

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

**Authority**

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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.

(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.

**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.

“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.

“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 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.

“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.

“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.

“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.

“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.

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

“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.

“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.

“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.

“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.

“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.

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

## 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.

(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  $Y1x(1+G)^2$  where the growth rate  $G = 0.5x(Y1 - Y3)/Y3$  and  $Y1$  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 method-

ology 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.

#### **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:

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 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; and

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 one of the above cases was not 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.

#### 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 instru-

ments 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;

**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.

## **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.

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 education 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.