

CHAPTER 23**EDUCATIONAL FACILITIES: LONG-RANGE FACILITIES PLANS****Authority**

P.L. 2000, c.72, effective July 18, 2000, specifically § 26.

Source and Effective Date

R.2000 d.461, effective October 20, 2000.
See: 32 N.J.R. 4140(a).

Chapter Expiration Date

Chapter 23, Educational Facilities: Long-Range Facilities Plans, expires on October 20, 2001.

Chapter Historical Note

Chapter 23, Educational Facilities: Long-Range Facilities Plans, was adopted as special new rules by R.2000 d.461, effective October 20, 2000, to expire October 20, 2001. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS**6:23-1.1 Purpose and applicability of rules**

These rules are adopted by the Commissioner of the New Jersey Department of Education to implement Section Four of the Educational Facilities Construction and Financing Act (EFCFA), P.L. 2000, c.72 (N.J.S.A. 18A:7G-1 et seq.), and set forth the procedures and requirements for preparation and filing of Long Range Facilities Plans (LRFP), which must be filed by every school district in the State. The Commissioner intends to promulgate additional regulations to implement sections 1-3, 5-11, 57-58 and 64 of the Act. 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 school districts in the State, including Abbott districts. 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.

6:23-1.2 Definitions

As used in this chapter, unless the context clearly indicates otherwise, the following words and terms shall have these 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 (ASSA)” is 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” is the product of the minimum 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. 6:23-2 and that has been determined by the Commissioner to ensure that, over the next five years, the school facilities are educationally adequate to support the achievement of the Core Curriculum Content Standards.

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

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

“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 three-or four-year old children 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.

“Department” means the New Jersey Department of Education.

“District” means a local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes, a county special services school district established pursuant to article 8 of chapter 46 to Title 18A of the New Jersey Statutes, a county vocational school district established pursuant to article 3 of chapter 54 of Title 18A of the New Jersey Statutes, and a State-operated school district established pursuant to N.J.S.A. 18A:7A-34 et seq.

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

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

“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.

“ECPA district” means a district that receives Early Childhood Program Aid.

“Excluded space” means an existing space not contained in the facilities efficiency standards that:

1. Delivers programs and services aligned to the Core Curriculum Content Standards;
2. Provides support services directly to students; or
3. Would, as demonstrated by the district, be structurally or fiscally impractical to convert to other uses contained in the facilities efficiency standards.

“Facilities efficiency standards” means the standards developed by the Commissioner pursuant to N.J.S.A. 18A:7G-4(h) and published in the New Jersey Register.

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

“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,” for purposes of an LRFP or school facilities project, means 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;

“FTE,” for purposes of a LRFP or school facilities project, means 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 handicapped 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 building 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.

“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 this chapter.

“Minimum area allowance per FTE student” is 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.

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

“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.

“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.

“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 facilities project” means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction or 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 an addition to or new construction in order to meet the housing needs of unhouseed students, or rehabilitation for the purpose of keeping a school facility functional or 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.

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

“Special education services student” means a student receiving specific services pursuant to chapter 46 of Title 18A of the New Jersey Statutes and N.J.A.C. 6A:14.

“Temporary facility” means a facility used for educating students on a temporary basis.

“Unhouseed students” is the number of students in excess of the functional capacity of a school facility calculated pursuant to N.J.A.C. 6:23-2.2(c).

SUBCHAPTER 2. LONG-RANGE FACILITIES PLANS

6:23-2.1 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) Each non-Abbott district shall file a LRFP no later than December 15, 2000.

(c) Except as provided in N.J.S.A. 18A:7G-4(b), no school facilities project shall be considered or approved unless the district’s LRFP has been submitted and approved by the Commissioner.

(d) 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. 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 55 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 55 days have passed from the planning boards’ receipt of the LRFP.

(e) 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.

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

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

(h) 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.

6:23-2.2 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 five most recent 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 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 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 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 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. 6:23-2.3(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 inventory that it intends to use 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 handicapped, 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 facilities for which preliminary eligible costs are determined pursuant to N.J.S.A. 18A:7G-8 in accordance with the district's LRFP. 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, 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 funding.

6:23-2.3 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 (c) below;
6. Spaces for which a waiver is approved pursuant to (d) below;
7. Spaces in excess of the facilities efficiency standards and not eligible for State funding;
8. Facilities not eligible for State funding;
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; and
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, however, 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.

(c) The Commissioner shall, as part of the approval of the LRFP, approve requests for additional space if the district can demonstrate 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 spaces will:

i. Allow for the return of students with disabilities from private facilities;

ii. Permit the retention of students with disabilities who would otherwise be placed in private 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 school district, educational services commission, jointure commission or other agency authorized by law to provide regional special education services in a school building 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.

(d) If the Commissioner does not approve the request for additional 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 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.

(e) The Commissioner shall not approve an LRFP that includes any plans for new construction or rehabilitation of a school facility 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 construction or rehabilitation 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 pursuant to N.J.S.A. 18A:7G-5(g) and, if granted, the LRFP shall be deemed amended consistent with such waiver.

(f) 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 school 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.

(g) An Abbott district that has an approved LRFP may begin undertaking feasibility studies for new construction identified pursuant to (b)9 above, site acquisition, development, remediation and 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 and in accordance with N.J.S.A. 18A:7G-5.

6:23-2.4 Appeals of Commissioner's determinations

All appeals of final determinations made by the Commissioner pursuant to EFCFA and this chapter shall be to the Appellate Division of the New Jersey Superior Court.