

CHAPTER 23**FINANCE AND BUSINESS SERVICES****Authority**

N.J.S.A. 18A:1-1, 18A:4-14, 18A:4-15, 18A:6-27, 18A:17B-12, 18A:7F, 18A:7G, 18A:17-9, 18A:17-10, 18A:17-32, 18A:17-45, 18A:18A-3.1, 18A:18A-4, 18A:18A-5, 18A:18A-7, 18A:18A-13, 18A:18A-40, 18A:19-13, 18A:20-4.2, 18A:21-1, 18A:22-8, 18A:23, 18A:24-10, 18A:29-3, 18A:33-3, 18A:36A-1, 18A:39-19, 18A:46, 18A:54-20.1, 18A:54-29.2, 18A:58-11 and 18A:58-37.1.

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R.2001 d.140, effective May 7, 2001 (operative July 1, 2001).
See: 33 N.J.R. 419(a), 33 N.J.R. 1415(a), 33 N.J.R. 1796(a).

Executive Order No. 66(1978) Expiration Date

Chapter 23, Finance and Business Services, expires on May 7, 2006.

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SUBCHAPTER 1. PURPOSE AND SCOPE**6A:23-1.1 Purpose and scope**

(a) The purpose of this chapter is to ensure sound administrative practices and proper expenditure of funds by a district board of education by providing an orderly and efficient method for conducting board of education support activities. These rules govern essential business services activities that support the educational process and enhance fiscal accountability, encourage more efficient and effective

business operations, and ensure a district board of education and the public has access to necessary information to make informed decisions. The rules also effectuate the provisions of the Comprehensive Educational Improvement and Financing Act of 1996, N.J.S.A. 18A:7F-1 et seq.

(b) This chapter, except for N.J.A.C. 6A:23-4, governs the finance and business services for every district board of education. N.J.A.C. 6A:23-4 governs the finance and business services for private schools for the disabled.

Amended by R.2002 d.253, effective August 5, 2002.

See: 34 N.J.R. 1652(a) 34 N.J.R. 2788(a).

In (a), added a third sentence.

6A:23-1.2 Definitions

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

“Abbott district” means one of the following 28 urban districts in district factor group 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 the following districts not included above but designated Abbott districts pursuant to P.L. 1999, c.110, Neptune Township and Plainfield, and such other districts as may qualify in the future. Abbott district shall not include a charter school located within any of these districts.

“Abbott V” means the Supreme Court decision in *Abbott v. Burke*, 153 N.J. 480 (1998).

“Accrual” is a basis of accounting that records the financial effects on a district board of education of transactions and other events and circumstances that have cash consequences for the district in the periods in which those transactions, events and circumstances occur, rather than only in the periods in which cash is received or paid by the district.

“Adjusted for inflation,” as defined by N.J.S.A. 18A:7F-5, means the greater of the CPI or three percent.

“Annual audit” is the audit of financial statements and schedules presented in the Comprehensive Annual Financial Report as required by N.J.S.A. 18A:23-1 et seq. The annual audit shall be performed in accordance with standards promulgated by the applicable authoritative or regulatory agencies and established in the documents issued by such agencies. Annual audit also includes an audit of compliance of a district board of education with the types of compliance requirements established by authoritative or regulatory agencies. An annual audit is performed by a public school accountant pursuant to N.J.S.A. 18A:23-8 et seq.

“Balanced budget” means a budget in which budgeted anticipated revenues and fund balances equal budgeted appropriations.

“Base budget” means the district board of education’s school budget which contains a net budget at its adjusted spending growth limitation pursuant to N.J.S.A. 18A:7F-5, but exclusive of additional spending proposals submitted to the voters or board of school estimate.

“Bid bond” means a written guarantee, in the form of a certificate, payable to the district board of education, that the bidder, if awarded the contract within such time as may be specified in the invitation to bid, but in no case more than 60 days, unless such bidder has agreed to a longer period, will enter into a contract and will furnish any prescribed performance bond or other security required as a guarantee or indemnification and in default thereof providing payment for the damages suffered by the district board of education as a result of the bidder’s refusing to sign the contract.

“Capital project” as defined in N.J.A.C. 6A:26-1.2.

“Capital projects fund” means the governmental fund that accounts for financial resources used to acquire or construct major capital facilities (other than those of proprietary funds and fiduciary funds). The source of revenue in this fund is the sale of bonds, the issuance of certificates of participation for a lease purchase agreement or grants received pursuant to N.J.S.A. 18A:7G-15. In the case of a charter school, the source of revenue may be a mortgage. Separate accounting must be used for each capital project.

“Change order” means a lawfully prepared and properly authorized document which directs and authorizes a contractor, consultant or other vendor performing work for or supplying materials and supplies to a district board of education pursuant to a contract to change the work, service or materials to be performed, rendered or furnished from that originally specified or estimated and to correspondingly change the payment due therefor.

“Chart of accounts” means a classification structure for the accounting system that permits the standardization of reported financial data whereby analyses may be performed within and between district boards of education and on a nationwide basis.

"Charter school" means a public school that is operated under a charter granted by the Commissioner, that is independent of the district board of education and that is managed by a board of trustees in accordance with N.J.S.A. 18A:36A-1 et seq. and N.J.A.C. 6A:11.

"Chief school administrator" means the superintendent or administrative principal, or the State district superintendent in the case of a State-operated school district, or lead person in the case of a charter school.

"Commissioner" means the Commissioner of Education or the Commissioner's designee.

"Comparative Spending Guide" means the annual report of comparative financial statistics of school districts compiled and published for general distribution by the Commissioner pursuant to N.J.S.A. 18A:4-30.

"Comprehensive Annual Financial Report" or "CAFR" means the official annual report of a governmental unit that includes all funds and account groups. The report summarizes the activities and operations performed by all units that constitute the reporting entity. The combined financial position and results of operations are presented as if there were a single operating unit.

"Core Curriculum Content Standards" means the seven academic and five workplace readiness areas adopted by the State Board of Education May 1, 1996 and as thereafter revised by the State Board. These standards communicate the common expectations for the achievement to which all New Jersey students will be held throughout their 13-year public education experience. The standards are articulated in areas including: visual and performing arts, comprehensive health/physical education, language arts literacy, mathematics, science, social studies and world languages and cross content areas for: career planning, use of technology information and other tools, critical thinking/decision making/problem solving, self management and safety principles.

"CPI," as defined by N.J.S.A. 18A:7F-3, means the average annual increase, expressed as a decimal, in the consumer price index for the New York City and Philadelphia areas during the fiscal year preceding the prebudget year as reported by the United States Department of Labor.

"Debt service," as defined by N.J.S.A. 18A:7F-3, means payments of principal and interest upon school bonds and other obligations issued 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 the costs of issuance of such obligations and shall include payments of principal and interest upon bonds 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

P.L. 1978, c.74 (N.J.S.A. 18A:58-33.22 et seq.), P.L. 1971, c.10 (N.J.S.A. 18A:58-33.6 et seq.) and P.L. 1968, c.177 (N.J.S.A. 18A:58-33.2 et seq.) is excluded.

"Debt service fund" means a governmental fund that accounts for the accumulation of resources for, and the payment of, general long-term debt, principal and interest.

"Demonstrably effective programs" means those programs, strategies or services pursuant to N.J.S.A. 18A:7F-18 that are established through State resources and are research-based or have demonstrated through strong, logical, empirical, research evidence that improvement in academic performance is educationally significant. Such programs, strategies or services result in high student achievement. These programs, strategies or services are either expressly identified in N.J.S.A. 18A:7F-18 or are approved by the State Board in accordance with N.J.A.C. 6A:23-5.5.

"Department" means the New Jersey Department of Education.

"District board of education" means the board of education of a local or regional school district, a county special services school district or a county vocational school district, or the State district superintendent in the case of a State-operated school district, and the board of directors of an educational services commissioner or jointure commission.

"Early Childhood Program Aid" means State aid pursuant to N.J.S.A. 18A:7F-16, which is distributed to all school districts with high concentrations of low-income students for the purpose of providing full-day kindergarten and pre-school classes and other early childhood programs and services.

"Early childhood programs and services" means programs and services for the provision of preschool, full-day kindergarten, and grades one through three.

"Efficiency standards," established pursuant to N.J.S.A. 18A:7F-4b, means the efficiency standards contained in the biennial Report on the Cost of Providing a Thorough and Efficient Education.

"Enterprise fund" means a proprietary fund used to account for operations that are

1. Financed and operated in a manner similar to private business enterprises; or
2. Where the district board of education or State regulatory agency has decided that periodic determination of revenues earned, expenses incurred, or net income is appropriate.

"Extraordinary unspecifiable services" or "EUS" means services which are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor.

"Fiduciary funds" means the funds used to account for assets held by a district board of education in a trustee capacity or as an agent.

"Fund" means a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions or limitations.

"GAAP" means the generally accepted accounting principles established by the Governmental Accounting Standards Board as prescribed by the State Board pursuant to N.J.S.A. 18A:4-14.

"General fund" means a governmental fund that accounts for all financial resources of the district board of education except those accounted for in another fund.

"Governmental funds" means the funds through which most district board of education functions typically are financed. The reporting focus of these funds is on determining financial position rather than net income. Governmental funds include the general fund, special revenue funds, capital projects funds, and debt service funds.

"Labor and material bond" means a written guarantee, in the form of a certificate, payable to the district board of education, that the bidder will promptly make payment to all claimants, for all labor and material used or reasonably required for use in the performance of the contract between the bidder and the district board of education and in default thereof providing for payment of all unpaid labor and material bills.

"Lease purchase payment" as defined in N.J.A.C. 6A:26-1.2.

"Line item account" means the lowest (most specific) level of detail in the appropriations/expenditure classification.

"Low-income pupils," as defined by N.J.S.A. 18A:7F-3, means those pupils from households with a household income at or below the most recent Federal poverty guidelines available on October 15 of the prebudget year multiplied by 1.30.

"Modified accrual" means a basis of accounting that is a mixture of both cash and accrual basis concepts. Under modified accrual, revenues and other financial resources are recognized when they become susceptible to accrual, which is defined as becoming both measurable and available.

"Mortgage" means, in the case of a charter school, a debt for a period greater than 12 months that is fully backed by the value of real property, so that the total value of all such debt does not exceed the total assessed value of the property by which the debt is backed.

"Net budget," as defined by N.J.S.A. 18A:7F-3, means the sum of the net T & E budget and the portion of the district's local levy that is above the district's maximum T & E budget.

"Net T & E budget," as defined by N.J.S.A. 18A:7F-3, means the sum of the T & E program budget, early childhood program aid, demonstrably effective program aid, instructional supplement aid, transportation aid, and categorical program aid received pursuant to N.J.S.A. 18A:7F-19 through 22, 28 and 29.

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

"Open-end contracts" means contracts for which price bids were solicited on a unit basis because exact quantities needed were not known at the time bids were sought. Such contracts, when advertised and awarded, must include a maximum number of units that can be ordered for each item under the contract.

"Other capital project" as defined by N.J.A.C. 6A:26-1.2.

"Performance bond" means a written guarantee, in the form of a certificate, payable to the district board of education, that the bidder will promptly and faithfully perform the contract between the bidder and the district board of education and in default thereof providing for completion of the contract or providing sufficient funds to pay the cost of completion of the contract.

"Prebudget year," as defined by N.J.S.A. 18A:7F-3, means the school fiscal year preceding the year in which the school budget is implemented.

"Professional services" means services rendered or performed by a person authorized by law to practice a recognized profession, whose practice is regulated by law, and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Professional services may also mean services rendered in the provision or performance of goods or services that are original and creative in character in a recognized field of artistic endeavor.

"Proprietary funds" means the funds used to account for district board of education activities that are similar to business operations in the private sector; or where the reporting focus is on determining net income, financial position and cash flow. Proprietary funds include enterprise funds and internal service funds.

"Purchasing agent" means the secretary, business administrator or the business manager of the board of education duly assigned the authority, responsibility and accountability for the purchasing activity of the board of education and having the power to prepare advertisements, to advertise for and receive bids and to award contracts as permitted by N.J.S.A. 18A:18A-1 et seq., but if there be no secretary, business administrator or business manager, such officer, committees or employees to whom such power has been delegated by the district board of education.

"School facilities project" as defined in N.J.A.C. 6A:26-1.2.

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

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

"Shared service" means any educational or administrative service required to be performed by a district board of education in which the school district, with board approval, is able and willing to share in the costs and benefits of that service with another district board of education, municipality, or other governmental unit but does not include sending/receiving relationships.

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

"Spending growth limitation," as defined by N.J.S.A. 18A:7F-3, means the annual rate of growth permitted in the net budget of a school district, county vocational school district or county special services school district as measured between the net budget of the prebudget year and the net budget of the budget year as calculated pursuant to N.J.S.A. 18A:7F-5d.

"T & E amount," as defined by N.J.S.A. 18A:7F-3, means the cost per elementary pupil of delivering programs and services including extracurricular and cocurricular activities

that enable all students to achieve the Core Curriculum Content Standards which constitute a thorough regular education under the assumptions of reasonableness and efficiency contained in the Report on the Cost of Providing a Thorough and Efficient Education.

"T & E program budget," as defined by N.J.S.A. 18A:7F-3, means the sum of core curriculum standards aid, supplemental core curriculum standards aid, stabilization aid, designated general fund balance, miscellaneous local general fund revenue and that portion of the district's local levy that supports the district's T & E budget.

"T & E range," as defined by N.J.S.A. 18A:7F-3, means the range of regular education spending which shall be considered thorough and efficient. The range shall be expressed in terms of T & E budget spending per elementary pupil, and shall be delineated by alternatively adding to and subtracting from the T & E amount the T & E flexible amount to establish the minimum T & E budget and maximum T & E budget when applied to each district's weighted resident enrollment.

"Thoroughness standards," as referenced in N.J.S.A. 18A:7F-4a, means the Core Curriculum Content Standards as approved by the State Board on May 1, 1996 and as thereafter revised by the State Board.

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

"Weighted resident enrollment," as used in N.J.S.A. 18A:7F-12, means the differentials in costs based on the efficiency standards established pursuant to N.J.S.A. 18A:7F-4b of providing education at the kindergarten, elementary (grades one through five), middle school (grades six through eight) and high school levels (grades nine through 12) which are determined by dividing the elementary cost per pupil into each category. The weights are applied to resident enrollment in each category pursuant to N.J.S.A. 18A:7F-13.

"Whole school reform model" or "WSR model" means the whole school reform model as established in N.J.A.C. 6A:24-4.

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

Added "Adjusted for inflation", "Base budget", "Capital project", "Comparative Spending Guide", "Core Curriculum Content Standards", "CPI", "Debt service", "Demonstrably effective programs", "Early Childhood Program Aid", "Early childhood programs and services", "Efficiency standards", "Lease purchase payment", "Low-income pupils", "Net budget", "Net T&E budget", "New school facility", "Other capital project", "Prebudget year", "School facilities project", "School report card", "Spending growth limitation", "T&E amount", "T&E program budget", "T&E range", "Thoroughness standards", "Unused spending authority", "Weighted resident enrollment".

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

**6A:23-2.1 Prescribed system of double-entry bookkeeping
and GAAP accounting**

(a) Each district board of education and charter school board of trustees shall maintain a uniform system of financial bookkeeping and reporting.

(b) Each district board of education and charter school board of trustees shall ensure that the uniform system is fully consistent with the "generally accepted accounting principles" (henceforth referred to as GAAP) as set forth in the Codification of Governmental Accounting and Financial Reporting Standards, 1998, published by the Governmental Accounting Standards Board (GASB; 401 Merritt 7, P.O. Box 5116, Norwalk CT), incorporated herein by reference as amended and supplemented, and is compatible with the financial accounting terminology and classifications established in the Federal accounting manual, Financial Accounting for Local and State School Systems 1990 (Handbook 2R2) by the National Center for Education Statistics (NCES; K Street NW, Washington, DC 20006), incorporated herein by reference, as amended and supplemented as prepared, published and distributed by the Commissioner, as required by N.J.S.A. 18A:4-14.

6A:23-2.2 Principles and directives for accounting and reporting

(a) Each district board of education and charter school board of trustees shall use accounting and reporting directives as prepared, published and distributed by the Commissioner in addition to any books, materials or bulletins, for the guidance of school officials in establishing and maintaining the double entry bookkeeping and accounting system mandated in this subchapter.

(b) Each district board of education and charter school board of trustees shall develop a system of accounting and reporting objectives that makes it possible to:

1. Present fairly and with full disclosure the funds and activities of the district board of education and charter school board of trustees in conformity with GAAP; and
2. Determine and demonstrate compliance with finance-related legal and contractual provisions.

(c) Each district board of education and charter school board of trustees shall develop an accounting system that is organized and operated on a fund basis and shall:

1. Report governmental, proprietary and fiduciary funds in the fund financial statements to the extent that they have activities that meet the criteria for using those funds;
2. Establish and maintain those funds required by law and sound financial administration. Only the minimum number of funds consistent with legal and operating requirements should be established;
3. Use the modified accrual or accrual basis of accounting as appropriate in measuring financial position and operating results in accordance with GAAP and regulatory provisions; and
4. Recognize transfers in the accounting period in which the interfund receivable and payable arise.

(d) Each district board of education and charter school board of trustees shall adopt an annual budget and shall include the adopted annual budget in the minutes of the board.

1. A district board of education or charter school board of trustees shall develop a detailed budget statement, which includes the classification of expenditures by program and function and is prepared on a fund basis in accordance with N.J.S.A. 18A:228, on a form prescribed by the Commissioner.

2. A district board of education or charter school board of trustees shall prepare detailed budgets for each special project, capital project and Federal or State grant and maintain them, along with all authorized revisions, on file in the district board of education or charter school board of trustees business office.

3. Each district board of education and charter school board of trustees shall take appropriate action, as necessary, to maintain a balanced budget.

(e) Each district board of education and charter school board of trustees shall ensure that the accounting system provides the basis for appropriate budgetary control.

(f) Each district board of education and charter school board of trustees shall ensure that budgetary comparison schedules are included in the appropriate financial statements and schedules for governmental funds in accordance with GAAP.

(g) Each district board of education and charter school board of trustees shall use a common terminology and classification consistently throughout the budget, the accounts and the financial reports of each fund, and shall adopt a chart of accounts prepared in conformity with the following:

1. Each district board of education and charter school board of trustees shall use, for financial reporting to the Department of Education, a uniform minimum chart of accounts published and distributed by the Commissioner consistent with Financial Accounting for Local and State School Systems 1990, commonly referred to as Handbook 2R2 and developed by the National Center for Education Statistics, incorporated herein by reference, as amended and supplemented.

2. A district board of education or charter school board of trustees wishing to expand upon the minimum requirements for the budget system established in (g)1 above shall compile budget data in the expanded and minimum format each month and at the end of the fiscal year, and shall use for such expanded systems the Financial Accounting for Local and State School Systems, commonly referred to as Handbook 2R2 and developed by the National Center for Education Statistics, as published and distributed by the Commissioner.

3. A district board of education and charter school board of trustees shall approve and adopt any modifications to the chart of accounts, and shall ensure conformance of the modifications to the standards established in (g)1 and 2 above.

(h) Each district board of education and charter school board of trustees shall prepare monthly financial statements and reports of financial condition, operating results and other pertinent information, in accordance with directions issued by the Commissioner, to facilitate management control of financial operations, legislative oversight and, where necessary or desired, for external reporting purposes.

(i) Each district board of education and charter school board of trustees shall prepare and publish a Comprehensive Annual Financial Report (henceforth referred to as CAFR) in compliance with the standards set forth in Governmental Accounting, Auditing and Financial Reporting (the "blue book"), 1994, incorporated herein by reference, as amended and supplemented as prepared, published and distributed by the Governmental Finance Officers Association (GFOA; 18 N. Michigan Ave., Ste. 800, Chicago, IL 60601) and GAAP, covering all activities of the district board of education and charter school board of trustees. The district board of education and charter school board of trustees shall ensure that the CAFR includes, but is not limited to: an introductory section; basic financial statements; required supplementary information; schedules, narrative explanations, and a statistical section. Each district board of education and charter school board of trustees shall use the uniform program as published and distributed by the Commissioner for preparing the Comprehensive Annual Financial Report.

1. A district board of education or charter school board of trustees shall engage only a licensed public school accountant to conduct the annual audit in accordance with N.J.S.A. 18A:23-1 et seq. which has an external peer/quality report performed in accordance with government auditing standards when applicable under OMB Circular A-133 or NJOMB Circular Letter 98-07. The external peer/quality report shall be completed within the time established by Government Auditing Standards issued by the Comptroller General of the United States (Yellow Book) unless the accountant or firm can show good cause as to why there is a delay.

2. A district board of education or charter school board of trustees shall require the submission of the most recent external peer/quality report to the district board of education or charter school board of trustees for review and evaluation prior to each appointment of a licensed public school accountant to conduct the annual audit.

3. A district board of education or charter school board of trustees shall acknowledge the receipt, review, and evaluation of the external peer/quality report in the public session and board minutes in which the district board of education or charter school board of trustees authorizes the engagement of the accountant or firm to perform the audit.

4. A district board of education or charter school board of trustees shall require the submission of an updated external peer/quality report of the licensed public school accountant engaged by the district board of education within 30 days after the issuance date of the external peer/quality report if such report is issued prior to the date of the audit opinion for the most recent fiscal year.

5. In accordance with NJOMB Circular Letter 98-07, a district board of education or charter school board of trustees shall ensure that the public school accountant provides a copy of the most recent external peer/quality report to the Department, within 30 days after the initial engagement of a licensed public school accountant or firm and within 30 days after the issuance of a subsequent peer/quality report.

6. A district board of education or charter school board of trustees may be prohibited for good cause by the Commissioner from engaging a particular licensed public school accountant, or may be directed by the Commissioner on a process to be used in the appointment of a licensed public school accountant. For the purpose of this provision, good cause includes documented violations of N.J.S.A. 18A:23-1 et seq., reported deficiencies or violations identified through the American Institute of Certified Public Accountants (AICPA's) Peer Review Process as applied by the New Jersey Society of Certified Public Accountants (NJSCPA), disciplinary action by the State Board of Accountancy or AICPA, or after an investigation by the Department and hearing before the Assistant Commissioner of Finance.

7. Documented violations of N.J.S.A. 18A:23-1 et seq. shall be reported to the State Board of Accountancy with a recommendation by the Commissioner to cancel the license of the licensed public school accountant. A district board of education or charter school board of trustees is prohibited from employing any accountant subject to this provision until the State Board of Accountancy makes a determination on the cancellation of the license.

6A:23-2.3 School level budget and financial reporting requirements

(a) Each Abbott district board of education, and, at the discretion of the Commissioner, other districts subject to the provisions of N.J.S.A. 18A:7F-6(b), shall conform to the following requirements:

1. A district board of education as defined in (a) above shall consider Comprehensive Education Improvement and Financing Act (CEIFA) generated revenue and all other State, local and Federal revenue as revenue of the general fund unless expressly restricted by Federal law or written contract, for the purpose of implementing the Department approved whole-school reform (WSR) model and court-ordered reforms, or in the case of non-Abbott districts the directives of the Commissioner.

2. A district board of education as defined in (a) above shall apply for schoolwide status under Title 1, Part A of the Elementary and Secondary Education Act of 1965 (ESEA) for each eligible school in the district, or submit a Federal waiver request to obtain permission to combine Federal, State and local funds.

3. A district board of education as defined in (a) above shall record appropriations and expenditures by school for classroom instruction, school level technology, student support services (family support team), curriculum development, educational media and library, professional development, security and school level administration. A district board of education may require other types of expenditures, such as maintenance and custodial and transportation, to be recorded by school at its discretion.

4. School level appropriation transfers necessary during the year to effectuate the requirements and components of the approved WSR model, or, in the case of non-Abbott districts, the directives of the Commissioner, require written Commissioner approval on forms prescribed by the Commissioner. Such forms shall require prior approval for all transfers from instructional to non-instructional accounts pursuant to N.J.S.A. 18A:7F-6(c), between functions/subfunctions that exceed 10 percent of the original appropriation, and any other transfers the Commissioner may deem necessary for prior approval. The forms shall specify a maximum timeframe for Department review of all transfer requests. The principal, school management team chairperson for Abbott districts only, school business administrator and chief school administrator shall certify availability of funds prior to approval.

5. School level surplus balances occurring during the year from salary breakage, unanticipated circumstances, overestimated costs, or other events, require written approval of the principal, school management team chairperson in Abbott districts only, school business administrator, chief school administrator and the Department before the surplus can be appropriated for new purposes.

i. Upon such approval, appropriation balances may be transferred between schools or for district-wide purposes, except where prohibited by any Federal law that may restrict such transfers.

ii. Any appropriation balances remaining at the end of the year shall lapse and be commingled with the general fund balance of the district, except where prohibited by any Federal law that may restrict such commingling.

iii. Notwithstanding this paragraph, each district board of education shall ensure that each school has the necessary resources to implement all components of its WSR model, or for non-Abbott districts the directives of the Commissioner, and shall appropriate additional funds from unreserved general fund balance or transfer amounts between schools during the year in accordance with N.J.A.C. 6A:23-2.11(a)3 and N.J.S.A. 18A:22-8.1, 18A:22-8.2, 18A:7F-6(c) and 18A:7G-31, except where prohibited by any Federal law. An Abbott district board of education may apply for additional State aid when necessary pursuant to N.J.A.C. 6A:24-7.1.

(b) A district board of education other than those in (a) above may require by resolution that appropriations/expenditures be recorded at the school level.

(c) The Commissioner shall assemble a working group of district practitioners to advise the Department in the development of technical manuals, training programs, and budget software to effectuate this section, as well as in the development of a pilot program for the recording of appropriations and expenditures at the school level by a district board of education not identified in (a) above in the most effective and least burdensome manner. The development of the pilot program will include an evaluation of the requirements of this subsection to determine which requirements, if any, should be included in the implementation of the pilot.

6A:23-2.4 Conflicts between legal provisions and GAAP

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

(b) Each district board of education and charter school board of trustees shall maintain the accounting system on a legal-compliance basis, and shall include sufficient additional records to permit GAAP based reporting.

6A:23-2.5 Minimum bond requirements for treasurer of school moneys

(a) Each district board of education and charter school board of trustees shall use as the minimum requirements for the surety bond for the treasurer of school moneys such percentage of the current year's school budget as is required in the schedule set forth below:

<u>Total School Budget</u>	<u>Minimum Bond Required</u>
Up to \$100,000.00	20 percent of budget (Minimum \$10,000)
\$100,000.01 to \$250,000.00	\$20,000 plus 15 percent of all over \$100,000
\$250,000.01 to \$500,000.00	\$42,500 plus 13 percent of all over \$250,000
\$500,000.01 to \$750,000.00	\$75,000 plus eight percent of all over \$500,000
\$750,000.01 to \$1,000,000.00	\$95,000 plus four percent of all over \$750,000
\$1,000,000.01 to \$2,000,000.00	\$105,000 plus two percent of all over \$1,000,000
\$2,000,000.01 to \$5,000,000.00	\$125,000 plus one percent of all over \$2,000,000
\$5,000,000.01 to \$10,000,000.00	\$155,000 plus $\frac{1}{2}$ percent of all over \$5,000,000
\$10,000,000.01 and upwards	\$180,000 plus $\frac{1}{4}$ percent of all over \$10,000,000

(b) A district board of education or charter school board of trustees, in fixing such minimum bond, shall round to the nearest \$1,000.

(c) The independent school auditor shall verify the adequacy of the treasurer's surety bond which is required by N.J.S.A. 18A:17-32, and shall include appropriate comment, and a recommendation, if needed, in the annual school audit report.

6A:23-2.6 Supplies and equipment

(a) Criteria to distinguish between supplies and equipment for accounting purposes as prescribed by GAAP pursuant to N.J.A.C. 6A:23-2.1 and contained in the Financial Accounting for Local and State School Systems, presently referred to as Handbook 2R2, which is established by the National Center for Education Statistics, and further specified in the New Jersey Department of Education's Uniform Minimum Chart of Accounts for New Jersey Public Schools, is incorporated by reference herein, as amended and supplemented, and on file and may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, PO Box 049, Trenton, New Jersey and the Department of Education, PO Box 500, Trenton, New Jersey.

(b) For the purpose of this section, "food supplies" includes only those supplies that are to be eaten or drunk and

those substances that may enter into the composition of a food in the operation of a school cafeteria or in a home economics class.

(c) Whenever any district board of education or charter school board of trustees elects to purchase food supplies pursuant to this section, it shall adopt a policy stating what food supplies will be purchased without advertising for bids, designating a person or persons authorized to purchase food supplies, describing the procedure by which interested vendors may become eligible to submit quotations, and outlining the method by which the district board of education will solicit and accept quotations. A district board of education or charter school board of trustees shall adopt this policy before the opening of schools each year, and shall make the policy known to the public.

(d) A district board of education or charter school board of trustees shall provide definite and uniform specifications governing standards of quality to each eligible vendor from whom quotations are solicited.

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

2. The person(s) designated to purchase the food supplies shall purchase them from the vendor giving the lowest quotation, unless the person(s) designated by the district board of education or charter school board of trustees to purchase food supplies can justify the purchase from one of the other vendors submitting a quotation; such justification, together with all quotations received, shall be in permanent record form, available to school officials, the district board of education or charter school board of trustees and the Department of Education for review and for audit for a minimum of three years.

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

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

6A:23-2.7 Mechanical bookkeeping systems

A district board of education or charter school board of trustees which contracts for electronic data processing bookkeeping services shall annually have an audit prepared, or obtain a copy of an audit of the internal controls of the service company or agency as prescribed by Statement of Auditing Standards (SAS) No. 70, as amended by SAS No. 88 of the American Institute of Certified Public Accountants, incorporated herein by reference, and maintain a copy of such audit on file.

6A:23-2.8 Employee organizational dues

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

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

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

6A:23-2.9 Petty cash fund

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

(b) A district board of education or charter school board of trustees establishing a petty cash fund shall:

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

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

6A:23-2.10 Summer payment plan

A district board of education, in accordance with N.J.S.A. 18A:29-3, shall establish a Summer Payment Plan which will provide for withholding 10 percent of the salary of 10-month employees during the academic year. The amount withheld shall earn interest and be available to the employee either at the end of the academic year or in installments prior to September 1.

6A:23-2.11 Budgetary controls and overexpenditure of funds

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

1. A district board of education or charter school board of trustees shall not approve an encumbrance or expenditure (liability or payment) which, when added to the total of existing encumbrances and expenditures, exceeds the amount appropriated by the district board of education or charter school board of trustees in the applicable line item account established pursuant to the minimum chart of accounts referenced in N.J.A.C. 6A:23-2.2(g)1.

2. When a district board of education or charter school board of trustees adopts an expanded chart of accounts pursuant to N.J.A.C. 6A:23-2.2(g)2, such district board of education or charter school board of trustees shall adopt a policy concerning the controls over appropriations for line item accounts which exceed the minimum level of detail established pursuant to N.J.A.C. 6A:23-2.2(g)1. If a district board of education or charter school board of trustees fails to adopt such a policy, such district shall apply the restrictions contained in (a)1 above to line item accounts, which exceed the minimum level of detail.

3. A district board of education or charter school board of trustees may transfer amounts from line item accounts with available appropriation balances to permit the approval of encumbrances or expenditures otherwise prohibited in (a)2 and 3 above. Prior to initiating a transfer, an Abbott district board of education shall receive Commissioner approval for school-based budget transfers pursuant to N.J.A.C. 6:23-2.3(c)4 and 5 and for district-level transfers from instructional to non-instructional accounts pursuant to N.J.S.A. 18A:7F-6(c) and from undesignated fund balance on the forms prescribed by the Commissioner. The forms shall specify a maximum timeframe for Department review of all transfer requests. A district board of education or charter school board of trustees shall make these transfers prior to the approval of such encumbrances or expenditures, and in the case of an Abbott district, following Commissioner approval. A district board of education or charter school board of trustees shall make all transfers in accordance with N.J.S.A. 18A:22-8.1, 18A:22-8.2, 18A:7F-6(c) and 18A:7G-31.

(b) A district board of education or charter school board of trustees anticipating an overexpenditure at any time in the general, capital projects or debt service funds as designated in N.J.A.C. 6A:23-2.2(c) shall proceed in the following manner:

1. The district board of education or charter school board of trustees shall direct the chief school administrator, or charter school lead person, to notify the county superintendent of schools within two working days, of the following:

- i. The projected amount of the overexpenditure;
- ii. The reason or reasons for the projected overexpenditure; and
- iii. The corrective action being taken by the district board of education or charter school board of trustees to avoid the projected fund(s) overexpenditure.

2. The district board of education or charter school board of trustees shall develop and adopt at a public meeting an acceptable corrective action plan to eliminate the projected fund(s) overexpenditure.

3. The county superintendent shall immediately notify the Commissioner, in writing, if the projected amount of the fund(s) overexpenditure exceeds five percent of the district's or charter school's general fund budget or \$100,000, whichever is lower.

4. The county superintendent shall immediately investigate to determine if the corrective action being taken by the district board of education or charter school board of trustees is sufficient to avoid a fund(s) overexpenditure. If necessary, the county superintendent shall assist the district board of education or charter school board of trustees in determining what further corrective action can be taken, or request assistance from the Division of Finance.

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

(c) Each district board of education or charter school board of trustees shall ensure the following occurs at every regular board of education or board of trustees meeting:

1. The board secretary or responsible charter school employee shall present to the district board of education or charter school board of trustees a report showing all transfers between line item accounts as well as appropriations, adjustments to appropriations, encumbrances and expenditures for each line item account shown on the budget form prepared in accordance with N.J.S.A. 18A:22-8. This report is in addition to the report required by N.J.S.A. 18A:17-9.

2. The board secretary or responsible charter school employee shall report to the district board of education or

charter school board of trustees any changes in anticipated revenue amounts and revenue sources.

3. A district board of education or charter school board of trustees shall obtain a certification from the board secretary or responsible charter school employee each month that no line item account has encumbrances and expenditures, which in total exceed the line item appropriation in violation of (a) above.

- i. If a violation has occurred, the district board of education or charter school board of trustees shall, by resolution, either transfer amounts among line items and/or from undesignated fund balance or direct the board secretary or responsible charter school employee, or the chief school administrator or charter school lead person, as appropriate, to transfer amounts among line items and/or from undesignated fund balance to eliminate the line item account deficit(s). If the latter option is selected, the appropriate official shall provide a detailed report of the amounts transferred into and out of the affected line item account(s) or undesignated fund balance for the board's ratification at the next regularly scheduled meeting.

- ii. As applicable, the board secretary or responsible charter school employee shall reflect in the minutes of the board, the certification or a detailed account of all transfers and the board's ratification, when this option is selected. The district board of education or charter school board of trustees shall make such transfers in accordance with this subchapter and N.J.S.A. 18A:22-8.1, 18A:22-8.2, 18A:7F-6(c) and 18A:7G-31.

4. A district board of education or charter school board of trustees, after review of the board secretary's and treasurer's or responsible charter school employee's monthly financial reports and upon consultation with the appropriate district or charter school officials, shall certify in the minutes of the board each month that no major account or fund has been overexpended in violation of (b) above, and that sufficient funds are available to meet the district board of education's or charter school board of trustee's financial obligations for the remainder of the fiscal year.

- i. If the district board of education or charter school board of trustees is unable to make such a certification, the board shall direct the chief school administrator or charter school lead person to initiate the steps outlined in (b) above and shall reflect such directive in the minutes of the board.

- ii. If the district board of education or charter school board of trustees is able to make such certification, but one or more members of the board votes no to the certification, the district board of education or charter school board of trustees shall provide to the county superintendent, the board vote, names of members that voted no, and the reason for the no vote.

iii. Within 30 days of month end, or later upon approval of the county superintendent, every Abbott district board of education, districts subject to N.J.S.A. 18A:7F-6(b) and N.J.A.C. 6A:30-3 and other districts or charter schools at the Commissioner's discretion shall provide a copy of the board secretary's and treasurer's monthly financial reports submitted to the district board of education or charter school board of trustees under (c)1 above and as required pursuant to N.J.S.A. 18A:17-9 and 18A:17-36 to the county superintendent.

iv. Within 30 days of the December month end, or later upon approval of the county superintendent, every district board of education shall provide a copy of the board secretary's and treasurer's monthly financial reports submitted to the board of education under (c)1 above and as required pursuant to N.J.S.A. 18A:17-9 and 18A:17-36 to the county superintendent.

v. Within 30 days of the September, December and March month end, every charter school board of trustees shall provide a copy of the monthly financial reports submitted to the board of trustees under (c)1 above and as required pursuant to N.J.S.A. 18A:17-9 and 18A:17-36 to the county superintendent.

vi. Any board secretary or responsible charter school employee that is more than two months behind in submitting the report pursuant to N.J.S.A. 18A:17-9 to a district board of education or charter school board of trustees shall immediately report this noncompliance to the county superintendent.

(d) The county superintendent shall report to the Commissioner by August 15, or for charter schools, 45 days after end of year, all fund overexpenditures as shown on the June report of the district board of education secretary, or responsible charter school employee, filed pursuant to N.J.S.A. 18A:17-10.

1. A district board of education or charter school board of trustees shall immediately develop and adopt an acceptable remedial plan to address any fund(s) deficits.

2. If necessary, the county superintendent shall assist the district board of education or charter school board of trustees in determining what further action can be taken, or request assistance from the Division of Finance.

3. The county superintendent shall immediately notify the Commissioner, in writing, should it appear that the district board of education or charter school board of trustees is not taking adequate action to remediate the fund(s) deficit.

(e) A district board of education that fails to develop a corrective action plan or take adequate action under (b), (c) or (d) above to avoid or remediate an overexpenditure or fund deficit may be subject to the following:

1. Conditional certification, Level II evaluation, or Level III evaluation under the Department's monitoring procedures at N.J.A.C. 6A:30-3.

2. Disqualification for certification under the Department's monitoring procedures at N.J.A.C. 6A:30-3.

3. Beginning in the second year following the year in which the projected overexpenditure or fund deficit occurred, a reduction in a district board of education cash payment of State aid by the percentage of the sum of the deficits or projected deficit in any fund to its T & E program budget defined in N.J.S.A. 18A:7F-3, or, in the case of a charter school, a reduction in the charter school aid. Reductions shall be made in the following descending order:

- i. Core curriculum standards aid;
- ii. Supplemental core curriculum standards aid;
- iii. Transportation aid;
- iv. Adult and post-graduate program aid;
- v. Full-time post-secondary vocational aid;
- vi. Bilingual education aid;
- vii. County vocational aid;
- viii. Special education aid;
- ix. Distance learning network aid;
- x. Demonstrably effective program aid;
- xi. Early childhood program aid;
- xii. Instructional supplement aid; and
- xiii. Academic achievement reward aid.

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

(f) In those cases where the Commissioner determines that the failure to develop a corrective action plan or take adequate action under (b), (c) or (d) above to avoid or address an overexpenditure or fund deficit impacts the district's ability to meet its goals and objectives, the Commissioner shall recommend to the State Board of Education that the district's certification be rescinded, or in the case of a charter school that its charter be revoked, pursuant N.J.S.A. 18A:36A-17.

6A:23-2.12 Debt service fund balance

(a) Each district board of education shall appropriate annually all unreserved debt service fund balances in the budget certified for taxes unless expressly authorized and documented by the voters in a bond referendum or upon formal Commissioner approval after review of documented authorization by the voters in a public meeting.

(b) A district board of education shall include in the bond referendum or documented authorization pursuant to (a) the specific purpose for, and duration of, maintaining the unreserved debt service fund balance.

6A:23-2.13 Internal service funds

(a) Internal service funds are used to account for and report any activity that provides goods and services from one department or office to other departments or offices of the district board of education, or to other district boards of education and governmental units, on a cost-reimbursement basis. Internal service funds are cost accounting and distribution entities and are intended to recover their costs annually or over a reasonable time period.

(b) A district board of education providing a shared service under a shared service agreement with another board of education or external entity shall account for the shared service costs in an internal service fund in accordance with GAAP.

1. The district board of education providing the shared service shall allocate the costs on a user charge basis to all participating entities on an annual basis at a minimum.

- i. User charges should be reported by entities or funds being serviced by the internal service fund in the applicable line item account for the goods or services received.

- ii. Sales and purchases of goods and services for a price approximating their external exchange value should be reported as revenues ("Services Provided to Other Funds") in provider/seller funds.

2. The shared service agreement shall include, or be amended to include, an agreed upon mechanism for the use and/or distribution of any unexpended balances.

3. Unexpended balances shall be evaluated annually to determine the amount of monies, if any, due back to the shared service entities.

(c) A district board of education providing a shared service within the district may allocate costs on a user charge or other basis.

6A:23-2.14 Student activity funds

(a) Student activity funds are used to account for funds derived from athletic events or other activities of pupil organizations and to account for the accumulation of money to pay for student group activities. A district board of education or charter school board of trustees shall establish student activity funds by board resolution. Such funds shall be under the jurisdiction of the board of education or charter school board of trustees and supervision of the school business administrator/board secretary or responsible charter school employee who may appoint a designee for purposes of administering the funds.

(b) Each district board of education and charter school board of trustees shall maintain student activity funds in an interest-bearing account separate from all other funds of the district board of education or charter school board of trustees. Interest on this account(s) shall be disbursed to each student activity fund in proportion to the sums on deposit for each activity.

(c) Each district board of education and charter school board of trustees shall ensure through adoption of a formal board policy that all financial and bookkeeping controls are adequate to ensure appropriate fiscal accountability and sound business practices. This policy shall include, but not be limited to, the following minimum requirements:

1. Receipts shall be detailed showing date, sources, purpose and amount. All receipts should be promptly deposited in the bank. Bank deposits shall agree with the receipts in the cash receipt book and shall be traceable to definite receipts or groups of receipts.

2. Disbursements shall be recorded chronologically showing date, vendor, check number, purpose and amount. All disbursements should be made by check and supported by a claim, bill or written order to persons supervising the fund. Checks should bear two or more authorized signatures.

3. Book balances shall be reconciled with bank balances. Canceled checks and bank statements shall be retained for examination by the licensed public school accountant as part of the annual audit required under N.J.S.A.18A:23-1 et seq. and stated in N.J.A.C. 6A:23-2.2(i)2.

4. Student activity funds shall be classified by school.

5. Borrowing from the student activity accounts is prohibited.

(d) The district board of education or charter school board of trustees is not responsible for the protection of and the accounting for funds collected by any teacher or pupil for an outside organization. Such funds cannot be approved for deposit in a school activity account.

6A:23-2.15 School store business practices

A district board of education or any organization under its auspices shall comply with sales tax rules established by the New Jersey Division of Taxation when operating a school store or offering goods for sale. See N.J.A.C. 18:24.

6A:23-2.16 Dismissal or re-assignment of a school business administrator

(a) In order to protect the integrity of the school business administrator office, a district board of education shall submit to the county superintendent a written justification for the non-renewal, dismissal for cause, re-assignment or elimination of the position of a school business administrator or the individual duly certified and performing the duties

of a school business administrator within 48 hours of said notification by the district board of education to the affected employee.

(b) The affected employee may request a meeting with the county superintendent or the coordinating county superintendent to discuss the justification submitted by the district board of education. The county superintendent of schools or the coordinating county superintendent shall initiate any follow-up action as warranted on issues under the jurisdiction of the Department.

SUBCHAPTER 3. TUITION PUBLIC SCHOOLS

6A:23-3.1 Method of determining tuition rates for regular public schools

(a) For the purposes of this subchapter, a district board of education does not include an educational services commission or jointure commission.

(b) The term “actual cost per student” for determining the tuition rate or rates for a given year referred to in N.J.S.A. 18A:38-19 and 18A:46-21 means the local cost per student in average daily enrollment, based upon audited expenditures for that year for the purpose for which the tuition rate is being determined and consistent with the grade/program categories in N.J.S.A. 18A:7F-13 and 18A:7F-19, that is, regular education classes: preschool and kindergarten, grades one through five, grades six through eight, and grades nine through 12; and special class programs as defined in N.J.A.C. 6A:14-4.7.

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

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

3. The “actual cost per student” for all grade and program categories shall be reduced as appropriate by Abbott v. Burke Parity Remedy Aid, transfers to whole school reform from special revenue sources, additional Abbott v. Burke aid, and State aid for programs for bilingual students received pursuant to N.J.S.A. 18A:7F-20 for both resident and nonresident students. Such reductions shall be made in accordance with the option selected in (c) below for certification of the “actual cost per student” for each tuition category.

(c) The receiving district board of education shall obtain certification of its “actual cost per student” for each tuition category for a given year from the Commissioner based upon either:

1. A report prepared and submitted annually by the receiving district board of education indicating the actual amounts of expenditures and adjustments whenever practicable or amounts equitably allocated and supported by documentation for each applicable item in the grade/program category for which the tuition rate is required, according to the prescribed bookkeeping and accounting system; or

2. A report prepared annually by the Commissioner for each receiving district board of education. This report shall establish the “actual cost per student” for each tuition category using the following:

i. Expenditures reflected in the receiving district board of education’s annual independent audit;

ii. Supplemental data for average daily enrollment and items of expenditure detailed in (e)2 below submitted by category by the receiving district board of education on a form prescribed by the Commissioner; and

iii. Criteria contained in (e) below.

(d) Once having determined to annually submit the report pursuant to (c)1 above to the Commissioner, a receiving district board of education shall submit a written request to the Commissioner in order to change to the certification method in (c)2 above. The request shall indicate reason(s) for the change and is subject to the Commissioner’s approval.

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

1. The actual expenditures for each category as reflected in the receiving district board of education’s annual independent audit shall be used for the following items:

i. Teachers’ salaries and equipment for regular education classes;

ii. Direct instructional expenditures for salaries, equipment and other expenses for special education classes; and

iii. Local contribution for early childhood programs.

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

- i. Rental of land and buildings;
- ii. Interest on lease purchase agreements;
- iii. School sponsored co-curricular activities, athletics and other instructional programs of the general fund;
- iv. Local vocational programs;
- v. Facilities acquisition and construction services included in the budget approved by the county superintendent and certified for taxes;
- vi. Building use charges as defined in (e)6 and 7 below;
- vii. Other support services, special education students;
- viii. Related services; and
- ix. Benefits for special programs.

3. Unallocated expenditures for general education class categories as reflected in the receiving district board of education's annual independent audit shall be allocated in proportion to the average daily enrollment in the grade categories for general education classes for the following items:

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

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

- i. General administration and business and other support services;
 - ii. Improvement of instructional services;
 - iii. Staff training services;
 - iv. Educational media services, school library;
 - v. School administration;
 - vi. Attendance, social work and health;
 - vii. Contracted transportation or transportation provided by district board of education owned vehicles for curricular activities such as field trips, athletic trips and other trips which are part of the instructional program;
 - viii. Operation and maintenance of plant expenditures;
 - ix. Fixed charges including unallocated employee benefit costs for retirement and social security contributions except Teacher's Pension and Annuity Fund (TPAF) contributions, insurance and judgments including unemployment compensation (UCC), interest on current loans, and other fixed charges except rental of land and buildings and interest on lease purchase agreements which are determined pursuant to (e)2 above, and principal on lease purchase agreements and tuition which are excluded pursuant to (e)5 below;
 - x. Food service expenditures of the general fund; and
 - xi. Direct instructional expenditures for salaries, equipment and other expenses for bilingual education programs and home instruction.
5. Expenditures shall be excluded from the actual cost per student for tuition purposes for the following items:
- i. Transportation to and from school which is paid by the resident district board of education;
 - ii. Employee retirement and social security contributions for TPAF members which are fully funded by the State;
 - iii. Principal on lease purchase agreements;
 - iv. Tuition;
 - v. Community services;
 - vi. Resource rooms which are determined pursuant to (e)9 below and permitted as a separate charge over and above tuition for general education classes;
 - vii. Accredited adult education programs and non-accredited adult and evening programs; and

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

6. Building use charge is determined as follows:

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

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

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

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

7. Special building use charge is determined as follows:

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

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

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

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

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

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

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

iii. A receiving district board of education for which this section is applicable may include, in accordance with (e)2 above, a facilities acquisition and construction service charge which is determined by the straight line amortization over three years of that part of the total expenditure for facilities acquisition and construction services which is over and above the amount stated in the budget certified for taxes and used in (e)2v above.

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

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

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

9. In addition to the tuition charged for each grade category, a receiving district board of education may charge for students receiving services in a resource room an additional amount up to the actual direct instructional cost per student for such services calculated on an hourly basis (an example of the calculation is contained in Policy Bulletin: 1001 issued by and available from the Division of Finance, State Department of Education, PO Box 500, Trenton, New Jersey 08625-0500).

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

1. "Estimated cost per student" shall be determined by the receiving district board of education using the appropriate supporting schedule in their annual budget for the ensuing year. A receiving district board of education that has elected to use (c)1 above to certify actual cost per student shall have the option of setting an estimated cost per student up to an amount which shall be determined by multiplying the most recent year's certified cost per student by one plus the Consumer Price Index (CPI) as defined in N.J.S.A. 18A:7F-3 or three percent, whichever is greater.

2. "Estimated average daily enrollment" for the purpose of calculating a tentative tuition charge shall be determined as follows:

i. A receiving district board of education shall project the number of students in each tuition category expected to be received consistent with the growth in average daily enrollment (ADE) taken from the three most recent school register summary reports prior to the year for which the budget is being prepared.

ii. Estimated average daily enrollment (EADE) equals $Y1 \times (1 + G)^2$ where the growth rate $G = 0.5 \times (Y1 - Y3) / Y3$, where G shall not exceed ± 10 percent, $Y1$ is the ADE two years prior to the year for which the tuition is being estimated, and $Y3$ is the ADE four years prior to the year for which the tuition is being estimated. For the purposes of the tentative tuition contract, a receiving district board of education shall apply the same growth rate calculation (as noted above) to project the number of students to be received from each sending district board of education.

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

4. The sending district board of education shall notify in writing the receiving district board of education of the estimated average daily enrollment of students in each tuition category expected to be sent during the ensuing school year no later than December 15 preceding the beginning of the ensuing school year. The receiving district board of education shall notify in writing the sending district board of education of the estimated cost per student in each tuition category for the ensuing school year and the tentative tuition charge no later than February 4 preceding the beginning of the ensuing school year. The receiving district board of education shall submit to the sending district board of education, on a form prepared by the Commissioner, a copy of its calculations to determine the estimated cost per student in each tuition category for the ensuing school year no later than February 4 preceding the beginning of the ensuing school year.

5. The county superintendent in the county in which the receiving district board of education is located shall review any unique circumstances or variations in methodology and mediate all disputes that arise from the determination of tentative tuition charges, including challenges to the estimated average daily enrollment counts generated using the formula in (f)2 above. Such a review shall include examination of the following documents:

- i. Annual budgets including supporting documents;
- ii. Application for State School Aid (ASSA) reports;
- iii. School register summary reports;
- iv. Tuition contracts; and
- v. Any other information deemed necessary.

6. If the Commissioner later determines that the tentative tuition charge established by written contractual agreement, except for a contractual agreement for a student enrolled in a special education class, was greater than the actual cost per student during the school year multiplied by the actual average daily enrollment received, the receiving district board of education shall return to the sending district board of education in the third school year following the contract year the amount by which the tentative charge exceeded the actual charge as determined above, or, at the option of the receiving district board of education, shall credit the sending district board of education with the excess amount. Such adjustment for a contractual agreement for a student enrolled in a special education class shall be made no later than the end of the third school year, following the contract year.

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

8. If at the end of the contract year a district board of education anticipates that a tuition adjustment will be required in the third year following the contract year, the district board of education can restrict fund balance, of up to 10 percent of the estimated tuition cost in the contract year, in a legal reserve for tuition adjustments. Full appropriation of the legal reserve shall be made for the tuition adjustment in the third year following the contract year, and any remaining balance shall be reserved and designated in the subsequent year's budget. A district board of education's budgeted fund balance and appropriation of the legal reserve in the third year following the contract year for such tuition adjustments shall be excluded from the net budget cap calculation.

(g) The receiving district board of education shall use forms prepared by the Commissioner for certification of the "actual cost per student" for each tuition category according to the rules in this section, for contracts, and for establishing the estimated cost per student for each tuition category for the ensuing school year.

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

Amended by R.2002 d.253, effective August 5, 2002.

See: 34 N.J.R. 1652(a), 34 N.J.R. 2788(a).

In (f)2ii, inserted "where G shall not exceed $\leq$ -10 percent," following " $G = 0.5 \times (Y1 - Y3) / Y3$ ".

6A:23-3.2 Method of determining tuition rate in a new district board of education

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

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

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

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

6A:23-3.3 Method of determining tuition rates for county vocational schools

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

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

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

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

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

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

(b) Each county vocational district board of education shall obtain from the Commissioner certification of the "actual cost per student" for each tuition category for a given year utilizing the following:

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

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

3. Criteria contained in (c) below.

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

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

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

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

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

(d) The total direct and indirect expenditures determined for each tuition category in (c) above shall be adjusted to reflect the net cost by deducting in proportion to the average daily enrollment for each tuition category the amount obtained from the sum of all State aid (except State grants), county appropriations pursuant to N.J.S.A. 18A:54-29.2, non-resident fees pursuant to N.J.S.A. 18A:54-20.1 and miscellaneous income less expenditures for postsecondary programs for which no tuition may be charged pursuant to N.J.S.A. 18A:54-20.1, respectively, and expenditures for resource room, special schools and evening schools and extraordinary services.

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

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

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

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

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

(g) Calculation of tentative tuition rates, execution of written contractual agreements, payment of tuition (including the nonresident fee) and adjustments to tentative tuition charges upon certification of actual tuition rates by the Commissioner shall be made in accordance with N.J.A.C. 6A:23-3.1(e) except that the tentative tuition rates shall be based on the county vocational district board of education's estimated adjusted net cost per student consistent with the calculation in (c), (d) and (e) above.

(h) The county vocational board of education shall use the "actual cost per student" certification forms, contract forms and tentative tuition rate forms as prepared and provided by the Commissioner.

6A:23-3.4 Method of determining tuition rates for county special services schools

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

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

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

3. The "actual cost per student" for all tuition categories shall be adjusted to reflect net costs plus a surplus consistent with the provision in N.J.S.A. 18A:46-31.

(b) Each county special services district board of education shall obtain from the Commissioner certification of the "actual cost per student" for a given year either for the district board of education or for each special education class by handicap classification based on the following:

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

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

3. Criteria contained in (c) below.

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

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

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

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

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

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

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

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

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

(g) Calculation of tentative tuition rates, execution of written contractual agreements, payment of tuition (including the nonresident fee) and adjustments to tentative tuition charges upon certification of actual tuition rates by the Commissioner shall be made in accordance with N.J.A.C. 6A:23-3.1(e) except that the tentative tuition rates shall be based on the county special services district board of education's estimated adjusted net cost per student consistent with the calculation in (c), (d) and (e) above.

(h) The county special services district board of education shall use the "actual cost per student" certification forms, contract forms and tentative tuition rate forms as prepared and provided by the Commissioner.

(i) A new county special services district board of education shall use the method of determining tentative tuition rates contained in N.J.A.C. 6A:23-3.2.

SUBCHAPTER 4. TUITION FOR PRIVATE SCHOOLS FOR THE DISABLED

6A:23-4.1 Definitions

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

"Advertising costs" means the costs incurred for, but not limited to, the following: cable television, videos, open houses, marketing and public relations. (The cost of a web site, the printing of descriptive brochures, newspapers advertising and advertising in a telephone book are not included in this definition.)

"Administrative costs" means those costs defined as administrative costs as prescribed by the Commissioner in the chart of accounts.

"Assistant Director" means an individual whose job function includes one or more of the following: the formulation of school goals, plans, policies, and budgets and the recommendation of their approval to the school's board of directors; the authorization to recommend all staff appointments and other personnel actions, such as terminations, suspensions and compensation, including the appointment of the business manager to the school's board of directors; the authorization to direct school operations and programs and to supervise and evaluate administrators, supervisors, school staff including teaching staff and office staff including the school business manager; and/or the administration and supervision of school operations staff and programs. The holder of this job title shall possess a bachelor's degree from an accredited institution.

“Average daily enrollment (ADE)” means the sum of the days present and absent of all school students enrolled in the register(s) of the school divided by the number of days the approved private school for the disabled was actually in session for the entire school year rounded to the nearest four decimal places, except in no event shall the divisor be less than 180 days.

“Bonus” means any payment to an employee which:

1. Is not part of the employee’s executed contracted salary;
2. Is not part of the employee’s base salary in the subsequent school year;
3. Is determined in an arbitrary, unreasonable and capricious manner; and
4. Is paid solely at the discretion of management.

“Business Manager” means an individual whose job function includes one or more of the following: financial budget planning and administration, insurance/risk administration, purchasing, financial accounting and reporting, facility planning, construction, and maintenance; personnel administration; administration of transportation and food services and data processing. The holder of this job title shall hold a bachelor’s degree in business, accounting, finance or economics from an accredited institution or shall hold a standard school business administrator’s certificate.

“Certified actual cost per student” means the actual allowable cost for the entire school year plus the applicable maximum surcharge/working capital fund divided by the average daily enrollment.

“Conditional approval status” means the approved private school for the disabled is precluded from accepting new students.

“Director” means an individual whose job function includes one or more of the following: the formulation of school goals, plans, policies, and budgets and the recommendation of their approval to the school’s board of directors; the authorization to recommend all staff appointments and other personnel actions, such as terminations, suspensions and compensation, including the appointment of the business manager to the school’s board of directors; the authorization to direct school operations and programs and to supervise and evaluate administrators, supervisors, school staff including teaching staff, and office staff including the school business manager; the administration and supervision of school operations staff and programs. The holder of this job title shall hold a bachelor’s degree from an accredited institution.

“Entertainment expenses” means the cost of providing any type of food/beverage to school officers, school directors/trustees, consultants and/or individuals providing ser-

vices to the school at any time or to school employees after school hours.

“Executive Director” means an individual whose job function includes one or more of the following: the formulation of school goals, plans, policies, and budgets and the recommendation of their approval to the school’s board of directors; the authorization to recommend all staff appointments and other personnel actions, such as terminations, suspensions and compensation, including the appointment of the business manager, to the school’s board of directors; the authorization to direct school operations and programs and to supervise and evaluate administrators, supervisors, school staff including teaching staff, and office staff including the school business manager; the administration and supervision of school operations staff and programs. The holder of this job title shall hold a bachelor’s degree from an accredited institution.

“Extraordinary service” means the services of a one-to-one aide for a student.

“Final tuition rate” means an amount equal to or less than the certified actual cost per student calculated in accordance with N.J.A.C. 6A:23-4.2(a).

“Instructional costs” means those costs defined as instructional costs as prescribed by the Commissioner in the chart of accounts.

“Keyman life insurance” means insurance on staff members for which the school is the beneficiary of the life insurance policy and the expense is charged as a fringe benefit.

“New private school for the disabled” means a private school for the disabled in the first two years of operation.

“Public school placement restricted working capital fund” means a non-profit school’s total public school restricted assets less the total public school restricted liabilities.

“Related services” means the type of services defined in N.J.A.C. 6A:14-1.3.

“School year” means the time period a school is in session either from July through June, August through June or September through June.

“Severance pay” means compensation in addition to regular salaries and wages that are paid by a school to an employee whose services are being terminated.

“Start up costs” means those costs such as, but not limited to, legal fees, filing fees, furniture, fixtures, equipment and facility costs incurred by a school prior to nine months of receiving Department approval to operate as an approved private school for the disabled. A salary would not be considered an allowable start-up cost.

"Surcharge" means the amount of profit that for-profit schools may include in the certified actual cost per student.

"Tentative tuition rate" means the original budgeted tuition rate charged to a sending district board of education for the school year prior to the final tuition rate charged determined as a result of the audited financial statements.

6A:23-4.2 Tuition rate procedures

(a) For determining the tuition rate for the school year for approved private schools for the disabled located in New Jersey, the certified actual cost per student means the actual allowable cost for the school year plus the applicable maximum surcharge/public school placement restricted working capital fund divided by the average daily enrollment for the school year except as modified in (a)2 and 3 below. Based on the certified actual cost per student, the school's board of directors shall determine the final tuition rate charged which is an amount less than or equal to the certified actual cost per student. The certified actual cost per student and final tuition rate charged shall be identified in the audited financial statements submitted pursuant to N.J.A.C. 6A:23-4.9.

1. Actual allowable costs for the program shall be based on all costs of student instruction from July 1 through June 30. Such costs shall be consistent with the individualized education program (IEP) of a disabled student, and shall include all costs required to implement all students' IEPs including all related services. Such costs shall be reasonable, that is, ordinary and necessary and not in excess of the cost which would be incurred by an ordinarily prudent person in the administration of public funds.

2. If the private school for the disabled proposes to charge a final tuition rate in excess of 10 percent of the tentative tuition rate charged, the private school shall notify each sending district board of education and the Assistant Commissioner, Division of Finance that such an increase will be charged and the reason for the increase within 45 days after the private school becomes aware of such increase.

i. If the sending district board of education and the Assistant Commissioner, Division of Finance are not notified within the 45 day time period, the private school shall charge only the 10 percent increase.

3. Costs for the program shall include instructional costs and administrative costs, as defined in the chart of accounts, as follows:

i. For the 2002-2003 school year, minimum instructional costs of 50 percent and maximum administrative costs of 35 percent;

ii. For the 2003-2004 school year, minimum instructional costs of 50 percent and maximum administrative costs of 30 percent; and

iii. For the 2004-2005 school year and years thereafter, minimum instructional costs of 55 percent and maximum administrative costs of 25 percent.

4. Unless otherwise determined by (b) below, the approved private school for the disabled shall charge one tentative tuition rate, charge one final tuition rate, and calculate one certified actual cost per student for the school year. All tuition rates shall be reflected on a per diem and school year basis (number of enrolled days in the school year times the per diem rate). Those schools that operate both a 10 month and an extended school year shall reflect tuition rates for both the July/August through June and September through June school years.

5. Costs for all related services shall be included in the actual allowable costs when calculating the certified actual cost per student. The private school may not bill the sending district board of education separately for related services that are required by a student's initial or subsequent IEP.

6. Total costs for programs in operation less than the minimum of 180 days of instruction (September 1 through June 30) shall be reduced by 1/180 for each day less than the 180 day requirement to determine actual allowable costs.

7. The average daily enrollment for students enrolled in a program for a time period other than a full day shall be based on the total number of hours actually enrolled during the school year divided by the total possible number of hours in the school year.

(b) An approved private school for the disabled has the option of charging one tuition rate per school location for the school year or separate tuition rates by class type by school location for the school year. Private schools for the disabled that choose to charge by class type shall:

1. Maintain bookkeeping and accounting records by class type by school location for the school year;

2. Charge a separate tuition rate for each class type served regardless of the number of class types served;

3. Prepare in the Department-prescribed format the audited costs by class type for the first two years that tuition is charged by class type in order for the Commissioner to determine the tentative tuition rates in accordance with (i) below; and

4. Determine on a pro rata basis the individual share of a particular allowable cost item for a class type, when it is not possible to charge the actual amount expended, in accordance with the following ratios or another acceptable method as approved by the Commissioner:

i. Ratio of average daily enrollment in each class type to the total average daily enrollment;

ii. Ratio of square feet of floor space in each class type to the total square feet of floor space used; and

iii. Direct costs.

(c) Direct costs are costs which can be identified specifically to a program and/or revenue source and shall be recorded in the prescribed bookkeeping and accounting system and used in determining the respective actual cost per student.

(d) Indirect costs are costs that are incurred for a common or joint purpose and not readily assignable to a program and/or a revenue source. Indirect cost pools may be established as appropriate for allocation between common or joint purposes at the end of the fiscal year.

(e) An entity that operates only as a private school for the disabled and operates one or more tuition programs at one or more locations shall charge their costs as follows:

1. Direct costs for each program as determined pursuant to (c) above; and
2. Indirect costs on a consistent basis in the respective actual cost per student in accordance with an equitable allocation plan approved by the Commissioner, or in accordance with either of the following ratios:
 - i. Direct costs for each program determined pursuant to (c) above to total direct costs; or
 - ii. Average daily enrollment for each program to total average daily enrollment.

(f) An entity that operates other programs in addition to a private school for the disabled program(s) at one or more locations shall charge their costs as follows:

1. Direct costs for each program as determined pursuant to (c) above;
2. Indirect cost centers established as follows:
 - i. A cost center, which shall include indirect costs that are allowable costs in accordance with N.J.A.C. 6A:23-4; and
 - ii. A cost center, which shall include indirect non-allowable costs that are not chargeable as allowable costs in accordance with N.J.A.C. 6A:23-4.
3. Allowable indirect costs shall be included on a consistent basis in the respective actual cost per student in accordance with an equitable allocation plan approved by the Commissioner or in accordance with either of the following ratios:
 - i. Direct costs for each program determined pursuant to (c) above to total direct costs; or
 - ii. Average daily enrollment for each program to total average daily enrollment.

(g) Whenever a facility used by an approved private school for the disabled is also used for unrelated activities and/or enterprises by related or unrelated parties, all costs,

direct or indirect, associated with such facilities and operations shall be charged according to the associated activities and/or enterprises which they benefit. Indirect costs shall be distributed in accordance with an equitable allocation plan approved by the Commissioner.

(h) A tentative tuition rate shall be established by written contractual agreement between the approved private school for the disabled and the sending district board of education. The tentative tuition rate charged shall be an amount not in excess of the tentative tuition rate established in accordance with (i) and (j) below for the ensuing school year. The written contract shall be on a form prescribed by the Commissioner and shall be executed prior to the enrollment of a student.

1. The contractual agreement shall require the sending district board of education to pay a tentative tuition charge based upon a per diem rate for the total number of days the student was enrolled during the month, for each month the student is enrolled. The per diem rate is determined by dividing the tentative tuition rate for the school year by the estimated number of days school will be in session, but not less than 180 days, and rounding to the nearest two decimal places.

2. The contractual agreement shall require the sending district board of education to pay the approved private school for the disabled the tentative tuition charge no later than the first of each month prior to the services being rendered. The sending district board of education shall pay the tentative tuition charge for a student enrolled during the month by the first day of the second month services begin. A sending district board of education that pays tuition 30 days after the first day of each month may be charged interest by the private school calculated at the rate of one percent per month on the unpaid balance.

(i) The tentative tuition rate for each approved private school for the disabled for the ensuing school year shall be determined by the Commissioner no later than January 1 preceding the beginning of the ensuing school year.

1. For school years beginning 2002-2003, the tentative tuition rate per student shall equal the product of the audited actual cost per student for the school year prior to the current school year and the sum of 1.0 and twice the spending growth limitation of 0.03 or the CPI, which ever is greater. Under no circumstances shall the tentative tuition per student determined be less than the tentative tuition rate per student charged in the prior school year for the school years 2002-2003 and 2003-2004.

2. The tentative tuition rate shall include:

i. For profit-making schools, the annual surcharge permitted in accordance with N.J.A.C. 6A:23-4.6; and

ii. For non-profit schools, a public school placement restricted working capital fund in accordance with N.J.A.C. 6A:23-4.7.

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

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

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

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

iii. A financial report which is properly completed and in the format prescribed by the Commissioner for the six months of operations ending December 31 immediately preceding the school year for such request. This report format is available at the Division of Finance, PO Box 500, Trenton, New Jersey 08625-0500.

(k) The final tuition rates charged shall be certified by the Commissioner according to this subchapter.

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

(m) If the Commissioner determines that the tentative tuition rate for the school year established by written contractual agreement is less than the final tuition rate charged for the school year, the approved private school for the disabled may charge each sending district board of education all or part of the difference owed, but the same final tuition rate charged shall be charged to each sending district board of education. The sending district board of education shall pay the difference on a mutually agreed upon date, but not later than the end of the second school year following the year for which the actual cost per student is certified.

(n) The contract and the form to establish the tentative tuition rate for the ensuing school year shall be prepared by the Commissioner.

(o) A list of maximum salaries by job title and county according to the job titles contained in N.J.A.C. 6:11 which pertain to private schools for the disabled shall be calculated and published by the Commissioner. Except for administrative job titles referenced in (p) below, maximum salaries shall be based on the highest contracted salaries of certified staff by job title in a district board of education for any prior year indexed by the average increase in salary between the two preceding school years for each job title. Such salaries shall be based on a 12-month contract period from July 1 through June 30, and the maximum salary of a private school staff member shall be prorated for staff employed for less than 12 months. Under no circumstances shall the maximum salary calculated be less than the corresponding salary in the prior year for the same job title and county. Unrecognized job titles shall be correlated to similar job titles in public schools based on their functional activities.

(p) A list of maximum salaries by administrative job titles and county according to the job titles contained in N.J.A.C. 6:11 and 6A:23-4.1 which pertain to private schools for the disabled shall be calculated and published by the Commissioner. Maximum salaries shall be based on the highest contracted salary by administrative job title for the entire State in a district board of education, special services district board of education and educational services commissions with comparable average daily enrollments for any prior year indexed by the average increase in salary between the two preceding school years for each job title. Such salaries shall be based on a 12-month contract period from July 1 through June 30, and the maximum salary of the private school staff member shall be prorated for staff employed for less than 12 months. Each district board of education, special services district board of education and educational services commission with an ADE equal to or less than the highest private school ADE will be considered comparable. Under no circumstances shall the maximum salary calculated, be less than the corresponding salary in the prior year for the same job title.

(q) For the 2001-2002 school year and years thereafter except as noted:

1. For a staff member who was employed by the private school prior to the 2001-2002 school year whose salary is greater than the maximum salary calculated by the Commissioner in accordance with (o) and (p) above, such salary shall be frozen at the 2000-2001 salary level reflected on the Fiscal Information Report for 2000-2001 as submitted in July of 2000 to the Department and subject to the provisions of (q)3 below, or until such time as the maximum salary calculated by the Commissioner in accordance with (o) and (p) above exceeds the 2000-2001 salary level;

2. For a staff member who was employed by the private school prior to the 2001-2002 school year whose salary as reflected on the fiscal Information Report for 2000-2001 as submitted in July of 2000 to the Department and subject to the provisions of (q)3 below is less than the maximum salary calculated by the Commissioner in accordance with (o) and (p) above, the maximum salary shall be determined in accordance with (o) and (p) above;

3. For a staff member who was employed by the private school prior to the 2001-2002 school year:

i. Whose job title remained the same from 1999-2000 but whose salary changed in 2000-2001 from the amount on the Fiscal Information Report for 2000-2001 as submitted to the Department in July of 2000, the salary increase must have been reflected in the employee's paycheck on or before November 15, 2000;

ii. Whose job title changed during 2000-2001 and is not on the Fiscal Information Report for 2000-2001 as submitted to the Department in July of 2000, the new job title and new salary must have been reflected in the employee's paycheck on or before November 15, 2000;

iii. Who was a new employee in 2000-2001 and whose name was not on the 2000-2001 Fiscal Information Report for 2000-2001 as submitted to the Department in July of 2000, the salary shall be based on the contractual agreement between the parties;

iv. Whose salary falls under items (q)3i through iii above, the salary is subject to Commissioner review and approval for determining the maximum salary for 2001-2002 and subsequent school years; and

4. For a staff member in a new private school opening on or after July 1, 2001, for employees whose employment commences on or after July 1, 2001 at private schools existing as of July 1, 2001 and for employees employed as of July 1, 2001 whose job titles change from 2000-2001 to a subsequent school year, the maximum salaries shall be determined in accordance with (o) and (p) above.

(r) A list of the recognized job titles in accordance with N.J.A.C. 6:11 that require certification and N.J.A.C. 6A:23-4.1 that require a bachelor's degree, shall be published by the Commissioner. Private schools for the disabled shall only hire staff or consultants in job titles that require certification or a bachelor's degree if such titles are included on this list, or if such titles are unrecognized job titles for instruction that are approved in accordance with N.J.A.C. 6:11-3.3(a). The private school for the disabled may use unrecognized administrative job titles, but maximum salaries of these titles are restricted in accordance with N.J.A.C. 6A:23-4.5(a)9.

(s) For students who are transitioning back to a program of the sending district board of education for a portion of the enrolled school day, or to a third party location and

require the services of a private school staff person, the ADE for tuition rate purposes shall be computed as follows:

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

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

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

1. The calculation of the student's ADE shall be based on the number of hours enrolled in the program to the total number of possible hours of the program.

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

6A:23-4.3 New private schools for the disabled

(a) A prospective applicant shall file an application and obtain approval of such application from the Commissioner prior to operating an approved private school for the disabled. A currently approved private school for the disabled which is expanding a program to another location or opening a new program is considered a new private school which shall be approved by the Commissioner prior to operating. A currently approved private school for the disabled which is expanding a program, or adding a new class type(s) to be housed in another building at the current location, shall not be considered a new private school for the disabled and shall charge as a tentative tuition rate the tuition the school is currently charging.

(b) An applicant applying for approval as a new private school for the disabled shall provide evidence to the Department that there is sufficient need for the new school private school as defined as follows:

1. The applicant shall submit documentation of intent signed by the superintendent of the sending district board of education to place a student in the new program and verification that there is no other appropriate placement for the student(s); and

2. The applicant shall document the need for a minimum of 16 students in order to be approved by the Commissioner.

(c) Programs that meet the criteria in (b) above, shall be approved as follows:

1. The school shall receive preliminary approval to operate for a two year period, after which the school shall

provide documentation that the school has a minimum ADE of 16 by the end of the second school year;

i. A school meeting the minimum ADE of 16 shall receive new school approval;

ii. A school not meeting the minimum ADE of 16 shall have their preliminary approval status revoked and no longer be considered an approved private school for the disabled;

iii. Any previously approved private school for the disabled that falls below the minimum ADE of 16 in a school year shall have their status as an approved private school for the disabled rescinded and shall be considered preliminarily approved. The school shall attain a minimum ADE of 16 by the end of the third school year after the year in question or their approval shall be rescinded in accordance with (c)1ii above; and

iv. Private schools for the disabled operating in and affiliated with a public school are exempt from *(c)1iii above.

(d) Start-up costs, if any, may not be directly expensed and shall be amortized over a 60 month period.

(e) For the first two years of operation of an approved private school for the disabled which was first in operation after the 2000-2001 school year, the estimated actual cost per student and per diem rate at each site or in each program shall be established annually and be based on budgeted allowable costs. These estimated cost(s) shall be submitted to the Commissioner for approval or disapproval no later than 90 days preceding the beginning of each school year. The proposed budget shall be on a form prepared by the Commissioner which shall provide for, but not be limited to, the following:

1. Fiscal and programmatic data;
2. Projected allowable cost items and projected enrollments;
3. A projected budget which reflects administrative costs not in excess of and instructional costs not less than the percentages identified in N.J.A.C. 6A:23-4.2(a)3 and as defined in the chart of accounts;
4. A report of all funding resources;
5. An affidavit of compliance; and
6. A statement of assurance.

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

(g) If, after each year of operation, the Commissioner determines that the actual cost per student or per diem rate differs from the estimated cost per student or per diem rate, the tentative tuition charges shall be adjusted in accordance with the provisions of this subchapter.

6A:23-4.4 Bookkeeping and accounting

(a) An approved private school for the disabled shall maintain accounting and bookkeeping systems as prescribed in Financial Accounting for New Jersey Private Schools for the Disabled issued by the Department in accordance with the following standards:

1. Accounts shall be kept in accordance with generally accepted accounting principles (GAAP) as defined by the American Institute of Certified Public Accountants, except as already modified in this chapter.

2. At a minimum, accrual accounting shall be used on a quarterly basis.

3. Fixed asset expenditures of \$2,000 or more shall be capitalized and depreciated using the straight line method and a useful life consistent with current Federal tax law, except for real property which may be depreciated using a useful life of 15 years or the term of the original mortgage, whichever is greater.

4. Leasehold improvements shall be capitalized and depreciated using the straight-line method and a useful life equal to that of the lease, but not less than five years.

5. Asset, liability and fund balance accounts, as well as expenditure and revenue accounts shall be maintained.

6. Non-profit organizations shall maintain financial records on a fund basis which requires that restricted or unrestricted donations shall be maintained in funds separate from the public school restricted fund. Costs incurred as a result of restricted or unrestricted donations shall be charged to the appropriate fund and not through the public school restricted fund. Profit-making organizations shall maintain financial records on a modified fund basis.

7. A chart of accounts issued by the Commissioner shall be maintained by each private school for the disabled. Effective July 1, 2002, a uniform minimum chart of accounts consistent with Financial Accounting for Local and State School Systems, 1990, commonly referred to as Handbook 2R2 and developed by the National Center for Education Statistics, incorporated herein by reference, as amended and supplemented as prepared, published and distributed by the Commissioner for use in the accounting systems of all private schools for the disabled and shall be used for financial reporting to the Department. For entities that operate other programs and the total private school tuition expenses are less than 51 percent of the entity's total expenses, the Commissioner may approve the use of an alternative chart of accounts but the private school shall provide evidence that such chart of accounts may be cross-walked to the prescribed chart of accounts.

8. If multiple facilities for a private school have been approved, financial information shall be segregated by facility in the bookkeeping records. If the private school chooses to charge tuition rates by class type, financial information shall be segregated by class type in the bookkeeping records. Bookkeeping records shall include, but not be limited to:

- i. Cash receipts journal;
- ii. Cash disbursement journal;
- iii. General ledger;
- iv. Tuition ledger;
- v. Payroll journal; and
- vi. Fixed asset inventory.

9. Documentation to verify postings shall be maintained. Purchase orders shall be prepared in detail to document all payments for goods and services. Invoices or cash register receipts shall be attached to their related purchase orders to support all purchases of goods. Detailed vouchers signed by the payee shall be attached to their related purchase orders to support all payments for personal services, employee mileage reimbursements or any payment for which invoices or cash register receipts are not used.

10. A payroll shall be prepared and supported by an accurate employee time record in a format prescribed or approved by the Commissioner, signed by the employee and supervisor, prepared in the time period in which the work was done and completed at least semi-monthly.

11. A financial report shall be prepared in a format prescribed or approved by the Commissioner each quarter at a minimum for the school year program. This report shall be submitted to the school's governing body. Acceptance of the financial report shall be documented in the minutes of the meetings.

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

13. An approved private school for the disabled shall use the mandated tuition contract prescribed by the Commissioner for each student received from a district board of education. The mandated tuition contract may only be revised by the private school for the disabled or the sending district board of education with prior written approval by the Commissioner.

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

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

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

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

16. A petty cash fund shall be approved by the governing body and supported by documentation. The fund shall not exceed \$1,500 and, disbursements shall not exceed \$150.00, except in the case of an emergency.

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

18. A mileage record shall be maintained for each school-owned vehicle, leased vehicle or vehicle contained in a related party transaction involving the purchase of transportation services in a format prescribed by the Commissioner. The mileage record shall be maintained on a trip by trip basis and include any personal use including to/from work commutation. At the end of the fiscal year, the percentage determined by the total personal miles to total miles shall be applied to all costs associated with the vehicle(s). Vehicle costs may include, but not be limited to, the following: depreciation, lease costs, gas, oil, repairs and maintenance, insurance and car phone.

19. Upon request from the Commissioner, a profit-making approved private school for the disabled shall provide a copy of the Internal Revenue Service (IRS) tax return and a non-profit approved private school for the disabled shall provide a copy of IRS form 990 to the Department.

20. An approved private school for the disabled shall maintain all pertinent financial record(s) for a period of seven years after the November 1 due date of the audit.

21. A non-profit entity that has chosen to cease operations as a non-profit private school for the disabled shall distribute its accumulated public school placement restricted working capital fund to each sending district board of education that had enrolled students during the private school's last five years of operation. The distribution shall be based on each district board of education's total ADE in the private school for the last five years of operation to the private school's total ADE for the same period. Within 180 days of closing, the private school shall file with the Commissioner a listing of the total distribution of the public school placement restricted working capital fund, by sending district board of education.

22. An approved private school for the disabled shall ensure that school staff, outside consultants and subcontractors including members of a management company hold the proper school certification, license or bachelor's degree to provide the services being rendered.

(b) An approved private school for the disabled which receives a refund(s) from a current or prior year expenditure or cancels an accounts payable shall apply such refund or accounts payable as a reduction to the general expenditure account charged, which shall reduce the current year expenditure account. If the original expenditure account charged is not charged in the current school year, such amount(s) shall be used to reduce total expenditures in the current year.

(c) An approved private school for the disabled shall, each year, execute an employment contract with each school employee whose position requires a certificate, license or a bachelor's degree, which shall contain at least the following information:

1. The name of employee;
2. The dates of employment;
3. The work hours;
4. Certification(s) and/or degree(s) held;
5. A job description;
6. The job title; and
7. The salary.

(d) The approved private school for the disabled shall request and receive approval to purchase or rent in a related party transaction an administrative or business office at a location other than at the private school of the disabled. A member of the County Office of Education shall conduct an on-site facility review to determine if there is sufficient space at the school for these operations, and/or the private school shall file documents with the Assistant Commissioner, Division of Finance to substantiate the need for additional space.

(e) Employees of an approved private school for the disabled shall provide the instructional program to the students for which they are compensated during the hours the school is in session.

(f) An approved private school for the disabled shall establish, maintain and distribute an employee handbook to all staff. The employee handbook shall contain an outline of all employee fringe benefits that shall include, but may not be limited to, the following: health insurance coverage, life insurance, type(s) and qualification for pension(s) and sick day benefits. All employees' fringe benefits shall be adopted in a Board of Director's meeting and documented in the board minutes prior to implementing the fringe benefit.

(g) An approved private school for the disabled that loans funds to any party shall charge interest at a rate equal to the prime rate. The Department shall compute imputed interest on those funds that are loaned at less than the prime interest rate or interest free. Such imputed interest revenue shall be netted against any short-term interest costs first, and then long term interest costs incurred by the private school.

(h) An approved non-profit private school which has a positive public school placement restricted working capital fund balance and a net deficit fund balance in all other fund balances (restricted and unrestricted) for more than three consecutive fiscal year-ends shall file a corrective action plan with the Assistant Commissioner, Division of Finance within 60 days after the end of the third fiscal year. The Department shall monitor the corrective action plan and if the deficit is not decreasing, the private school shall be put on conditional approval status until such time that the deficit decreases.

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

(j) Beginning in the 2001-2002 school year, private schools for the disabled shall attempt to use the job titles that are in use in the public schools in accordance with N.J.A.C. 6:11, and the list published each year by the Commissioner or those approved in accordance with N.J.A.C. 6:11-3.3(a). The private schools should minimize the use of unrecognized job titles.

(k) A private school shall issue salary increases after the start of the fiscal year only in one or more of the following cases and in accordance with N.J.A.C. 6A:23-4.2(q):

1. The increase is due to a staff member(s) promotion that results in additional job responsibilities;

2. The increase is due to a staff member(s) attaining a higher degree or certification;

3. The increase is in accordance with (a)14 or 15 above; or

4. The increase has been approved by the Department after review of a formal written request to the Assistant Commissioner of Finance documenting the facts necessitating the increase, if none of the above cases was met.

(l) Staff members functioning in the following positions without the proper bachelor's degree as defined in section N.J.A.C. 6A:23-4.1 shall either obtain the proper bachelor's degree no later than June 30, 2006 or be removed from the position:

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

Amended by R.2002 d.253, effective August 5, 2002.

See: 34 N.J.R. 1652(a), 34 N.J.R. 2788(a).

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

6A:23-4.5 Non-allowable costs

(a) A cost that is not allowable in the calculation of the certified actual cost per student means the following:

1. An administrative cost in excess of and/or instructional cost less than the percentages indicated in N.J.A.C. 6A:23-4.2(a);

2. The cost of maintaining an administrative office in a private home or other residence;

3. An advertising cost in excess of 0.5 percent of the private school's actual allowable costs not including advertising;

4. Any cost associated with public relations and lobbying including salaries and fringe benefits except those incurred within item (a)3 above;

5. Any cost other than those governed by (a)52 below associated with lobbying in an attempt to influence:

- i. The outcome(s) of any Federal, State, or local referendum, initiative or similar activity; or
- ii. The introduction of Federal legislation, State legislation or State rulemaking, or the enactment or modification of any Federal legislation, State legislation or State rulemaking.

6. The salary of a professional staff member, consultant or subcontractor including a member of a management company who is not certified but is functioning in a position requiring certification in accordance with

N.J.A.C. 6:11 or bachelor's degree required in accordance with this subchapter;

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

8. A salary in excess of the associated maximum salary determined in N.J.A.C. 6A:23-4.2(o), (p) and (q) for a staff member or consultant whose position requires certification, license or a bachelor's degree including a director, assistant director, executive director, and business manager. Part-time or split-time positions shall be prorated including salaries in entities defined in N.J.A.C. 6A:23-4.2(e) and (f);

9. A salary of an employee not covered by (a)6 above in excess of the lowest maximum salary in the same county according to the list of maximum salaries determined in N.J.A.C. 6A:23-4.2(o), (p) and (q) whose position does not require certification, license or bachelor's degree, including an individual with the director, assistant director, executive director, or business manager job title whose job function(s) are not consistent with those functions described in N.J.A.C. 6A:23-4.1. Part-time or split-time positions shall be prorated including salaries in entities defined in N.J.A.C. 6A:23-4.2(e) and (f);

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

11. A legal, accounting or consultant fee resulting from a frivolous challenge to a State audit or financial review or the prosecution of a claim against the State. The Commissioner shall determine whether the challenge is frivolous by considering at least the following factors:

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

12. A consultant fee for services which are not detailed in an executed written contract and which shall include at least a list of the nature of the services provided, the approximate number of days to complete the work, the charge per day and the product or outcome of the consultation. The consultant shall hold the appropriate school certification when such certification exists;

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

14. Depreciation unacceptable under N.J.A.C. 6A:23-4.4(a)3 and depreciation on:

- i. Donated goods and assets;
- ii. That which is not based on estimated straight-line method; and
- iii. Autos in excess of the dollar or percentage limitation contained under Internal Revenue Service Code Section 280F;

15. The yearly cost of a lease for a vehicle covered under Internal Revenue Service Code section 280F in excess of the amount allowed by the Internal Revenue Service;

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

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

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

19. The cost of a fine or penalty which results from a violation of or failure by the school to comply with a Federal, State and/or local law or rule;

20. The cost of meals for students, unless the meals meet the nutritional requirements of the Child Nutrition Program;

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

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

23. Fringe benefits:

i. When the benefits are determined in an arbitrary or capricious manner rather than on an existing written uniform policy based on an equitable standard of distribution, such as years of service or education; and

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

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

25. Goodwill;

26. Interest costs on loans when:

i. Interest is in excess of the general prevailing rate at the time the loan was taken;

ii. The loan is a less-than-arm's length/related party transaction which has not been previously approved by the Department and not repaid in accordance with the Department's approval letter; and

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

27. Interest costs on long-term loans or mortgages when:

i. The loan is used for other than financing of fixed assets;

ii. The loan is not secured by the fixed asset being financed; and

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

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

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

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

31. Pension costs that are:

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

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

iii. For a defined contribution plan in excess of the lesser of 25 percent of the employee's gross salary or \$30,000 and subsequent changes made to the IRS maximum percentage and maximum dollar amount; and

iv. For a defined benefit plan in excess of an amount, by employee, which would allow the defined plan to provide a benefit in excess of the percentage of the employee's number of years of service divided by 60 times the highest three year average salary and at an age before 55;

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

33. The costs of a salary increase or merit pay award when such amount(s) were not in accordance with N.J.A.C. 6A:23-4.4(a)14 or 15 or the merit pay award(s) are not consistent with the plan(s) on file with the Commissioner;

34. The cost of travel involving the difference between first-class air accommodations and less than first-class air accommodations, except when less than first-class accommodations are not reasonably available, which shall be documented by the airline or travel agent;

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

36. A payment of a bonus;

37. A loss on an investment;

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

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

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

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

42. Personal use of a school-owned or leased vehicle which includes to/from work commutation;

43. Any costs associated with a school-owned vehicle, leased vehicle or vehicle contained in a related party transaction involving the purchase of transportation services where a mileage log was not maintained;

44. A business-incurred charge for a privately owned vehicle in excess of the mileage rate allowed by the United States Internal Revenue Service for automobile travel;

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

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

47. Costs related to transactions between related parties in which one party to the transaction is able to control or substantially influence the actions of the other. Such transactions are defined by the relationship of the parties and include, but are not limited to, those between divisions of an institution; institutions or organizations under common control through common officers, directors, or members; and an institution and a director, trustee, officer, or key employee of the institution or his or her immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. Such costs shall include, but are not limited to:

i. Rental costs for buildings and equipment in excess of the actual allocated costs of ownership (such as straight line depreciation in accordance with N.J.A.C. 6A:23-4.4(a)3, mortgage interest, real estate taxes, property insurance and maintenance costs) incurred by the related property owner including a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The lease agreement shall include a list of anticipated costs to be incurred by the property owner, prepared in the format supplied by the Commissioner, signed by the property owner and notarized;

ii. Rental costs under a sub-lease arrangement with a related party for buildings and equipment in excess of the actual allocated costs related to the lease (such as rent, lease commission expense and maintenance costs)

incurred by the sub-lessor. Profit, return on investment or windfall of any kind shall not be included in the sub-rental cost. The sub-lease agreement shall include a list of anticipated costs to be incurred by the sub-lessor, signed by the sub-lessor and notarized;

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

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

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

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

i. The related parties' tax returns; and

ii. The related parties' paid bills and canceled checks concerning the transaction;

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

50. Indirect and direct costs associated with unrelated activities or enterprises as defined in N.J.A.C. 6A:23-4.2(g);

51. Cost of the year-end audited financial statements prepared by an individual who does not meet the requirements contained in N.J.A.C. 6A:23-4.9(a);

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

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

ii. For membership in an organization which devotes any activities to influencing legislation or state

regulation(s) not directly related to the educational instruction program of disabled students and such activities are not subsidized by sources other than membership fees from private schools for the disabled;

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

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

53. Salary of a staff member which is not properly supported by the employee time record in a format prescribed or approved by the Commissioner in accordance with N.J.A.C. 6A:23-4.4(a)10;

54. A salary or payment made to a member(s) of the board of directors/trustees for services performed in their capacity as a member of the board of director/trustees;

55. Cost of a pension plan and/or medical benefits for current or retired members of the board of directors/trustees;

56. Cost of medical benefits for retired employees who have not reached the age of 55 and who were employed a combination of less than 25 years in a New Jersey public school, a New Jersey public agency or a New Jersey approved private school for the disabled with at least 10 years of service in an approved private school for the disabled;

57. Costs of salaries and fringe benefits of unrecognized position titles which are not properly approved in accordance with N.J.A.C. 6:11-3.3(b);

58. Cost of employee severance pay in excess of four weeks' salary;

59. Cost of a buyout of an employee contract in excess of 90 days;

60. Cost of a salary or consultant fee paid to a full-time employee or consultant for performing more than one administrative function in the private school;

61. Cost to purchase or rent in a related party transaction an administrative office or business office at a location other than at the private school location which was not approved in accordance with N.J.A.C. 6A:23-4.4(d);

62. Cost of a salary increase paid after the start of the fiscal year not in accordance with N.J.A.C. 6A:23-4.4(k); and

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

6A:23-4.6 Surcharge

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

6A:23-4.7 Public school placement restricted working capital fund

(a) For non-profit schools, the school's tuition rate may include an amount which will permit the school to establish a public school placement restricted working capital fund of up to 15 percent of the private school's allowable actual costs but annually may not include an amount in excess of 2.5 percent of the private school's allowable actual costs per year.

(b) Interest and/or dividends earned from the investment of tuition funds shall be applied to reduce the school's total allowable costs when calculating the certified actual cost per student.

(c) Any gain on the sale of fixed assets originally purchased through public school restricted funds shall be added to the public school placement restricted working capital fund.

6A:23-4.8 Calculation of student attendance

(a) Each approved private school for the disabled shall maintain a school register, in accordance with N.J.A.C. 6:3-9, to record all student attendance.

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

(c) Each approved private school for the disabled shall identify private placements in the register.

(d) Each approved private school for the disabled shall maintain a separate register by class type.

6A:23-4.9 Audit requirements

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

(b) The audit shall follow generally accepted auditing standards (GAAS), as set forth in the Codification of Statements on Auditing Standards, 1993, published for the American Institute of Certified Public Accountants, (1211 Avenue of the Americas, NYC, NY 10036-8775), incorporated herein by reference, as amended and supplemented and when applicable, OMB Circular A-133 or NJOMB Circular Letter 98-07 and successor pronouncements. The Commissioner shall establish auditing guidelines and publish the format of the audit.

1. The audit shall include such information as: basic financial statements, required supplementary information, schedules and narrative explanations.

(c) The audited financial statements shall determine the certified actual cost(s) per student and final tuition rate(s) charged at the end of the school year.

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

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

(f) The approved private school for the disabled shall not amend the final tuition rate charged after certification by the Commissioner.

(g) Any adjustments necessary as a result of the certified audit or a tuition audit performed by the Commissioner which are in excess of \$10.00 per sending district board of education shall be made in accordance with N.J.A.C. 6A:23-4.2(l) and (m).

(h) Audits filed after the November 1 due date shall cause the estimated actual cost per student for the ensuing school year to be calculated based upon the audited actual cost per student for the school year two years prior to the current school year, and N.J.A.C. 6A:23-4.2(j) will not apply.

(i) Failure to comply with this section may result in the Commissioner placing the approved private school for the disabled on conditional approval status.

6A:23-4.10 Appeals

(a) The decision of the Commissioner, regarding the calculation of the tentative tuition rate pursuant to N.J.A.C. 6A:23-4.2(j), regarding the approval of a tentative tuition rate pursuant to N.J.A.C. 6A:23-4.3 and regarding conditional approval status pursuant to N.J.A.C. 6A:23-4.9(i), may be appealed in accordance with N.J.A.C. 6A:3.

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

(c) The decision of the Commissioner in regard to N.J.A.C. 6A:23-4.3, New private schools for the disabled, may be appealed to the State Board of Education in accordance with N.J.S.A. 18A:6-27.

6A:23-4.11 Out-of-State approved private schools for the disabled

(a) Out-of-State private schools for the disabled shall be approved to provide special education programs by the department of education of the state in which they are located. Exceptions to this requirement may be made only at the discretion of the Office of Special Education, New Jersey Department of Education in accordance with N.J.A.C. 6A:14-7.1(e).

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

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

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

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

3. If a tuition rate cannot be mutually agreed upon in accordance with (c)1 or 2 above, the approved private school for the disabled shall file a budget in a format prescribed by the Commissioner to determine a tentative tuition rate and shall comply with the provisions of this subchapter in order to collect tuition from a New Jersey district board of education or agency. The cost of the audit contained in N.J.A.C. 6A:23-4.9 may be charged to the sending district board of education or agency that did not mutually agree to the tuition rate.

6A:23-4.12 Inspection of records

(a) All financial and accounting records maintained by the approved private school for the disabled, as required by this subchapter, shall be open during normal business hours for review and audit by the Commissioner or his or her representative(s) for the period indicated in N.J.A.C. 6A:23-4.4(a)20.

(b) All financial and accounting records maintained by a related party which pertain to a transaction between a related party and the approved private school for the disabled shall be open during normal business hours for review and audit by the Commissioner or his or her representative(s) for the period indicated in N.J.A.C. 6A:23-4.4(a)20.

(c) All auditor's workpapers used in the preparation of the year-end audited financial statements shall be open during normal business hours for review by the Commissioner or his or her representative(s) for the period indicated in N.J.A.C. 6A:23-4.4(a)20.

6A:23-4.13 Fiscal monitoring of private schools and corrective action plans

(a) The Commissioner shall monitor approved private schools for the disabled in accordance with this subchapter. On site monitoring shall be conducted at least every six years.

(b) The monitoring process may include, but is not limited to, all financial information required in this subchapter.

(c) After the monitoring process is completed, a report shall be written and sent to the private school, the county superintendent and the school's auditor.

(d) If the school receives a final report that indicates noncompliance, a corrective action plan shall be developed and submitted to the Department for approval.

(e) The corrective action plan shall include, but is not limited to, the following:

1. Objective and strategies for correcting each non-compliance item; and
2. The dates by which noncompliance will be corrected.

(f) When an approved private school for the disabled is determined to be in noncompliance, the Commissioner may:

1. Issue a conditional approval status when noncompliance with State rules and/or implementation of the corrective action plan is demonstrated; or
2. Immediately remove program approval when it is documented that the health, safety or welfare of the students is in danger.

(g) The actions of the Commissioner may be appealed according to N.J.A.C. 6A:3.

(h) Annually, the Department shall publish the results of the on-site fiscal monitorings of private schools for the disabled.

6A:23-4.14 Fiscal information

(a) Annually, each approved private school for the disabled shall submit information to the Division of Finance including, but not limited to:

1. Fiscal and program information, including:

- i. The number of students served;
- ii. The number of and types of class types;
- iii. Number of schools days; and
- iv. The daily hours in session;

2. Staffing information, including:

- i. A staff roster, including, but not limited to, names, job titles, salaries, hours worked, certification(s), degree(s) and license(s) held;

3. An affidavit that the program meets the standards of, and is conducted in full compliance with the Individuals with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and Title II and III of the Americans with Disabilities Act, P.L. 101-336, N.J.S.A. 18A:46-1 et seq., this subchapter, and N.J.A.C. 6A:14; and

4. An affidavit that the owners/operators of the program are aware of the non-allowable costs contained in N.J.A.C. 6A:23-4.5 and that such costs charged as allowable costs in the private school for the disabled tuition rate are consistent with the individualized education program of a disabled student and shall be reasonable, that is, ordinary and necessary and not in excess of the cost which would be incurred by an ordinarily prudent person in the administration of public funds.

(b) Annually, the Department shall publish a Private School for the Disabled Comparative Spending Guide.

(c) An approved private school for the disabled shall have a copy of the board of director's minutes, or for a partnership, the minutes of the partners meetings available upon request by the Department.

6A:23-4.15 Failure to comply with Department directives

The Department may place an approved private school for the disabled on conditional approval status when the school fails to comply with Department directives, such as, but not limited to, failure to refund tuition funds as a result of a Department tuition audit.

SUBCHAPTER 5. STATE AID**6A:23-5.1 Emergency aid**

(a) For the purposes of this subchapter, a district board of education does not include an educational services commission or jointure commission.

(b) A district board of education may request emergency aid pursuant to N.J.S.A. 18A:58-11 as follows:

1. The district board of education shall submit a resolution adopted by the board of education to the county superintendent as follows:

i. The resolution shall indicate the specific requested amount of emergency aid and identify the emergency condition that exists within the district board of education;

ii. The resolution shall be accompanied by a separate detailed statement about the emergency condition which indicates the reason why the condition was unforeseeable and/or why the costs associated with the condition were unforeseeable;

iii. The resolution shall also be accompanied by the board secretary's latest monthly financial report, a statement showing the projected end of the year general fund free balance, a detailed accounting of how the emergency aid will be expended and a statement certified by the chief school administrator; and

iv. It shall be duly noted in the board's minutes that no other funds can be reallocated within the existing budget for the emergency condition without adversely impacting the district board of education's ability to meet the core curriculum content standards.

2. Disbursements against emergency aid funds shall be separately accounted for in a district board of education's general fund accounting records.

(c) The county superintendent may request additional documentation as deemed necessary to support a district board of education's request for emergency aid.

(d) The county superintendent shall submit a recommendation regarding a request for emergency aid and all of the information submitted by the district board of education making the request to the Assistant Commissioner, Division of Field Services. The Assistant Commissioner, Division of

Field Services will consult with the Assistant Commissioner, Division of Finance and determine whether to recommend to the Commissioner that a request be sent to the State Board of Education for approval.

1. In determining whether a recommendation for emergency aid will be sent to the State Board of Education, the Department shall consider the extent the district board of education budgeted an adequate level of surplus for unexpected expenditures.

2. If the district board of education did not budget an adequate level of surplus, the Department shall not recommend the emergency aid request.

(e) The State Board of Education shall approve or disapprove any emergency aid requests that have been recommended. The State Board of Education shall fully approve, partially approve, conditionally approve or deny an emergency aid request.

6A:23-5.2 Method of determining the district of residence

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

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

2. The "present district of residence" of a child placed by a State agency in a group home, skill development home, private school or out-of-State facility also referred to in the first paragraph of N.J.S.A. 18A:7B-12b means the New Jersey district of residence of the child's parent(s) or guardian(s) as of the date of the child's initial placement by the State agency. In subsequent school years spent in the educational placement made by a State agency, the child's "present district of residence" shall be determined in the same manner as for a child in a residential State facility as set forth in (a)1 above. The "district of residence" referred to in the second paragraph of N.J.S.A. 18A:7B-12b means the New Jersey district of residence in which the child resided with his or her legal guardian immediately prior to his or her initial admission to a State facility or placement by a State agency.

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

(c) The district board of education shall be notified by the Department of the determination of the district of residence and shall be bound by such determination unless

and until it is reversed on redetermination or appeal pursuant to the provisions of (e) and (f) below.

(d) A district board of education contesting the Department's determination of district of residence shall submit a written notification that a dispute exists to the Assistant Commissioner, Division of Finance, within 30 days of the receipt of a final notice that a child was determined to be a resident of the district for purposes of State funding. As part of this written notice, the following information shall be submitted:

1. A written statement detailing the effort of the district board of education to verify the determination of the Department;
2. Written rationale for rejecting the determination of the Department; and
3. Any additional information the district board of education has obtained which might enable redetermination of the district of residence.

(e) The Division of Finance shall attempt to resolve the dispute administratively and shall notify the district board of education whether a redetermination of district of residence shall be made within 90 days of the receipt of the written notification that a dispute exists.

(f) A district board of education may initiate a formal proceeding before the Commissioner to resolve such a dispute if the Division of Finance is unable to resolve a dispute within the 90 day time limit, by filing a Petition of Appeal with the Commissioner pursuant to the provisions of N.J.A.C. 6A:3.

(g) As prescribed by N.J.S.A. 18A:7B-12, the "district of residence" for a homeless child whose parent(s) or guardian(s) temporarily moves from one district board of education to another is the district in which the parent(s) or guardian(s) last resided prior to becoming homeless. This district shall be designated as the district of residence for as long as the parent(s) or guardian(s) remains homeless.

6A:23-5.3 Address submission for determining the district of residence

(a) The address submitted to the Department for determining the district of residence for school funding purposes for a child described below shall be the address defined below:

1. If the State has custody of the child or if a court or the State has appointed a third party as the custodian of the child, the present address of the parent(s) or guardian(s) with whom the child resided immediately prior to his or her initial admission to a State facility or placement by a State agency shall be submitted. If the child is in a foster home, the present address of the foster parent(s) shall be submitted pursuant to N.J.S.A. 18A:7B-12.

2. If the child's parents are divorced with joint guardianship, the present address of the individual parent with whom the child resided as of the date required by N.J.A.C. 6A:23-5.2(a)1 or 2 shall be submitted.

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

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

6A:23-5.4 Early Childhood Program Aid

(a) A district board of education shall appropriate Early Childhood Program Aid (ECPA) in a special revenue fund and use the aid for preschool, full-day kindergarten, and other early childhood programs and services, except as allowed pursuant to N.J.A.C. 6A:24 and 6A:23-2.3.

1. Other early childhood programs and services include programs and services necessary for the delivery of the core curriculum content standards for grades one through three.

2. A district board of education shall use ECPA for other early childhood programs and services only if the district board of education has achieved full implementation of the required programs for full-day kindergarten and preschool pursuant to N.J.S.A. 18A:7F-16.

(b) A district board of education which has fully implemented preschool and full-day kindergarten shall continue the full operation of such programs for as long as it receives ECPA.

(c) A district board of education shall submit to the county superintendent fiscal and program operational plans for ECPA for review and approval and shall be subject to monitoring by the Department. The county superintendent shall review each line item in the district's fiscal and program operational plans to determine if it is appropriate. The district board of education shall revise the fiscal and program operational plans annually to reflect changes in program and fiscal components.

(d) Early Childhood Program Aid is a dedicated, non-lapsing source of funds. A district board of education shall classify ECPA revenue that is not expended or encumbered by June 30 of the budget year as deferred revenue in the financial accounts and statements of the district, and shall either:

1. Add such revenue to the ECPA revenue of the subsequent year when identified prior to the preparation of the subsequent year budget;
2. Appropriate such revenue during the subsequent year with the approval of the Commissioner or his or her designee; or

3. Retain such revenue as deferred revenue until the second subsequent year budget.

(e) A district board of education shall use all new or deferred ECPA revenues only for the purpose of early childhood programs and services.

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

6A:23-5.5 Demonstrably Effective Programs Aid

(a) A district board of education receiving Demonstrably Effective Programs Aid (DEPA) shall utilize these funds exclusively for demonstrably effective programs in the schools for which the aid eligibility and amount was determined, except as allowed pursuant to N.J.A.C. 6:24 and 6A:23-2.3.

1. Demonstrably effective programs include alternative schools, community schools, class size reduction programs, parent education programs, job training programs, training institutes to improve homework response, telephone tutorial programs, teleconference and video tutoring programs, and HSPT/Early Warning Test before school/after school preparation programs pursuant to N.J.S.A. 18A:7F-18; additional programs that are recommended or revised by the Commissioner; and specific supplemental programs shown to be beneficial for districts with high concentrations of students from low-income families including health services, comprehensive guidance counseling, programs to ensure that schools are safe and drug free, summer school and outreach for dropouts.

(b) A district board of education, except for an Abbott district which is subject to N.J.A.C. 6A:24 and 6A:23-2.3, receiving DEPA shall develop school level operational plans which provide a detailed budget for each school, a description of the demonstrably effective program or programs in use in the school, and a mechanism for annual program evaluation. The district board of education shall include in its operational plan goals, objectives, activities, annual benchmarks and an evaluation process.

1. A district board of education receiving DEPA in accordance with (b) above shall submit to the county superintendent for approval as part of the budget review process in accordance with N.J.A.C. 6A:23-8.1 the school-level operational plan and budget.

(c) District boards of education not subject to N.J.A.C. 6:24 and 6A:23-2.3 shall maintain separate school accounts in the special revenue section of district budget and financial records in accordance with GAAP and N.J.A.C. 6A:23-3.

(d) Demonstrably Effective Programs Aid is a dedicated, nonlapsing source of funds except for a district board of education subject to N.J.A.C. 6:24 and 6A:23-2.3. A district board of education not subject to N.J.A.C. 6:24 and 6A:23-2.3 shall classify DEPA revenue which is not expended or encumbered by June 30 of the budget year as deferred

revenue in the financial accounts and statements of the district, and shall either:

1. Add such revenue to the DEPA revenue of the subsequent year when identified prior to the preparation of the subsequent year budget;

2. Appropriate such revenue during the subsequent year with the approval of the Commissioner or his or her designee; or

3. Retain such revenue as deferred revenue until the second subsequent year budget.

(e) A district board of education shall use all new or deferred revenues only for approved demonstrably effective programs, strategies or services pursuant to N.J.A.C. 6A:23-5.5.

(f) District boards of education receiving Demonstrably Effective Programs Aid that fail to use such aid as required by N.J.A.C. 6A:23-5.5 shall be subject to rescission of aid and additional monetary penalties as established by the Commissioner on a case-by-case basis.

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

SUBCHAPTER 6. PURCHASE AND LOAN OF TEXTBOOKS

6A:23-6.1 Eligibility

(a) For the purposes of this subchapter, a district board of education does not include an educational services commission or jointure commission.

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

(c) Children who are enrolled in a nonpublic school whose parents or legal guardians do not maintain a residence in this State are not eligible to receive such textbooks. Children who are enrolled in a nonpublic school whose tuition is paid by a district board of education are not eligible to receive such textbooks.

6A:23-6.2 Responsibility of the district board of education

Existing book stocks and newly purchased textbooks purchased pursuant to N.J.S.A. 18A:58-37.1 et seq. shall be distributed among all students on an equitable basis. A district board of education shall not discriminate against students in either public or nonpublic schools.

6A:23-6.3 Individual requests

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

(b) Individual requests shall be submitted directly to the district board of education in which the nonpublic school is located or to the nonpublic school. In the latter case, the nonpublic school official shall forward such requests collectively to the district board of education.

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

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

(e) Students attending public schools are not required to submit such requests.

6A:23-6.4 Ownership and storage of textbooks

(a) All textbooks purchased under the provisions of N.J.S.A. 18A:58-37.1 et seq. shall remain the property of the district board of education. Such ownership shall be indicated in each book by a label.

(b) The district board of education shall be responsible for the receipt of the textbooks from the vendor and inventory of such textbooks.

(c) The district board of education may require that the textbooks be returned to the district board of education at the end of the school year, or may enter into agreements with the nonpublic schools to store such books. In the event of such an agreement, the district board of education shall not pay storage charges of any kind to a nonpublic school for this service.

6A:23-6.5 Accounting entries

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

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

(c) The cost of textbooks for nonpublic school students shall be entered in the special revenue fund in the account designated in the minimum chart of accounts. State aid received by the district board of education pursuant to N.J.S.A. 18A:58-37.1 et seq. shall be recorded separately in the special revenue fund as State aid.

6A:23-6.6 Charge for textbook loss or damage

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

(b) Such rules and regulations are applicable to both public and nonpublic school students.

SUBCHAPTER 7. MANAGEMENT OF PUBLIC SCHOOL CONTRACTS

6A:23-7.1 Change orders and open-end contracts

(a) Changes in quantities, work performed, services rendered, materials, supplies or equipment delivered or provided shall not be authorized, permitted or accepted, except by the procedures established in this section. All change orders are subject to the following:

1. Each change order shall be in writing and shall be numbered consecutively (beginning with the number one) for each project or contract;

2. Change orders which result in payment reduction below the originally contracted price may be made by locally established procedure, provided that any change orders increasing costs on the same contract shall include reference to such reductions;

3. Quantities of items or work shall not be changed in such a manner as to nullify the effect of the competitive determination of lowest responsible price which was made at the time of contract award, provided that at said time the changes could have been reasonably foreseen; and

4. Responsibility required by this section to be exercised specifically by the district board of education or charter school board of trustees may not be delegated. In those instances in which authority is to be exercised by some school official, the authority, responsibility and required procedures should be clearly spelled out in advance, by resolution.

(b) Orders placed under open-end contracts are not considered change orders for purposes of this section.

(c) Professional and extraordinary unspecifiable services (EUS) contract change orders are governed by the following:

1. Changes shall be within the scope of activities of the original contract, and not for the purpose of undertaking new or different work or projects. Changes in payments for activities within the scope of activities of the contract shall be in accordance with a schedule of specific charges or rates contained in the contract and shall be effectuated by a written change order authorized by the appropriate school official. If such a schedule is not included in the contract, the contract shall be amended to provide for same.

2. If the change is not within the scope of activities of the original contract:

i. If the contract was awarded without competitive bidding being required by law or rule (as in the case for professional services and certain authorized extraordinary, unspecifiable services per N.J.S.A. 18A:18A-5a(2)), any change beyond the original scope of activities may be made by amendatory contract; and

ii. If the consulting contract was not a professional service and was required to be subject to competitive bidding, any change beyond the original scope of activity shall be by new contract based on new bidding.

3. Before authorizing any change order increasing costs, availability of funds shall be certified by the board secretary or responsible employee of the charter school board of trustees.

4. An amendatory contract may be effectuated by the same method required for the authorization of the original contract.

(d) Change orders for contracts for materials, supplies and equipment are governed by the following:

1. Change orders may be used to change the number of units or items originally advertised and contracted for, provided that:

i. Unit prices were sought at the time of advertising and included in the contract; and

ii. The advertising and the contract included a provision that the unit prices could be so used.

2. Change orders may not be used to substantially change the quality or character of the items to be provided, inasmuch as such factors would have been a factor in the original bidding.

3. Such changes shall not cause the originally awarded contract price to be exceeded cumulatively by more than 20 percent net.

4. Before authorizing any change orders increasing costs, availability of funds shall be certified by the board secretary or the responsible employee of the charter school board of trustees.

5. Changes may be effectuated by the school official authorized to serve as purchasing agent, subject to such controls or approval requirements as the district board of education or charter school board of trustees may lawfully impose.

6. Change orders for materials, supplies and equipment items that are part of a contract that is primarily a construction contract shall be handled in accordance with N.J.A.C. 6A:26-4.9.

7. Change orders may be authorized by the purchasing agent for price adjustment for petroleum products, provided:

i. There has been a determination by the school board attorney that such a price adjustment is authorized by law;

ii. That the original bidding specifications and contract so authorize;

iii. That an objective price benchmark not under the direct control of the supplier is utilized to establish the price changes, and that the changes are not for the purpose of correcting asserted bidding errors; and

iv. That adequate funds have been certified as being available.

(e) Change orders for construction, reconstruction and major repair contract are governed by the following:

1. Change orders shall be limited to the following types:

i. Emergency occurrences affecting health and safety;

ii. Unforeseeable problems; and

iii. Minor modifications to effect economies, improve service or resolve minor problems.

2. Change orders shall not be made for the following:

i. Changes that materially expand upon the size, nature or scope of the project as it was originally described in the bid specifications; and

ii. Extra work that could reasonably be effectuated by a separately bid contract without duly disrupting the basic work or imposing adverse cost consequences.

3. All change orders for construction, reconstruction, and major repair contracts shall be submitted to the Office of Facilities Financing for approval, except:

i. When an emergency condition requires immediate action, the school official designated by the district board of education or charter school board of trustees to handle emergency purchases per N.J.S.A. 18A:18A-7 may authorize the necessary actions to be taken, but only to the extent necessary to meet the emergency;

ii. Minor field (site) modifications, to the extent normally permitted (method is at local option) may be authorized by the district board of education or charter school board of trustees and appropriate school officials, provided that they do not affect the overall scope of work of the contract; however, if these change orders shall result in an inability to complete the full contracted scope of services without increasing the contracted price, the Office of Facilities Financing shall approve in advance; and

iii. If the awarded contract includes a sum for contingencies, said sum should be encumbered against the appropriation at the outset, and charges against that amount may be authorized by the district board of education or charter school board of trustees, provided that the sum so included does not exceed 20 percent of the overall contract.

4. In those instances where the Office of Facilities Financing approval is necessary, the following procedures shall govern:

i. The authorized school official of the district board of education or charter school board of trustees shall file with the Office of Facilities Financing two copies of the request for the change order, stating the facts involved and indicating that the proposed change order may be allowed under this section. If the request and justification are prepared by other than an official of the district board of education or charter school board of trustees, it shall be countersigned by the authorized school official;

ii. The Office of Facilities Financing shall take steps as it may find appropriate to assure that a change is necessary and that it will actually be carried out;

iii. The Office of Facilities Financing shall be assured that adequate appropriations are available;

iv. If appropriate, the Office of Facilities Financing shall authorize a written amendatory contract to be entered into covering the change(s) to be made. The exact form of this amendatory contract shall be at the discretion of the district board of education or charter school board of trustees; and

v. A copy of the change order authorized marked "Approved" shall be sent to the district board of education or charter school board of trustees for its information and files.

(f) The issuance of purchase orders pursuant to an open-end contract shall be considered to be the carrying out of the contract and not a change order. The following requirements shall apply:

1. Orders under open-end contracts shall not be used for purposes such as changing the quality or character of items to be provided, nor to exceed the maximum number(s) of items or units provided for in the original specifications and contract. Such changes would constitute a change order;

2. The contract shall not be for a period longer than the requirements of N.J.S.A. 18A:18A-1 et seq., the Public School Contracts Law unless specifically authorized by law;

3. The certificate of availability of funds shall be executed each time an order is placed covering the amount of the order, unless the district board of education or charter school board of trustees wishes to commit and certify the full amount at the outset. The certificate must be executed before the district board of education or charter school board of trustees incurs a contractual liability on its part; and

4. Orders shall be placed by the school official authorized to serve as purchasing agent subject to such controls or approval requirements as the district board of edu-

cation or charter school board of trustees may lawfully impose.

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

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

In (d)6, substituted "N.J.A.C. 6A:26-4.9" for "(e) below".

6A:23-7.2 Bonds

(a) A district board of education or charter school board of trustees may require the following bonds:

1. A performance bond;
2. A bid bond; and/or
3. A labor and material bond.

(b) A district board of education or charter school board of trustees may require in the notice to bidders or in the specifications that bidders guarantee that they will enter into a contract with the district board of education or charter school board of trustees and will furnish any prescribed performance bond or other security required as a guarantee or indemnification. The guarantee may be given, at the option of the bidder, by certified check, cashier's check or bid bond. When the guarantee is given in the form of a bid bond, such bid bond shall:

1. Be given by a responsible surety or insurance company licensed to operate in New Jersey. A district board of education or charter school board of trustees is prohibited from requiring that bidders submit a bid bond from a particular surety or insurance company; or
2. Be given by a responsible individual residing in New Jersey. The district board of education or charter school board of trustees may reject such individual bid bond if it is not satisfied with the sufficiency of the individual surety offered.

(c) A bid bond in the form of a certificate, identifying the bidder, whose acts are guaranteed, the name of the surety company, insurance company or individual surety and the district board of education in whose favor the bonds are given.

(d) The "penalty" or "penal sum" on performance bonds, labor and material bonds, and all other such bonds shall be expressed in words and figures as a specific number of dollars and not as a percentage of the bid.

(e) The "penalty" or "penal sum" on performance and labor and material bonds shall be in the amount of 100 percent of the contract price.

6A:23-7.3 Contracts for behind-the-wheel driver education

(a) Contracts with private driver education schools providing behind-the-wheel driver education may be made, negotiated or awarded by a district board of education or charter school board of trustees, for any term not exceeding in the aggregate three years, by resolution at a public

meeting without public advertising for bids. Such resolution shall indicate that the private driver education school shall provide behind-the-wheel driver education that is substantially equivalent to that provided by the district board of education or charter school board of trustees at less cost than current or other proposed programs.

(b) Contracts shall only be made, negotiated or awarded with approved private driver education schools. A driver education school holding a current license or certificate of approval issued by the Director of the Division of Motor Vehicles shall be considered as being approved by the Commissioner of Education for the purpose of providing behind-the-wheel driver education. The district board of education or charter school board of trustees shall obtain from the private driver education school a copy of such current license or certificate of approval and maintain the copy on file with the contract.

6A:23-7.4 Joint purchasing systems

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

SUBCHAPTER 8. ANNUAL BUDGET DEVELOPMENT, REVIEW AND APPROVAL

Authority

N.J.S.A. 18A:4-15 and 18A:7F-1 et seq.

Source and Effective Date

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

6A:23-8.1 Budget review and approval

(a) A district board of education shall complete a budget application prepared and distributed by the Commissioner, which shall be referred to as the School District Budget Statement and Supporting Documentation. The district board of education shall include in the budget application a complete reporting of revenues and appropriations and other requirements pursuant to N.J.S.A. 18A:22-8 and 18A:7F-1 et seq.

(b) A district board of education shall submit at the Commissioner's request supplemental information such as documents, contracts, reports, and financial records and statements required by law or regulation, or other information necessary to conduct a review of the district's annual spending plan.

(c) A district board of education shall submit the budget application prescribed by the Commissioner in (a) above to the county superintendent for review and approval.

(d) The county superintendent as designated by the Commissioner shall review and approve each district board of education's proposed budget prior to its advertisement. The county superintendent shall only approve budgets when:

1. The base budget portion of the budget application and supporting documentation submitted by the district board of education provides curriculum and instruction that are designed and will be delivered in such a way that all students will have the opportunity to achieve the knowledge and skills defined by the Core Curriculum Content Standards; and
2. The base budget contains funds sufficient to meet all existing statutory and regulatory mandates.

(e) In reaching a determination, the county superintendent's review shall include, but not be limited to, the following information and records of the district board of education:

1. The thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-4a and b;
2. The annual report (Quality Assurance Annual Report) required under N.J.S.A. 18A:7A-11 and N.J.A.C. 6:8-3.1;
3. Pupil achievement on or progress in meeting existing State assessment standards;
4. Annual independent audits and other external reviews by a State or Federal agency or reviews required by statute and regulation;
5. The comparative spending guide;
6. The school report card;
7. Contractual obligations;
8. The Comprehensive Maintenance Plan pursuant to N.J.A.C. 6:24-3.1; and
9. The section of Long-Range Facilities Plan (LRFP), submitted pursuant to N.J.S.A. 18A:7G-4, that includes the capital projects proposed in the budget.

(f) The county superintendent shall not approve any base budget unless it has been determined that it ensures that curriculum and instruction are designed and shall be delivered in such a way that all students shall have the opportunity to achieve the knowledge and skills defined by the Core Curriculum Content Standards, and that all proposed expenditures are suitable and appropriate as school district expenditures. The county superintendent shall order any changes in expenditure proposals that are found unsuitable or inappropriate except that no modification of non-remote busing proposals shall be made, pursuant to N.J.S.A. 18A:7F-6e.

(g) The county superintendent shall not approve any base budget unless it includes the required annual maintenance amount pursuant to N.J.A.C. 6:24.

(h) The county superintendent shall annually review expenditures of each district board of education, and shall not predicate determinations on past practices. The county superintendent shall direct as appropriate an increase, decrease or the elimination of expenditures contained in the prior year's approved budget.

6A:23-8.2 Review of Abbott district budgets

(a) Abbott districts with schools implementing whole-school reform shall submit whole-school reform implementation plans and school-based budgets by December 1 pursuant to N.J.A.C. 6A:24.

(b) In addition to the district budget approval requirements in this chapter for all districts, Abbott districts shall submit district wide budgets pursuant to N.J.S.A. 18A:7F-6c seven days prior to the normal submission date, and shall include the school-based budget as approved by the Commissioner and the district application for Additional Abbott v. Burke State aid, if applicable, pursuant to N.J.A.C. 6A:24-7.

6A:23-8.3 Commissioner to ensure achievement of the Core Curriculum Content Standards

(a) A district board of education shall be subject to actions by the Commissioner, as part of the budget approval process, upon the failure of one or more schools within the district to achieve the Core Curriculum Content Standards as evidenced by existing Statewide assessment methods or other statutory or regulatory methods of evaluation, resulting in the schools' designation as in need of improvement, as follows:

1. Upon the initial year of failure, a district board of education shall, as a minimum pursuant to Commissioner direction, prepare within 60 days an assessment of the weaknesses in the current educational program and a corrective action plan. This assessment will be part of the district's next annual budget submission and review. The Commissioner may also exercise as appropriate the powers granted him or her under N.J.S.A. 18A:7F-6a.

2. Upon two consecutive years of failure, a district board of education shall, as a minimum pursuant to Commissioner direction, be subject to an assessment of the district's curriculum and budget by the Commissioner as well as to the authority granted to the Commissioner under N.J.S.A. 18A:7F-6a and consider that assessment as part of the district's next annual budget submission. The Commissioner may contract to perform the assessment and may direct that the cost of such contracts be included in the district's budget.

(b) Upon three consecutive years of failure or for districts which have already experienced at least three consecutive

years of failure under existing State assessment methods, the district board of education shall, pursuant to the summary authority granted the Commissioner in N.J.S.A. 18A:7F-6b, be subject to corrective actions as deemed appropriate including, but not limited to:

1. Restructuring of curriculum or programs and the redirection or addition of expenditures consistent with the thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-4;

2. Retraining or reassignment of staff and the development and implementation of a formal plan for professional development at the amount provided for in the thoroughness and efficiency standards;

3. Review of the terms of collective bargaining agreements prior to final approval by the district board of education and an assessment of the impact of such terms on the district's budget, educational program and the local property tax levy; and

4. A Comprehensive Operational Program Assessment (COPA) pursuant to (c) below.

(c) A district board of education that is conditionally certified pursuant to N.J.A.C. 6A:30, and does not correct evaluation indicators rated as unacceptable, or a district board of education that has been fully certified pursuant to N.J.A.C. 6A:30, and subsequently obtains failing test scores for three consecutive years, shall be subject to a Comprehensive Operational Program Assessment (COPA) at the discretion of the Commissioner.

1. The COPA shall, as deemed appropriate, involve the review and assessment of the following areas:

- i. Student performance inputs, which include curriculum and instruction, staffing, technology, professional development; curriculum alignment and articulation;

- ii. Community support;

- iii. Operational management which includes finance and facilities;

- iv. Governance, which includes board relationships, board policy and central office organization; and

- v. Other areas deemed appropriate for study by the county superintendent.

2. A team of Department staff shall be established to conduct the COPA based on the areas to be assessed and size of the district board of education.

3. The county superintendent shall present the results of the COPA to the district board of education at a public meeting of the board.

4. A district board of education shall prepare a COPA remediation plan for implementation over a 12-to 18-month time period and shall submit the plan to the board of education for approval. The COPA team mem-

bers shall submit the board-approved plan to the county superintendent for review.

i. If the plan is not acceptable, the team shall provide comments to the district board of education to make the necessary modifications.

5. Upon completion of the review by the COPA team, the COPA team shall submit the final Remediation Plan to the Commissioner for approval.

6. A district board of education's implementation of the Commissioner-approved COPA Remediation Plan shall be monitored by the county superintendent on a quarterly basis.

(d) The Commissioner will report any action taken under (b) above to the State Board within 30 days.

(e) A district board of education may appeal any actions taken by the Commissioner under (b) above to the State Board.

(f) Nothing in this section shall be construed to limit such general or specific powers as are elsewhere conferred upon the Commissioner pursuant to law.

6A:23-8.4 Capital outlay budget

(a) Pursuant to N.J.A.C. 6A:26-3.7 and 3.12, a district board of education shall obtain approval of the local funding for a capital project (school facility project or other capital project) through one of the following methods:

1. Necessary line items in capital outlay in the budget certified for taxes;

2. Separate voter approved question or board of school estimate approved resolution or capital projects review approved resolution of the expenditure of local support; or

3. Withdrawals from capital reserve in accordance with N.J.A.C. 6A:26-9.

(b) A district board of education seeking local approval through the necessary line-items in the budget pursuant to (a)1 above, shall provide the necessary detail in the appropriate supporting documentation pursuant to N.J.S.A. 18A:22-8 and N.J.A.C. 6A:23-2.

(c) A district board of education shall transfer the local share of school facilities projects budgeted in capital outlay to the capital projects fund pursuant to N.J.A.C. 6A:26-3.8(a)3.

(d) Pursuant to N.J.A.C. 6A:26-3.12(c), a district board of education may annually transfer, by board resolution, unbudgeted fund balance up to one percent of the district's annual budget certified for taxes or \$50,000, whichever is greater, to capital outlay to fund other capital projects, except for land acquisition projects, that received approval pursuant to N.J.A.C. 6A:26-3.12(a) and (b).

(e) A district board of education shall be restricted from transferring any funds from capital outlay accounts to current expense accounts without a written request and approval from the county superintendent upon demonstration of hardship.

6A:23-8.5 Additional spending proposals

(a) A district board of education may, as appropriate, submit to the voters at the annual school budget election, or to the board of school estimate, a separate proposal or proposals for additional general fund tax levies which may be in excess of its adjusted spending growth limitation determined pursuant to N.J.S.A. 18A:7F-5d. The district board of education shall not include in such proposal or proposals:

1. Any programs or services necessary for the district to provide the opportunity for all students to achieve the thoroughness standards established pursuant to N.J.S.A. 18A:7F-4a (Core Curriculum Content Standards);

2. Proposed expenditures for items which are contained in the efficiency standards established pursuant to N.J.S.A. 18A:7F-4b when the amounts contained in the base budget for those items are less than that contained in the efficiency standards established pursuant to N.J.S.A. 18A:7F-4b; or

3. Any proposed expenditures for items to 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 pursuant to N.J.A.C. 6A:26-3.7(d).

(b) The district board of education shall frame and adopt, by a recorded roll call majority vote of its full membership, the content of the question or questions to be submitted so that each specific purpose is submitted in a separate question, or all or any number of them are submitted in one question. The district board of education shall submit to the county superintendent a copy of any such formally adopted question or questions and include it as a part of the legal notice of public hearing on the budget pursuant to N.J.S.A. 18A:22-28, posted at the public hearing held on the budget pursuant to N.J.S.A. 18A:22-29 and printed on the sample ballot pursuant to N.J.S.A. 19:60-10.

(c) The district board of education shall frame each question to contain a description of the specific purpose or purposes to be achieved and the amount of general fund tax levy to be raised and expended. The district board of education shall also include in the sample ballot a statement that the proposed additional expenditures are in addition to those necessary to achieve the Core Curriculum Content Standards.

(d) A district board of education shall frame each question to request sufficient funds to carry out the specific purpose or purposes contained therein. A district board of education shall include in the base budget only those funds for purposes that can be implemented without the approval of a separate question.

(e) Pursuant to N.J.S.A. 18A:7F-5d(10), proposed expenditures which are rejected by the local voters and which are not restored by the local governing body or bodies, or rejections by a board of school estimate, are final and application for restoration pursuant to N.J.A.C. 6A:23-8.9 is prohibited.

(f) A district board of education shall not modify the base budget to execute such purposes pursuant to (e) above, except as allowed in (j) below.

(g) A district board of education shall use amounts approved by the local voters or board of school estimate, or amounts restored by the municipal governing body or bodies after rejection by the local voters exclusively for the purpose or purposes contained in the associated question.

1. If multiple purposes are approved, a board of education may approve a transfer of amounts among purposes, if necessary, as long as all purposes in the statement originally approved by the local voters or board of school estimate can be completed.

(h) A district board of education shall maintain a separate accounting of expenditures for each question, and approved amounts which remain unexpended or unencumbered at the end of the school year shall either be anticipated as a part of the designated general fund balance of the subsequent school year budget or reserved and designated in the second subsequent school year budget.

(i) A district board of education shall submit to the Commissioner amounts approved by the local voters or board of school estimate or amounts restored by the municipal governing body or bodies after rejection by the local voters both separately as proposed and approved, and as part of the final overall budget certified for taxes. If the amount restored by the municipal governing body or bodies is insufficient to complete the project or projects as submitted, the district board of education shall not use the monies for general fund purposes and shall reserve and designate the monies in the second subsequent school year budget.

(j) Purposes for amounts not restored by the municipal governing body or bodies after rejection by the local voters may be implemented in the budget year through a donation or contribution from an external source, other than the district board of education, only if such implementation will not require funding by the district board of education in subsequent budget years.

6A:23-8.6 Designation of general fund balances

(a) Each district board of education shall, at a minimum, designate in the original budget certified for taxes an estimate of unreserved general fund balance at June 30 of the prebudget year in excess of the limitations contained in N.J.S.A. 18A:7F-7, less any excess amounts anticipated to be transferred to a capital reserve account pursuant to N.J.A.C. 6A:26-9 or a maintenance reserve account pursu-

ant to N.J.A.C. 6:24, and any general fund balances reserved by law or regulation or designation.

(b) A district board of education shall not designate in a proposed base budget an unreserved general fund balance such that the estimate of unreserved general fund balance at June 30 of the budget year is less than three percent of the general fund base budget, or \$75,000, whichever is greater.

1. A district board of education shall not transfer unreserved general fund balance such that the remaining unreserved general fund balance is less than the amounts pursuant to (b) above, without a written request and detailed justification to, and approval from, the county superintendent.

(c) A district board of education, except as excluded in (c)1 below, which applies to the Commissioner pursuant to N.J.S.A. 18A:7F-5d(6), (7) or (8) for an adjustment to the spending growth limitation, shall designate in the proposed base budget all unreserved general fund balance in excess of three percent of the general fund base budget for the budget year or \$75,000, whichever is greater, and any general fund balances reserved by law or regulation for designation. The district board of education shall not deposit any excess unreserved general fund balance into a capital reserve account or maintenance reserve account subject to this provision.

1. A district board of education may apply to the Commissioner pursuant to N.J.S.A. 18A:7F-5d(6), (7) or (8) for an adjustment to the spending growth limitation and maintain an undesignated, unreserved general fund balance up to the limitations contained in N.J.S.A. 18A:7F-7 provided that its net budget of the prebudget year adjusted for inflation less all State aid of the budget year accounted for in the net budget other than core curriculum standards aid, supplemental core curriculum standards aid, and all forms of stabilization aid pursuant to N.J.S.A. 18A:7F-10 results in resident per pupil spending below the bottom of the T & E range, and the general fund tax levy of the base budget does not exceed that of the prebudget year. For a district board of education which provides an educational program which does not include a full kindergarten through grade 12 curriculum but is part of a formal sending/receiving district tuition agreement, the per pupil spending shall be adjusted to exclude resident students sent out of district and the associated tuition paid for such students in order to determine the per pupil spending for resident students attending the in-district educational program.

(d) If a district's audited undesignated general fund balance at June 30 of any school year exceeds the amounts permitted in (a) and (c) above, the excess amount must be reserved and designated in the subsequent year's budget.

(e) A district board of education that fails to comply with (c) above shall be subject to a deduction in the State aid payable to the district board of education in the subsequent

budget year in an amount equal to the audited excess undesignated general fund balance less any Federal impact aid received in the prebudget year.

6A:23-8.7 Public notice and inspection

(a) Each district board of education upon submission of its budget application to the county superintendent or by the statutory submission date, whichever is earlier, shall make available upon request for public inspection all budget and supporting documentation contained in the budget application and all other documents listed in N.J.A.C. 6A:23-8.1(e) once the budget application has been submitted to the county superintendent for approval. Nothing in this section shall restrict access by the citizens of this state to documents which otherwise qualify as public records pursuant to N.J.S.A. 47:1A-1 et seq., or common law.

(b) Any district board of education which proposes a base budget that contains spending which exceeds its maximum T & E budget shall also:

1. Include the full text of the statement required by N.J.S.A. 18A:7F-5d(10) in the advertised section of the budget pursuant to N.J.S.A. 18A:22-8 and 18A:22-11 and in the legal notice of public hearing, posting at the public hearing and on the sample ballot pursuant to N.J.S.A. 18A:7F-5d(10); and

2. Prepare a narrative statement based on the thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-4 which describes in specific detail the reasons why and to the extent that the district's proposed budget contains spending which exceeds its maximum T & E budget (that is, the maximum amount needed to deliver curriculum and instruction which will enable all students to achieve the Core Curriculum Content Standards). That statement shall be included with the budget application and other materials for public inspection.

6A:23-8.8 Adjustments to spending growth limitation

(a) When adjusting the spending growth limitation for capital outlay expenditures pursuant to N.J.S.A. 18A:7F-5, a district board of education shall:

1. Adopt and submit with the budget application a true copy of a formal board resolution which contains a narrative description of the capital project(s) and project number as included in the district board of education's long range facilities plan (LRFP), the full amount to be included in the base budget, and the need for and the amount of the adjustment;

2. Provide evidence of one of the following:

- i. The proposed capital project(s) is directly related to classroom instruction;

- ii. The proposed capital project(s) is part of an established periodic schedule of equipment replacement;

- iii. The proposed capital project(s) is essential to the administration of necessary school level activities;

- iv. The proposed capital project(s) is required to ensure the health and safety of persons using school facilities or sites; or

- v. That the capital outlay portion of the prebudget year was an aberration in that it was the lowest of the previous three budget years;

3. Provide a true copy of the minutes of the board meeting at which the proposal was formally introduced and discussed in public if the proposed capital outlay portion of the budget includes funds to purchase, expand, renovate or construct capital projects or sites;

4. In the event that the capital outlay portion of the budget will not be or is not fully expended or encumbered by the end of the budget year, reserve and designate any balances in the subsequent budget year when determined prior to the adoption of that budget or the second subsequent budget year when determined after adoption; and

5. Use amounts for the purchase, expansion, renovation or construction of school facilities or sites or the major replacement or purchase of equipment exclusively for their intended purposes, and reserve and designate any balances which will not be or are not expended or encumbered by the end of the budget year in the subsequent budget year when determined prior to the adoption of that budget or the second subsequent budget year when determined after adoption. A district board of education may apply to the Commissioner for an exemption to this provision due to unforeseeable conditions which result in other urgent capital outlay needs. The district board of education shall be eligible for an exemption if the existence of such conditions is demonstrated.

(b) A district board of education's adjustment to the spending growth limitation for pupil transportation costs provided pursuant to N.J.S.A. 18A:39-1.1 shall be calculated as follows:

$$\frac{\text{TNRM}}{\text{TM}} \times \text{TPTC}$$

where:

TNRM is the total mileage for all non-remote pupils provided transportation services pursuant to N.J.S.A. 18A:39-1.1

TM is the total mileage for all remote and non-remote pupils provided transportation services pursuant to N.J.S.A. 18A:39-1.1

TPTC is the total pupil transportation costs contained in the proposed budget

(c) A district board of education's adjustment to the spending growth limitation for changes in enrollment and for special education costs per pupil in excess of \$40,000 shall be provided pursuant to N.J.S.A. 18A:7F-5(d).

(d) A district board of education's application pursuant to N.J.S.A. 18A:7F-5d(7) for adjustment to the spending growth limitation because of the implementation of early childhood programs shall not be approved for an amount that exceeds the excess of the percentage increase in Early Childhood Program Aid over three percent or CPI, whichever is greater, multiplied by the Early Childhood Program Aid.

(e) A sending district's application pursuant to N.J.S.A. 18A:7F-5d(8) for an adjustment to the spending growth limitation for increases in receiving district tuition rates shall not be approved in an amount greater than that which would restore the district's per pupil net budget, adjusted for inflation and after deducting the tuition rate increase per resident pupil, to its actual prebudget year level. In determining the amount of the adjustment, any available reports, documents or other pertinent information will be considered.

(f) A district board of education's application pursuant to N.J.S.A. 18A:7F-5d(7) for adjustment to the spending growth limitation because of the implementation of demonstrably effective programs shall not be approved for an amount that exceeds the excess of the Demonstrably Effective Program Aid for the budget year less the Demonstrably Effective Program Aid for the prebudget year indexed by the CPI or three percent, whichever is greater.

(g) A district board of education's adjustment to the spending growth limitation for opening a new school facility pursuant to N.J.S.A. 18A:7F-5 shall be applied only to the budget year the new facility or addition is scheduled to open for educational purposes, except for cap banking purposes pursuant to N.J.A.C. 6A:23-8.9. The adjustment shall not be applied in subsequent years for the same new school facility.

1. The adjustment includes the incremental cost of opening a new school facility, defined pursuant to N.J.A.C. 6A:23-1.2 as a new school facility or addition to an existing school facility characterized by an increase in the gross square footage of the school facility used wholly or in part for education purposes by the district, in the following areas:

- i. Salary and benefit costs of new teaching staff members and support staff, including but not limited to, support staff for security, custodial and maintenance;
- ii. Material and supply costs, including custodial and maintenance, related to the opening of a new school facility;
- iii. Equipment costs for which the district board of education has not already received an adjustment to its spending growth limitation under the capital outlay

adjustment in (a) above or generated unused spending authority pursuant to N.J.A.C. 6A:23-8.9.

- iv. Energy costs;
- v. Utility costs (water and sewer);
- vi. Insurance costs; and
- vii. Transportation costs.

2. A district board of education shall comply with the following requirements when adjusting the spending growth limitation for opening of a new school facility during the budget year pursuant to N.J.S.A. 18A:7F-5:

- i. Adopt and submit with the budget application a true copy of a formal board resolution which contains a narrative description of the new school facility, including square footage, number of classrooms, and enrollment. The district board of education shall also include in the description the full amount to be included in the base budget, the need for and the amount of the adjustment and the capital project number assigned by the Department upon approval of final eligible costs, if applicable and if not applicable, the capital project's name and number as identified in the district board of education's LRFP; and
- ii. Provide evidence that the new school facility is scheduled to be completed and opened in the budget year.

6A:23-8.9 Unused spending authority (banked cap)

(a) Pursuant to N.J.S.A. 18A:7F-5a, a district board of education which increases its net budget between the prebudget year and budget years less than that authorized pursuant to N.J.S.A. 18A:7F-5(d), may include the unused spending authority, which is the amount of the difference between its actual net budget and its permitted net budget, in either of the next two succeeding budget years.

(b) A district board of education shall comply with all of the following requirements when including unused spending authority in either of the next two succeeding budget years:

1. Fully exhaust all spending authority authorized pursuant to N.J.S.A. 18A:7F-5(d) in the budget prior to including unused spending authority calculated under (a) above in that budget year;
2. Adopt and submit with the budget application a true copy of a formal board resolution which contains the need for and the amount of the unused spending authority to be included in the base budget, and a statement that said need must be completed by the end of the budget year and cannot be deferred or incrementally completed over a longer period of time; and
3. Submit with the budget application a true copy of the minutes of the board meeting at which the need for the unused spending authority to be included in the base budget was formally introduced and discussed in public.

(c) Unused spending authority calculated pursuant to (a) above that is created by merging a passed separate proposal(s) with the base budget shall not be considered unused spending authority available to a district board of education in the next two subsequent budget years.

(d) A district board of education shall fully utilize unused spending authority from the prior prebudget year before utilizing unused spending authority from the prebudget year.

6A:23-8.10 Restoration of budget reductions

(a) Procedures following voter defeat of the proposed budget are as follows:

1. A district board of education in which the general fund tax levy proposed in the base budget or any amounts contained in a separate question or questions has been rejected by the voters at the annual school election shall, within two days of the certification of election results, submit to the county superintendent and the governing body or bodies comprising the district, the following information:

i. A complete line-item budget listing each item by code and line description, including actual expenditures for the previous school year, actual budgeted amount for the current school year, proposed budgeted amount for the ensuing school year as proposed to the voters, the advertised budget for the ensuing school year, and all supporting documentation and narrative explanations;

ii. A copy of the annual report (Quality Assessment Annual Report) submitted to the Commissioner pursuant to N.J.S.A. 18A:7A-11 and N.J.A.C. 6:8-3.1;

iii. A copy of the district's most recent annual audit;

iv. An explanation of any action(s) to reallocate, direct additional expenditures, and so forth, taken by the Commissioner, or the county superintendent on behalf of the Commissioner, pursuant to N.J.S.A. 18A:7F-5 through 7 or a statement to the effect that no such actions were taken;

v. The numbers of professional and nonprofessional staff during the current school year and projected staff for the ensuing school year, together with reasons for any increase or decrease;

vi. Pupil enrollment by grade for the district as of the proceeding June 30, the last school day prior to the preceding October 16 and as projected for October of the ensuing school year;

vii. Salary schedules for all employees;

viii. The number of schools and classrooms in each school;

ix. Tuition received or paid during the previous school year, anticipated for the current school year and projected for the ensuing school year;

x. Substantiation of need for any proposed capital projects and/or deposits into the capital reserve, including documentation of the projects' inclusion in the LRFP;

xi. Any information required for submission to the county superintendent pursuant to N.J.A.C. 6A:23-8.1 and not specifically enumerated in (a)1i through x above;

xii. The comparative spending guide;

xiii. The school report card; and

xiv. Any other documentary materials or records the Commissioner deems appropriate for a specific district board of education.

2. The governing body or bodies comprising the district, or a formally approved committee thereof, shall, as soon as immediately practicable, consult with the district board of education, or a formally approved committee thereof, for purposes of determining the amount of general fund tax levy sufficient to ensure provision of a T & E education or to maintain the stability of a district's programs.

3. On or before May 19, the governing body or bodies shall certify to the county board of taxation an amount to be appropriated for this purpose. The governing body or bodies shall not certify an amount less than the minimum tax levy required to meet the required local share established pursuant to N.J.S.A. 18A:7F-5.

i. If the amount so certified for the base budget is less than proposed to the voters by the board of education, the governing body or bodies shall present to the district board of education and the county superintendent of schools a statement of the specific line-item reductions made by the governing body or bodies. The governing body or bodies shall also submit with the statement, a certification attesting that the governing body or bodies has reviewed the budget proposed by the district board of education and that it deems the revised budget sufficient for provision of a thorough and efficient system of education.

ii. If the budget resulting from such review under (a)3i above is below the minimum T & E budget prescribed by N.J.S.A. 18A:7F-5, the governing body or bodies shall concurrently present to the district board of education, and to the county superintendent, a specific written explanation and document by clear and convincing evidence for each line item reduced that it either will not adversely affect the ability of the district board of education to meet the thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-4a and b, or will not adversely affect the stability of a district board of education's overall operations given the need for long term planning and budgeting.

(b) Procedures following review of the budget by the board of school estimate are as follows:

1. A district board of education when submitting its proposed budget to the board of school estimate, shall also submit to the board of school estimate, the governing body or bodies and the county superintendent, the documents enumerated in (a)1 above.

i. If the amount of money appropriated by the board of school estimate for general fund purposes for the ensuing year, which amount may not be less than the minimum tax levy required to meet the required local share established pursuant to N.J.S.A. 18A:7F-5b, is less than the amount proposed by the district board of education, the board of school estimate shall present to the board of education, the governing body or bodies and the county superintendent a statement of the specific line-item reductions made by the board of school estimate. The board of school estimate shall submit with the statement a certification that the board of school estimate has reviewed the budget proposed by the board of education and that it deems the revised budget sufficient for provision of a thorough and efficient system of education.

2. The governing body of each municipality comprising the district shall appropriate the amount certified by the board of school estimate.

i. If the amount of money appropriated by the governing body or bodies for general fund purposes for the ensuing year pursuant to N.J.S.A. 18A:22-17, which amount may not be less than the minimum tax levy required to meet the required local share established pursuant to N.J.S.A. 18A:7F-5b, is less than the amount certified by the board of school estimate, the governing body or bodies shall present to the board of school estimate, the board of education and the county superintendent a statement of the specific line-item reductions made by the governing body or bodies. The board of school estimate shall submit with the statement a certification that the amount appropriated for school purposes is sufficient for provision of a thorough and efficient system of education.

ii. If the budget resulting from board of school estimate review or subsequent governing body certification is below the minimum T & E budget pursuant to N.J.S.A. 18A:7F-5e(2), the board of school estimate and/or governing body or bodies, as the case may be, shall concurrently present a specific written demonstration as to why such reductions will not adversely affect the ability of the district to provide a thorough and efficient education or the stability of the district given the need for long term planning and budgeting.

(c) In those instances where the governing body or bodies or the board of school estimate has certified an amount of tax levy less than that proposed by the district board of education as a result of reductions eligible for restoration through application to the Commissioner as set forth in (e) through (g) below, the county superintendent shall schedule a conference between the district board of education, or a

formally approved committee thereof, and the governing body or bodies or the board of school estimate, as the case may be, or a formally approved committee thereof, for the purpose of assisting the respective bodies in reaching agreement on the amount of tax levy sufficient to ensure provision of a T & E education consistent with the requirements of N.J.S.A. 18A:7F-1 et seq.

1. If an agreement is reached, any resultant adjustment in tax levy shall be certified forthwith to the county board of taxation.

2. If an agreement is not reached, where tax levy has already been certified pursuant to N.J.S.A. 18A:22-37, the levy will stand as originally certified and application to the Commissioner for restoration of reductions may be made in accordance with the provisions of this section.

3. Paragraphs (c)1 and 2 above shall not apply to any instance where governing body or bodies or board of school estimate reductions are not eligible for restoration through application to, or automatic review by, the Commissioner as set forth in (e) through (g) below, in which case the amount certified by the governing body or bodies or the board of school estimate shall remain final without further review or consultation.

(d) Pursuant to N.J.S.A. 18A:22-38, in those instances where the governing body or bodies fail to certify by May 19 an amount of tax levy for any item rejected at the annual school election, or certify different amounts, to the county board of taxation, a district board of education shall submit the budget and any reductions recommended pursuant to N.J.S.A. 18A:7F-5i(1) or (2) by the governing bodies following voter defeat for review and determination by the Commissioner pursuant to (g) below of the tax levy amount to the county board of taxation.

(e) Submission to the Commissioner of a budget subject to automatic review is as follows:

1. A district board of education which has proposed to the voters or the board of school estimate, as the case may be, a general fund budget below the minimum T & E budget prescribed by N.J.S.A. 18A:7F-5, or a district board of education which has had its general fund budget reduced to a level below the minimum T & E budget prescribed by N.J.S.A. 18A:7F-5, shall submit any reductions made pursuant to N.J.S.A. 18A:7F-5e(2) by the governing body or bodies following voter defeat, or by the board of school estimate, for review by the Commissioner to determine whether such reductions will adversely affect the ability of the district to provide a thorough and efficient education or the stability of the district given the need for long term planning and budgeting.

i. Reductions to a general fund budget below the minimum T & E budget prescribed by N.J.S.A. 18A:7F-5 or reduced to a level below the minimum T & E budget that are uncontested by a district board of education and determined sufficient for a thorough and efficient education pursuant to N.J.A.C. 6A:23-8.1 by the county superintendent, are not subject to automatic review by the Commissioner.

ii. A general fund budget proposed to the voters below the minimum T & E budget subject only to an increase in budgeted fund balance or other revenues is subject to automatic review by the Commissioner if contested by the district board of education or if the tax levy certification reduces the estimated unbudgeted fund balance at June 30 of the budget year below three percent of the general fund budget, or \$75,000, whichever is greater.

2. Within 10 days of delivery to the district board of education and the county superintendent, pursuant to (a) or (b) above, of a budget subject to automatic review by the Commissioner, a district board of education may submit to the county superintendent any comments it may wish to make in response to the demonstration provided at the time of certification by the governing body or bodies, or the board of school estimate, that the specific reductions made will not adversely affect the ability of the district to provide a thorough and efficient education or the stability of the district given the need for long term planning and budgeting. A district board of education shall submit a copy of such comments concurrently to the governing body or bodies, or the board of school estimate.

(f) Application to the Commissioner for restoration of reductions is as follows:

1. A district board of education which has proposed to the voters or the board of school estimate, as the case may be, a general fund budget in excess of the maximum T & E budget prescribed by N.J.S.A. 18A:7F-5 may apply for restoration of reductions made pursuant to N.J.S.A. 18A:7F-5e(1) by the governing body or bodies following voter defeat, or by the board of school estimate, only on grounds that such reductions will negatively impact on the stability of the district given the need for long term planning and budgeting ("stability grounds"), and shall document by clear and convincing evidence its need for restoration of each item reduced. In such cases, a district board of education shall not argue that any of the reductions will adversely affect the district board of education's ability to meet the thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-4a and b.

i. "Stability grounds" as used in the Comprehensive Educational Improvement and Financing Act of 1996, N.J.S.A.18A:7F-1 et seq., means reductions which would require long term planning or budgeting and cannot be accomplished within the budget year; would adversely affect the district board of education's ability to operate a school system; and which are not a program, service or other expenditure contained within the efficiency standards established pursuant to N.J.S.A. 18A:7F-4b or are expenditures for items which are in excess of those contained in the efficiency standards established pursuant to N.J.S.A. 18A:7F-4b.

2. A district board of education which has proposed to the voters or the board of school estimate, as the case may be, a general fund budget at or below the maximum T & E budget prescribed by N.J.S.A. 18A:7F-5 may apply for restoration of reductions made pursuant to N.J.S.A. 18A:7F-5e(2) by the governing body or bodies following voter defeat, or by the board of school estimate, on grounds that such reductions either will adversely affect the district board of education's ability to meet the thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-4a and b ("T & E grounds"), or will adversely affect the stability of a district board of education's overall operations given the need for long term planning and budgeting ("stability grounds").

i. "T & E grounds" means that the reduction or reductions would adversely affect the district board of education's ability to implement programs and services at the level contained in the efficiency standards established pursuant to N.J.S.A. 18A:7F-4b in order to ensure that its students achieve the Core Curriculum Content Standards. The efficiency standards are those contained in the Report on the Cost of Providing a Thorough and Efficient Education.

3. Within 10 days after the certification of general fund tax levy by the governing body or bodies, or the board of school estimate, a district board of education eligible for restoration pursuant to (f)1 or 2 above may submit an application to the Commissioner for such restoration on a form deemed appropriate by the district, but shall:

i. Address each line-item reduction made by the governing body or bodies or the board of estimate; and

ii. Provide a specific written explanation supported by attached documentation, or specific reference to information contained in materials submitted pursuant to N.J.A.C. 6A:23-8.10(a)1, as to why each reduction will adversely affect the ability of the district to provide a thorough and efficient education or the stability of the district given the need for long term planning and budgeting, whichever criterion or criteria will apply under (f)1 or 2 above.

4. A district board of education shall submit an application for restoration to the appropriate county superintendent, and a copy of the complete application shall concurrently be submitted to the governing body or bodies, or the board of school estimate, as the case may be.

5. Within 10 days of receipt of the district board of education's application, the governing body or bodies, or the board of school estimate, may submit to the county superintendent any comments it may wish to make on the board's application. A copy of such comments shall concurrently be submitted to the board of education.

6. For the purposes of determining the grounds on which a district board of education can submit an application to the Commissioner pursuant to (f)1 and 2 above, the calculation of the T & E budget does not include a sending district's required tuition payment or number of students sent.

(g) Commissioner review and certification of tax levy, determination of application for restoration and automatic reviews are as follows:

1. Upon receipt of a district board of education's application and the governing body or board of school estimate's comments thereon or upon expiration of the time for their submission, or upon receipt of a board's comments on a budget below minimum T & E level or expiration of the time for their submission, the Commissioner will review the materials submitted and issue an order directing such restorations or reallocations as he or she deems warranted pursuant to the appropriate standard as set forth in N.J.S.A. 18A:7F-5 consistent with the overall intent of the Act. For purposes of assessing budgets for certification of tax levy, assessing applications, or conducting automatic reviews in the case of districts having budgets below the minimum T & E budget, the Commissioner may engage the assistance of such Department of Education staff as he or she deems appropriate.

2. In addition to application materials and responsive comments, and those materials submitted to the county superintendent in accordance with the requirements of (a)1 above, the Commissioner, assessing budgets for certification of tax levy, assessing applications for restoration or conducting automatic budget reviews may consider such additional information as may be available to him or her through established reporting requirements and Department of Education data collection processes, for example, the Fall Report. Additionally, should the Commissioner or a designee determine during the course of review that further information or explanation is required from a district board of education, or a governing body or board of school estimate, such information may be requested at any time during the review process.

3. In the case of budgets subject to Commissioner tax levy certification pursuant to (d) above or applications submitted pursuant to (f) above, the Commissioner may consider enrollment increases or decreases within the district, the history of voter or board of estimate approval or rejection of district budgets, the impact on the local tax levy, whether reductions made will impact on the ability of the district to fulfill its contractual obligations, and the other factors listed in (g)5 below.

4. In the case of reductions requiring review pursuant to (e) above, the governing body or bodies or the board of school estimate which has made the reductions shall affirmatively demonstrate to the Commissioner that such reductions will not adversely affect the district board of education's ability to provide a thorough and efficient

education or the stability of the district given the need for long term planning and budgeting. In reviewing the budget and the governing body or board of estimate's position, the Commissioner may consider enrollment increases or decreases within the district, the history of voter or board of estimate approval or rejection of district budgets, the impact on the local tax levy, whether reductions made will impact on the ability of the district to fulfill its contractual obligations, and the other factors listed in (g)5 below.

5. In determining the impact of reductions on the stability of a district, the Commissioner may consider the following information:

- i. Increases or decreases in enrollment;
- ii. The history of voter approval or rejection of district budgets;
- iii. The impact on the local tax levy;
- iv. The ability of the district to fulfill its existing contractual obligations on the effective date of N.J.S.A. 18A:7F-1 et seq. and the relationship of contractual obligations since the effective date of N.J.S.A. 18A:7F-1 et seq. to Statewide trends in bargaining practices;
- v. The impact on class sizes relative to instructional space;
- vi. The impact on class sizes relative to teaching staff reductions under existing teacher contracts;
- vii. The link between the proposed reduction and classroom instruction or health and safety;
- viii. The nature of the reduction as to whether it is a continuation expenditure or a new or increased expenditure;
- ix. The district's relative standing in the Comparative Spending Guide on the indicators for Total Administration, Administrative Salaries and Benefits, Total Operations and Maintenance of Plant, Board Contributions to the Food Service Program and Extracurricular Costs;
- x. The district's original budget to actual spending and undesignated general fund balance usage and projections trend histories;
- xi. Nonrecurring costs; costs removed from the pre-budget year net budget by statutory change, such as the transfer of lease purchase payments to the debt service fund;
- xii. The degree to which a district exceeds the maximum T & E budget; and
- xiii. Any facts or data which would provide evidence of the reduction's impact.

6. In directing adjustments to budgets which are subject to Commissioner certification, application for restoration or required review, the Commissioner may reallocate or sustain reductions to surplus where such reallocations or reductions do not decrease surplus below three percent of the proposed general fund budget or \$75,000 whichever is greater, notwithstanding that budgeted amounts are within the level permitted by N.J.S.A. 18A:7F-7.

7. Any reallocations directed as a result of review under this subsection shall be made consistent with the provisions of N.J.S.A. 18A:7F-6e.

8. Orders of the Commissioner issued pursuant to this subchapter are final decisions appealable to the State Board of Education pursuant to N.J.A.C. 6A:4.