizes of" in the third sentence, and added the fourth and fifth sentences.

SUBCHAPTER 3. WHOLE SCHOOL REFORM

6:19A-3.1 Adoption of whole school reform

(a) Each elementary school shall adopt a whole school reform (WSR) model by the 2000-2001 school year. The presumptive model shall be Success for All—Roots and Wings (SFA/R&W); however, permission to use other models may be granted by the Department where the choice of such model is justified. If any school shall fail to select a model by the commencement of the 2000-2001 school year, the Commissioner shall direct the school to implement a Department-approved WSR model.

(b) Each elementary or secondary school which has an agreement with a developer for adopting one of the Court-sanctioned models of WSR shall submit an application to the Department of Education to participate in the implementation of WSR for the 1998-99 school year. Application forms, including instructions and timelines, will be provided by the Department for this purpose.

- 1. Applications are to be completed by new and continuing schools implementing a WSR model. New schools must vote or reach consensus on selection of the model in accordance with the developer's requirements. All schools must have the agreement of the developer.
- 2. A separate application is required for each school.

(c) The principal of any elementary school not applying for participation in 1998-99 implementation of WSR pursuant to (b) above shall develop a plan for exploration of whole school models and eventual adoption of one such model. The plan shall include a timeline leading to selection of a model and initial implementation of WSR by the 2000-2001 school year, and shall be submitted to the Department for approval, with a copy to the board, on or before December 1, 1998.

(d) Any secondary school not applying for participation in 1998-99 implementation of WSR pursuant to (b) shall include a plan for exploration of whole school models and eventual integration of one such model into the school's program as part of the SMT activity required pursuant to N.J.A.C. 6:19A-4.1.

(e) Each of the following elements shall be addressed in a WSR model adopted by a school in an Abbott district:

- 1. Improved Student Performance: The model must lead to improved student achievement focused on the Core Curriculum Content Standards, as measured by the State assessment program (ESPA, EWT, and HSPT).
- 2. Research Based Program: Each school must provide a research-based program of curriculum and instruction supported by, and integrated with, an appropriate array of research-proven supplemental strategies (for example, SFA/R&W).
- 3. School Based Leadership and Decision Making: The school must maintain its own planning and decision making structure, including establishment of an SMT pursuant to N.J.A.C. 6:19A-1.4, and must be led by a strong, effective principal. The principal must involve parents and faculty in setting annual student achievement targets. School staff and members of the community must be committed to working together in a comprehensive, concerted effort to ensure that each child achieves immediate success and maintains his or her self-confidence and enthusiasm for learning.
- 4. Integration and Alignment of School Functions: The school must take a comprehensive approach, rather than a

piecemeal one, to assure effective school-level implementation pursuant to N.J.A.C. 6:19A-3.2. All school functions must collectively support student attainment of the core curriculum content standards. The school must have an effective and compatible program of curriculum and instruction, supported systematically by a well-planned school budget pursuant to N.J.A.C. 6:19A-3.3.

5. **Educational Technology:** Educational technology must be infused in all aspects of curriculum and instruction, throughout the entire WSR model, to support achievement of the Core Curriculum Content Standards pursuant to N.J.A.C. 6:19A-1.5(d). Educational technology includes acquisition and maintenance of necessary equipment and infrastructure, provision of appropriate professional development activities and designation of appropriate staff to implement plans and activities.

6. **Professional Development:** All staff of the school must be engaged in an organized, continuous program of staff training, focused on the acquisition of knowledge and skills directly related to the achievement of the Core Curriculum Content Standards and the implementation of the selected WSR model.

7. **Safe School Environment/Conducive to Learning:** The school climate must be safe and conducive to learning. There must be a code of conduct that clearly defines acceptable and unacceptable student behaviors and the consequences for them. The district must provide required security staff and other necessary protective devices as set forth in N.J.A.C. 6:19A-1.5(f).

8. **Student and Family Services/Coordination of Resources:** Each elementary school must maintain a Family Support Team or other comparable entity that encourages parent involvement in the school and in students' learning; trains parents for volunteer roles; intervenes to solve behavioral, nutritional, attendance and other problems; receives teacher referrals of students who are not making progress; and makes referrals to appropriate health and human service agencies. Each middle and secondary school must provide health and social services in accordance with N.J.A.C. 6:19A-1.5(g) and 4.1.

9. **Accountability System:** Each school must establish an accountability system, consistent with the district accountability system established pursuant to N.J.A.C. 6:19A-1.5(h), that includes both a system of rewards to recognize teachers, parents, and administrators who contribute to helping students attain the Core Curriculum Content standards, and a system of sanctions to be applied when an individual school fails to meet State standards.

(f) Additionally, the following requirements must be met:

1. The school principal and staff must make an informed choice to use the WSR model. Voting or consensus procedures required by the developer of the model must be followed;

2. The district administration and school staff must agree to fully implement the model within three years and maintain implementation of the model after the initial three years;

3. All requirements of the developer must be addressed. An agreement must be signed by the district, the school and the developer to implement the model in accordance with the developer's and the Department's requirements;

4. There must be a clear commitment by the district administration, school staff, parents and community to faithful replication of the model selected;

5. Extensive professional development must be implemented according to the requirements of the developer and the Department;

6. The district must allocate the necessary resources to implement the model, and the school must use the allocated resources for this purpose;

7. The school must integrate all local, State and Federal resources into the funding of one WSR implementation plan;

8. The schools must restructure all existing programs to focus on the WSR model being implemented; and

9. A plan must be in place to continue to reduce class size to 1:21 for grades one through three and 1:23 for grades four through six.

(g) A WSR plan adopted at the secondary level must incorporate all programs and services specified in N.J.A.C. 6:19A-4.1. Additionally, the plan must address reducing the dropout rate, increasing the graduation rate, improving attendance and reducing class size.

6:19A-3.2 Submission of implementation plan

(a) On or before November 2, 1998, the SMT of each school participating in WSR pursuant to N.J.A.C. 6:19A-3.1(b) and (e) shall develop and submit to the Department, with a copy to the board, an implementation plan which integrates all local, State and Federal resources and has been developed in accordance with the guidelines and requirements of the Department and the program developer. At a minimum, the plan must:

1. Be developed with the involvement of school staff, parents, community members and other stakeholders, in consultation with the developer and the Department;

2. Be consistent with the activity plan approved by the Department as part of the school's application for participation;

3. Include goals, measurable objectives, activities, timelines, budget data and an evaluation plan;

4. Include a timeline leading to full implementation of WSR by the 2000-2001 school year; and

5. Be approved by the chief school administrator, school principal and the SMT.

ipating in implementation of WSR pursuant to N.J.A.C. 6:19A-3.1(b).

6:19A-3.3 School based budgets

(a) On or before December 1, 1998, the school shall submit for the Commissioner's approval a school based budget for the 1999-2000 school year for each school partic-

1. A zero-based budget shall be prepared by the SMT, with the assistance of the school business administrator, in a format prescribed by the Commissioner.

2. The SRI Team shall assist the SMT in the development of the budget.

3. The budget shall be developed assuming available revenues based on 1997-98 audited amounts and those allocated for 1998-99. Additionally, it shall account for anticipated revenues and reflect the resources necessary to implement WSR and required supplemental programs where applicable.

4. All local, State and Federal funds, except where prohibited by Federal law, shall be considered general funds available for WSR activities notwithstanding any restrictions that would otherwise apply.

5. The budget shall be certified as to adequacy, in writing, by the school principal.

(b) Where funds available within the 1998-99 budget, together with anticipated revenues, are not sufficient to support the proposed 1999-2000 budget, the principal shall further attest in writing that all available school-level resources have been reallocated for the purpose of implementing WSR and required supplemental programs, and that no further reallocation at the school level is possible.

(c) Upon approval of the school budget by the Commissioner, the board shall allocate adequate funds for its support in the 1999-2000 district budget.

(d) Where a board determines that adequate funds will not be available in the district's 1999-2000 budget after all possible reallocations have been made, it shall make application for additional funds pursuant to the provisions of N.J.A.C. 6:19A-3.4.

(e) A board shall seek from the Commissioner such authorizations, equivalency determinations or waivers as are necessary to permit it to implement required or approved programs or services in an efficient and effective manner, or to effectuate reallocations necessary to provide such programs or services.

6:19A-3.4 Application for supplemental programs and additional funding

(a) To the extent that a board having a school participating in implementation of WSR pursuant to N.J.A.C. 6:19A-3.1(b) determines that resources are insufficient, after all possible reallocation at the school and district levels, to support the WSR programs, the board shall apply to the Department of Education for additional funding. All such applications must be prepared, and will be reviewed, in accordance with the standards established in the applicable provisions of N.J.A.C. 6:19A-4.2 and 4.3.

(b) Any school participating in implementation of WSR pursuant to N.J.A.C. 6:19A-3.1(b) may recommend to the board, with a copy to the SRI Team, that a supplemental program or service be provided based upon a demonstration of particularized need that cannot be addressed through the WSR program.

1. In those instances where the board does not agree that the SMT has demonstrated a particularized need for a program or service or does not agree that the program or service is essential in order to enable students to achieve the Core Curriculum Content Standards, the board shall provide to the SMT a detailed statement of the bases for its determination.

2. In those instances where the board determines that a particularized need for a recommended supplemental program or service has been demonstrated and that the program or service is essential for student success in achieving the Core Curriculum Content Standards, over and above existing, whole school reform or required supplemental programs, the board shall submit its proposed plan for the program and the budgetary reallocations to fund it to the Department for approval in accordance with the provisions of N.J.A.C. 6:19A-4.2 and 4.3.

3. In those instances where the board determines that resources are insufficient to support the necessary program or service after all possible reallocation at the school and district levels have been made, the board shall apply to the Department of Education for additional funding. All such recommendations, and the ensuing procedures for their consideration and approval by the Department, shall be undertaken in accordance with the requirements of N.J.A.C. 6:19A-4.2 and 4.3.

SUBCHAPTER 4. SUPPLEMENTAL PROGRAMS IN SECONDARY SCHOOLS

6:19A-4.1 Implementation of required supplemental programs

(a) Prior to December 1, 1998, the SMT in consultation with the SRI Team shall develop and submit to the Department for approval, with a copy to the chief school administrator and the board, a plan to implement the following required programs and services over a two-year period commencing with the 1999-2000 school year:

1. A mechanism for access to the health and social services identified by the SMT as being essential for the educational attainment of students, through utilization of existing district staff, programs and services, and through coordination of and referral to community based providers;

2. A school security program, consistent with the requirements of N.J.A.C. 6:19A-1.5(f), appropriate to the building's circumstances and needs, including development of a Code of Student Conduct and review of any existing student behavior policies to ensure maximum effectiveness;

3. A mechanism for identifying students requiring referral to the district's alternative education program(s);

4. School-to-work or college transition programs, including career majors, vocational instruction, structured learning experiences including work-based and volunteer programs, links to employers and post-secondary training programs, and career development services;

5. Integration of technology into all aspects of the curriculum and instructional program to support achievement of the Core Curriculum Content Standards, including provision for acquisition and maintenance of necessary equipment and infrastructure, appropriate professional development activities and designation of staff to implement technology activities; and

6. A focused, ongoing program of professional development for all building staff, including administrative, teaching and support staff, designed to meet the specific needs of the school and its students as such needs relate to implementation of WSR and achievement of the Core Curriculum Content Standards.

(b) The plan shall be submitted to the Department on the form provided for this purpose, and shall at a minimum include:

1. An inventory of existing supplemental programs and services targeted to the area(s) of need, together with an assessment of their efficacy and efficiency;

2. Recommendations for elimination or modification of programs or services judged less than efficacious and efficient, or which overlap with the proposed new program or service;

3. A review of community resources which could be used to address the area(s) of need;

4. Recommendations for the programs and services needed to implement the SMT's plan, and the operating budget necessary to provide them;

5. Approval by the chief school administrator, the principal and the head of the SMT, if other than the principal;

6. A plan for exploration of whole school models and eventual integration of one such model into the school's program, for any secondary school not applying for participation in 1998-99 implementation of WSR pursuant to N.J.A.C. 6:19A-3.1(b); and

7. Such other information as the Department may require.

(c) The board shall accord the programs and services listed under (a) above the highest priority in the development of the 1999-2000 and 2000-2001 school budget, making such reallocations and dedicating such resources as are necessary to ensure their full implementation by the 2000-2001 school year. To the extent resources are insufficient, after all possible reallocations at the school and district levels, to support the required programs, the board shall apply to the Department of Education for additional funding pursuant to N.J.A.C. 6:19A-4.3.

6:19A-4.2 Additional supplemental programs

(a) Subsequent to completion of the implementation plan for the programs required pursuant to N.J.A.C. 6:19A-4.1, the SMT may consider whether there exists a particularized, demonstrated need for further supplemental educational programs or services which are essential to ensure students' educational success and without which students cannot achieve the Core Curriculum Content Standards.

(b) Upon finding such a need, the SMT shall recommend the appropriate programs and services to the board, with a copy to the SRI Team. Prior to any such recommendation, the SMT shall first undertake:

1. An assessment of student achievement in meeting Core Curriculum Content Standards and identification of particular populations not meeting such standards;

2. Where standards are not being met, a determination that the students' failure is caused by particularized needs which are not capable of being addressed by existing, whole-school or required supplemental programs at the school level;

3. An inventory of currently used programs and services targeted to the area(s) of need, together with an assessment of their efficacy in meeting such need;

4. A review of un- or underutilized internal and community resources which could be used to address the area(s) of need;

5. Identification of additional research-based programs or services demonstrated to be effective in meeting such needs and in improving student achievement in areas where the Core Curriculum Content Standards are not being met;

6. Recommendation of elimination or modification of existing programs or services identified as less than effective and efficient, or which would overlap with the proposed new program or service;

7. Development of an operating budget for the proposed new program or service; and

8. One or more public hearings in order to obtain parent, student and citizen input on the preceding matters.

(c) In those instances where a board does not agree that the SMT has demonstrated a particularized need for a program or service or does not agree that the program or service is essential in order to enable students to achieve the Core Curriculum Content Standards, the board shall provide to the SMT a detailed statement of the bases for its determination.

6:19A-4.3 Application for additional supplemental programs and additional funds

(a) Upon determination by the board that a particularized need for a recommended supplemental program or service has been demonstrated and that the program or service is essential for student success in achieving the Core Curriculum Content Standards, over and above existing, whole school reform or required supplemental programs, the board shall submit its proposed plan for the program and the budgetary reallocations to fund it to the Department for approval. Applications for such approval must be submitted on forms provided by the Department and shall at a minimum include:

1. A general description of the program and an explanation of the particularized need which must be met in order to enable students to achieve the Core Curriculum Content Standards;
2. A description of the method and results of the student needs assessment underlying the request, including an identification of the specific population(s) to be served;
3. A demonstration that the need to be addressed cannot be met through existing, whole school reform or required supplemental programs, including an inventory and assessment of all such programs and an explanation as to why they are insufficient to meet the identified need; except that in the case of application for on-site health and social services, a demonstration must also be made as to why such programs cannot be provided efficiently or effectively off-site;
4. A detailed plan and budget for the proposed program or service, indicating staffing, supply, facility and other considerations, and including a demonstration, where appropriate, of compliance with applicable law;
5. A plan for evaluating the continuing efficacy and efficiency of the program; and
6. A demonstration that the requested supplemental program will not delay or impede implementation of, or does not duplicate, supplemental or whole-school programs and services required elsewhere in this chapter.

(b) Where a board determines that an essential program or service is unable to be funded through reallocation, the board shall apply to the Department for additional funds. Any application for additional funding must include the following:

1. Where the application is not submitted as part of an application for approval of supplemental program(s) pursuant to (a) above, a description of the program and the basis for the board's contention that it is essential, that is, the program is required by law or has previously been approved by the Department;
2. A budgetary analysis demonstrating that no further reallocation from surplus or within the district's budget is

possible and identifying those programs, services or specific expenditures that would be eliminated to fund the requested necessary program or service in the current budget year; and

3. A plan for incorporating the program or service into subsequent regular budgeting cycles.

(c) Where the Department concurs with the need for a particular program or service and the applicant contends that funding is not available for it, the Department may order reallocation of existing resources in order to accommodate the required program. In making the determination as to whether an existing program, service or expenditure should be exempt from reallocation, in whole or part, the Department shall consider whether:

1. The existing program, service or other expenditure is a school-level one directly serving the students in the school;
2. The existing program, service or other expenditure has demonstrated measurable results in enhancing the achievement levels of students in the school;
3. Elimination of the existing program, service or other expenditure would undermine the fundamental education program of the school;
4. The existing program, service or other expenditure is consistent with, and does not duplicate, the elements of the SMT's overall plan or the WSR plan, whichever is applicable;
5. The existing program, service or other expenditure is both research-based and demonstrably necessary over and above whole school reform and/or required supplemental programs;
6. The existing program, service or other expenditure is being delivered in the most efficient possible manner;
7. The existing program, service or other expenditure is of a priority equal to expenditures contained elsewhere in the district budget; and
8. The district has considered elimination of administrative and noninstructional expenditures before proposing elimination of programs, services and other expenditures that directly serve students.

(d) Where the Department is satisfied that the requested program or service is required pursuant to law or that a particularized need for it has been demonstrated, and further, that it is unable to be funded through existing resources, based on sufficient assessment by the district or SMT of the factors set forth above and the Department's independent review of information submitted and any additional information the Department may request, the Department shall request that the Legislature appropriate the funds needed to implement the program or service for the ensuing budget year.

(e) Any application rejected by the Department, either on grounds of demonstrated need or request for additional funding, may be appealed to the Commissioner pursuant to the provisions of N.J.A.C. 6:19A-6.

SUBCHAPTER 5. FACILITIES

6:19A-5.1 Facilities management plan

(a) On or before January 15, 1999, the board shall prepare and submit to the Commissioner for review and approval a five-year facilities management plan that details the district's facilities needs and the board's plans to address them in accordance with instructions to be provided by the Commissioner.

1. The plan shall address the school years 1999-2000 through 2003-2004.

2. The plan shall include demonstration that the board has considered, and plans to implement or has dismissed with justification, the following options to address identified short and long-term facilities needs:

- i. Realignment of school sending areas and grade configurations;
- ii. Interdistrict cooperative arrangements;
- iii. Extension or restructuring of the school day;
- iv. Extension or restructuring of the school year;
- v. Alternative or enhanced program delivery through use of communication technologies such as the Internet and distance learning resources;
- vi. Joint use of municipal or privately owned facilities; and
- vii. Partnerships with private industry.

3. The plan adopted by the board must be endorsed by the facilities advisory board established pursuant to (c) below.

(b) The board shall contract with a qualified demographer to project the district's enrollments, delineated by grade level and inclusive of three, four and five-year-old residents, through the 2003-2004 school year. The projection shall employ a cohort survival methodology or other methodology approved by the Commissioner, and shall serve as the basis for identifying the capacity and program needs detailed in the five-year facilities management plan.

(c) The board shall assemble a facilities advisory board to assist in its development of a facilities management plan. The advisory board shall include parents, teachers, school-level administrators, representatives of community groups, and at least one member of the SRI Team(s) assigned to school(s) in the district pursuant to N.J.A.C. 6:19A-1.3. The board shall retain a licensed architect and a licensed engineer, who shall serve on the facilities advisory board in addition to other duties prescribed in this chapter.

(d) The board shall prepare and submit to the Department an educational adequacy inventory of all existing district facilities.

(e) The board shall prepare and submit to the Department a report detailing the status of deficiencies identified in the Vitetta assessment submitted to the New Jersey Supreme Court pursuant to the Court's May 14, 1997 ruling in *Abbott v. Burke* or otherwise identified by the district's licensed engineer. The report shall include, but not be limited to, identification of the following:

1. Deficiencies that the district's licensed engineer determines to be emergent health and safety concerns;
2. Deficiencies identified in the Vitetta assessment and an indication of whether they have been corrected or remain; and
3. Deficiencies identified in the Vitetta assessment that may not require remediation under the rehabilitation subcode of the Uniform Construction Code (N.J.A.C. 5:23-6) as revised effective January 5, 1998 and that in the opinion of the district's licensed engineer do not require remediation.

(f) The submissions required of boards pursuant to (a) through (e) above shall conform to the guidelines, criteria and format prescribed by the Commissioner.

SUBCHAPTER 6. APPEALS

6:19A-6.1 Applicability of subchapter

Aggrieved applicants for Department authorization to improve or amend existing programs, adopt additional supplemental programs, build or renovate facilities or seek additional funding may appeal to the Commissioner in accordance with the provisions of this subchapter.

6:19A-6.2 Filing, service and documentation of petition

(a) Any appeal filed pursuant to this subchapter must meet the filing, service and format requirements for petitions of appeal as set forth in N.J.A.C. 6:24, including the requirement for service on the Attorney General of the State of New Jersey. Such service should be directed to Department of Law and Public Safety, Division of Law, PO Box 112, Trenton, New Jersey 08625-0112; Attention: Education Section.

(b) Any appeal filed pursuant to this subchapter must include, in addition to the petition required under (a) above, a copy of the complete application submitted to the Department and a copy of the determination being appealed from.

(c) Appeals may be filed only by the entity which submitted the application under dispute, or, in the case of applications filed by entities other than the board, by the board if it does not concur with the Department's determination; however, in any appeal where the board is not the petitioner, the board must be named as an indispensable party to the appeal.

6:19A-6.3 Filing, service and documentation of answer

(a) Answers to petitions of appeal filed pursuant to this subchapter must meet the filing, service and format requirements for answers as set forth in N.J.A.C. 6:24.

(b) Answers to appeals filed pursuant to this subchapter must additionally include a copy of any information relied **upon** by respondent(s) in making determinations at issue, where such information is not a part of the documentation submitted by the petitioner pursuant to N.J.A.C. 6:19A-6.2(b).

6:19A-6.4 Submission of position statements and replies

Within 20 days of the filing of respondent(s)'s answer(s), or expiration of the time for such filing, the petitioner shall file a letter memorandum setting forth with particularity the basis for its position, referencing the criteria established for the application process and the materials submitted in conjunction with it. Within 10 days of receipt of petitioners' memorandum, each respondent shall file such reply as it may wish to make. Within five days of receipt of any reply, petitioner may file a final response thereto. All submissions must be filed in triplicate (original and two copies) and

served upon all other parties to the appeal at the same time they are filed with the Commissioner.

6:19A-6.5 Commissioner review and decision

(a) Upon receipt of the filings set forth above, or expiration of the time for their submission, the Commissioner shall review the total record before him and render a written decision, which shall be a final decision unless and until reversed on appeal. The Commissioner's decision shall include an appropriate order; where the relief ordered includes additional funding, the Commissioner shall make the necessary request to the Legislature.

(b) In rendering decisions pursuant to this subchapter, the Commissioner shall apply the same standards as are set forth for Department review in the operative rules for the type of application in dispute. The burden of proof shall be on the petitioning party to demonstrate that these standards were, or were not as the case may be, met by the applicant notwithstanding the Department's determination to the contrary.

(c) Should the Commissioner find that there are material issues of fact to be determined, the case may be transferred to the Office of Administrative Law for hearing as a contested case under the Administrative Procedure Act, in accordance with N.J.S.A. 52:14B-1 et seq., N.J.A.C. 1:1, and N.J.A.C. 6:24.

(d) Pursuant to P.L. 1998, c.45, Commissioner decisions rendered pursuant to this subchapter shall be final agency decisions and shall be appealed to the Appellate Division of the Superior Court.