

CHAPTER 23
FINANCE AND BUSINESS SERVICES

Authority

N.J.S.A. 18A:1-1, 18A:4-14, 18A:4-15, 18A:6-27, 18A:7B-12, 18A:7F-1 et seq., 18A:7G-1 et seq., 18A:17-10, 18A:17-32, 18A:17-34, 18A:17-37, 18A:17-45, 18A:18A-1 et seq., 18A:19-1 et seq., 18A:20-1 et seq., 18A:21-1 et seq., 18A:22-1 et seq., 18A:23-1 et seq., 18A:24-1 et seq., 18A:29-3, 18A:33-3, 18A:36A-1 et seq., 18A:36B-8, 18A:38-7.8, 18A:38-7.9, 18A:38-8, 18A:38-19, 18A:38-21, 18A:39-1 et seq., 18A:46-1 et seq., 18A:54-1 et seq., 18A:58-1 et seq., 18A:69-1 et seq.

Source and Effective Date

R.2006 d.361, effective September 8, 2006.
See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 23, Finance and Business Services, expires on March 6, 2012. See: 41 N.J.R. 2850(a).

Chapter Historical Note

Subchapter 8, Annual Budget Development, Review and Approval, was adopted as new rules by R.2002 d.253, effective August 5, 2002. See: 34 N.J.R. 1652(a), 34 N.J.R. 2788(a).

Subchapter 9, Financial Operations of Charter Schools, was adopted as R.2004 d.322, effective August 16, 2004. See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Chapter 23, Finance and Business Services, was readopted as R.2006 d.361, effective September 8, 2006. As a part of R.2006 d.361, Subchapter 4, Tuition for Private Schools for the Disabled, was renamed Tuition for Private Schools for Students with Disabilities, effective October 2, 2006. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. PURPOSE AND SCOPE

- 6A:23-1.1 Purpose and scope
- 6A:23-1.2 Definitions

SUBCHAPTER 2. DOUBLE ENTRY BOOKKEEPING AND GAAP ACCOUNTING

- 6A:23-2.1 Prescribed system of double-entry bookkeeping and GAAP accounting
- 6A:23-2.2 Principles and directives for accounting and reporting
- 6A:23-2.3 School level budget and financial reporting requirements
- 6A:23-2.4 Conflicts between legal provisions and GAAP
- 6A:23-2.5 Minimum bond requirements for treasurer of school moneys
- 6A:23-2.6 Supplies and equipment
- 6A:23-2.7 Mechanical bookkeeping systems
- 6A:23-2.8 Employee organizational dues
- 6A:23-2.9 Petty cash fund
- 6A:23-2.10 Summer payment plan
- 6A:23-2.11 Transfers during the budget year
- 6A:23-2.12 Budgetary controls and overexpenditure of funds
- 6A:23-2.13 Capital reserve
- 6A:23-2.14 Maintenance reserve
- 6A:23-2.15 Debt service fund balance
- 6A:23-2.16 Internal service funds
- 6A:23-2.17 Student activity funds
- 6A:23-2.18 School store business practices

- 6A:23-2.19 Dismissal or re-assignment of a school business administrator
- 6A:23-2.20 Appeals

SUBCHAPTER 3. TUITION PUBLIC SCHOOLS

- 6A:23-3.1 Method of determining tuition rates for regular public schools
- 6A:23-3.2 Method of determining tuition rate in a new district board of education
- 6A:23-3.3 Method of determining tuition rates for county vocational schools
- 6A:23-3.4 Method of determining tuition rates for county special services schools

SUBCHAPTER 4. TUITION FOR PRIVATE SCHOOLS FOR STUDENTS WITH DISABILITIES

- 6A:23-4.1 Definitions
- 6A:23-4.2 Tuition rate procedures
- 6A:23-4.3 New approved private schools for students with disabilities
- 6A:23-4.4 Bookkeeping and accounting
- 6A:23-4.5 Non-allowable costs
- 6A:23-4.6 Surcharge
- 6A:23-4.7 Public school placement restricted working capital fund
- 6A:23-4.8 Calculation of student attendance
- 6A:23-4.9 Audit requirements
- 6A:23-4.10 Appeals
- 6A:23-4.11 Out-of-State approved private schools for students with disabilities
- 6A:23-4.12 Inspection of records
- 6A:23-4.13 Fiscal monitoring of approved private schools for students with disabilities and corrective action plans
- 6A:23-4.14 Fiscal information
- 6A:23-4.15 Failure to comply with Department directives
- 6A:23-4.16 Sale of assets of an approved private school for students with disabilities

SUBCHAPTER 5. STATE AID

- 6A:23-5.1 Emergency aid
- 6A:23-5.2 Method of determining the district of residence
- 6A:23-5.3 Address submission for determining the district of residence
- 6A:23-5.4 Early Childhood Program Aid
- 6A:23-5.5 Demonstrably Effective Programs Aid

SUBCHAPTER 6. PURCHASE AND LOAN OF TEXTBOOKS

- 6A:23-6.1 Eligibility
- 6A:23-6.2 Responsibility of the district board of education
- 6A:23-6.3 Individual requests
- 6A:23-6.4 Ownership and storage of textbooks
- 6A:23-6.5 Accounting entries
- 6A:23-6.6 Charge for textbook loss or damage

SUBCHAPTER 7. MANAGEMENT OF PUBLIC SCHOOL CONTRACTS

- 6A:23-7.1 Change orders and open-end contracts
- 6A:23-7.2 Acceptance of bonds under the Public School Contracts Law
- 6A:23-7.3 Public sale of bonds
- 6A:23-7.4 Contracts for behind-the-wheel driver education
- 6A:23-7.5 Joint purchasing systems
- 6A:23-7.6 Multi-year leasing

SUBCHAPTER 8. ANNUAL BUDGET DEVELOPMENT, REVIEW AND APPROVAL

- 6A:23-8.1 Budget review and approval
- 6A:23-8.2 Administrative cost limits

- 6A:23-8.3 Commissioner to ensure achievement of the Core Curriculum Content Standards
- 6A:23-8.4 Capital outlay budget
- 6A:23-8.5 Additional spending proposals
- 6A:23-8.6 Designation of general fund balances
- 6A:23-8.7 Public notice and inspection
- 6A:23-8.8 Adjustments to spending growth limitation
- 6A:23-8.9 Unused spending authority (banked cap)
- 6A:23-8.10 Restoration of budget reductions

SUBCHAPTER 9. FINANCIAL OPERATIONS OF CHARTER SCHOOLS

- 6A:23-9.1 Definitions
- 6A:23-9.2 Bookkeeping and accounting for charter schools
- 6A:23-9.3 Certification
- 6A:23-9.4 Per pupil calculations, notification and caps
- 6A:23-9.5 Enrollment counts, payment process and aid adjustments
- 6A:23-9.6 Financial requirements
- 6A:23-9.7 Public school contract law

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

(b) This chapter, except for N.J.A.C. 6A:23-4 and 9 and as otherwise indicated, 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 approved private schools for students with disabilities. N.J.A.C. 6A:23-9 governs the finance and business services for charter school boards of trustees.

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

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

In (a), added a third sentence.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (a), inserted "that" following "ensure" in the second sentence; in (b), inserted "and 9 and as otherwise indicated" following the N.J.A.C. reference in the first sentence, and added the third sentence.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (a), inserted "district" following "conducting"; and in (b), inserted "approved" and substituted "students with disabilities" 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 as defined at N.J.S.A. 18A:7F-3.

"Accrual" as defined by the National Council on Governmental Accounting Statement, means the basis of accounting that records most transactions of a district board of education when they occur, regardless of when cash is received or disbursed.

"Adjusted for inflation," as defined by N.J.S.A. 18A:7F-5, means indexed by the greater of the CPI or 2.5 percent.

"Administrative cost" means total administrative costs as defined by the Comparative Spending Guide and in accordance with the Uniform Minimum Chart of Accounts for New Jersey Public Schools and the National Center for Education Statistics classifications, as referred to at N.J.A.C. 6A:23-2.2(f)1, and other reporting directives published and distributed by the Commissioner pursuant to N.J.S.A. 18A:4.14 and N.J.A.C. 6A:23-2.

"Advertised per pupil administrative costs" means the per pupil administrative costs as defined by the Comparative Spending Guide and advertised in the school district budget pursuant to N.J.S.A. 18A:22-11.

"A4F" means the form each district board of education is required to use and file with the county board of taxation and other required entities for certification and reporting of school taxes.

"Annual audit" means 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 is 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 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.

"Annual audit program" means the uniform program published and distributed by the Commissioner for each district board of education for preparing the Comprehensive Annual Financial Report pursuant to N.J.A.C. 6A:23-2.2(i).

"Authorized membership of the school board" means the full membership of the district board of education as established pursuant to N.J.S.A. 18A:12.

"Balanced budget" means a budget in which budgeted anticipated revenues and fund balance equal budgeted appropriations.

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

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

"Board of trustees" means the public agents authorized by the State Board of Education to supervise and control a charter school.

"Capital maintenance" means as defined in N.J.A.C. 6A:26A-1.3.

"Capital project" means as defined in N.J.A.C. 6A:26-1.2.

"Capital projects fund" means the governmental fund that accounts for financial resources used to acquire or construct capital facilities (other than those of proprietary funds and fiduciary funds). The source of revenue in this fund includes the sale of bonds, grants received pursuant to N.J.S.A. 18A:7G-15, and other sources as defined in N.J.A.C. 6A:26-4.1. In the case of a charter school, the source of revenue may be a mortgage. Separate accounting is required for each capital project.

"Capital reserve account" means the account established by a district board of education pursuant to N.J.S.A. 18A:7G-31 into which a district board of education deposits monies to finance its long-range facilities plan not met by State support.

"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 established in accordance with N.J.S.A. 18A:36A-1 et seq.

"Chief school administrator" means the superintendent pursuant to N.J.S.A. 18A:17-15, or the administrative principal pursuant to N.J.S.A. 18A:17-20.5, or the State district superintendent pursuant to N.J.S.A. 18A:7A-35 in the case of a State-operated school district, or the lead person as defined at N.J.A.C. 6A:11-1.2 in the case of a charter school.

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

"Comparative Spending Guide" means the annual report of comparative financial statistics of school districts compiled and published for general distribution by the Commissioner pursuant to N.J.S.A. 18A:4-30 and available on the Department's website at <http://www.state.nj.us/njded/guide>.

"Comprehensive Annual Financial Report" or "CAFR" means the official annual report of a governmental unit containing the basic financial statements, management discussion and analysis (MD&A) and other required supplementary information and statistical data prepared in accordance with standards established by the Governmental Accounting Standards Board.

"Core Curriculum Content Standards" means the student achievement standards originally adopted by the State Board of Education on May 1, 1996 and as thereafter revised by the State Board, pursuant to N.J.S.A. 18A:7F-4. These standards communicate the common expectations for the achievement to which all New Jersey students will be held throughout their 13-year public education experience.

"CPI," means as defined at N.J.S.A. 18A:7F-3 and 18A:7F-5.

"Debt service" means as defined at N.J.S.A. 18A:7G-3 and N.J.A.C. 6A:26-1.2.

"Debt service fund" means a governmental fund type used to account for the accumulation of resources for, and the payment of, general long-term debt principal and interest.

"Demonstrably effective programs" means those programs, strategies or services pursuant to N.J.S.A. 18A:7F-18.

"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 commission or jointure commission.

"Early Childhood Program Aid" means State aid described at N.J.A.C. 6A:23-5.4, and authorized pursuant to N.J.S.A. 18A:7F-16, which is distributed to all school districts with high concentrations of low-income students for the purpose of providing full-day kindergarten and preschool classes and other early childhood programs and services.

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

"Efficiency standards," established pursuant to N.J.S.A. 18A:7F-4b, means the efficiency standards contained in the most recently published biennial Report on the Cost of Providing a Thorough and Efficient Education pursuant to N.J.S.A. 18A:7F-5.a.

"Emergent circumstance" means a circumstance that must be addressed expeditiously to avoid peril to the health and safety of students and staff and/or to avert an operating deficit from the required implementation of the thoroughness standards.

"Emergent condition" means as defined at N.J.A.C. 6A:26-1.2.

"Enterprise fund" means a proprietary fund used to report activities for which a fee is charged to external users for goods and services. Activities are required to be reported if the pricing policies of the activity establish fees and charges designed to recover its costs, or if the activity meets other criteria established by Governmental Accounting Standards Board Statement No. 34, paragraph 67.

"Excess costs" means as defined at N.J.A.C. 6A:26-1.2.

"Fiduciary funds" means the funds used to account for assets held by a district board of education in a trustee capacity or agency capacity for others, and, therefore, cannot be used to support the district board of education's own programs.

"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 that are uniform minimum standards of and guidelines to financial accounting and reporting that are generally recognized as essential to effective management control and financial reporting, and are promulgated and published 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 or charter school board of trustees, except those required to be 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 the sources, uses and balances of current financial resources and often has a budgetary orientation. Governmental funds include the general fund, special revenue funds, capital projects funds, debt service funds and permanent funds.

"Internal control" means a process effected by a district board of education or charter school board of trustees, management and other personnel, designed to provide reasonable assurance regarding the achievement of the following objectives: effectiveness and efficiency of operations, reliability of

financial reporting, and compliance with applicable laws and regulations.

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

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

"Legal reserve" means a reserve of fund balance as defined by the Governmental Accounting Standards Board (GASB) for encumbrances, or other funds not available for appropriation due to State or other legally imposed purpose, or as approved pursuant to N.J.A.C. 6A:23-2.2(j).

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

"Local share" means as defined at N.J.A.C. 6A:26-1.2 and pursuant to N.J.S.A. 18A:7G-3.

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

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

"Maintenance Reserve Fund" means the account established by a district board of education pursuant to N.J.S.A. 18A:7G-13 into which a district board of education deposits monies to be used exclusively for required maintenance of school facilities.

"Modified accrual" means a basis of accounting in which revenues and other financial resources are recognized in the accounting period when they become both measurable and available to finance expenditures of the fiscal period, and expenditures are recognized in the accounting period in which the fund liability is incurred, if measurable, except for unmatured interest on general long-term debt which should be recognized when due.

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

"Net budget," as defined at N.J.S.A. 18A:7F-3, means the sum of the net T & E budget and the portion of the school

district's local levy that is above the school district's maximum T & E budget.

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

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

"Non-discretionary fixed costs" means fixed costs incurred by a school district in its operation that are outside the control of the district board of education.

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

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

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

"Permanent fund" means a fund used to report resources that are legally restricted to the extent that only earnings, and not principal, may be used for purposes that support the reporting district board of education's programs.

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

"Proprietary funds" means the funds used to account for district board of education activities where the reporting focus is on the determination of operating income, financial position and cash flow. Proprietary funds include enterprise funds and internal service funds.

"Required maintenance" means as defined in N.J.A.C. 6A:26A-1.3.

"Routine maintenance" means as defined in N.J.A.C. 6A:26A-1.3.

"School facilities project" means as defined in N.J.A.C. 6A:26-1.2 and pursuant to N.J.S.A. 18A:7G-3.

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

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

"Shared service" means any educational or administrative service required to be performed by a district board of education in which the school district, with board approval, is able and willing to share in the costs and benefits of that service with another district board of education, municipality, or other governmental unit, as authorized by the Interlocal Services Act at N.J.S.A. 40:8A-1 et seq. and in compliance with existing school finance laws at N.J.S.A. 18A, 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, or revenues for major capital projects) that are legally restricted to expenditures for specified purposes.

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

"State support" means as defined at N.J.A.C. 6A:26-1.2.

"Surplus" means the amount of undesignated, unreserved fund balance as of July 1 of each year.

"T & E amount," as defined by N.J.S.A. 18A:7F-3, means the cost per elementary student of delivering programs and services including extracurricular and cocurricular activities that enable all students to achieve the Core Curriculum Content Standards, which constitute a thorough regular education under the assumptions of reasonableness and efficiency contained in the Report on the Cost of Providing a Thorough and Efficient Education.

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

"T & E range," as defined by N.J.S.A. 18A:7F-3, means the range of regular education spending that is considered

thorough and efficient. The range is expressed in terms of T & E budget spending per elementary student, and is delineated by alternatively adding to and subtracting from the T & E amount the T & E flexible amount to establish the minimum T & E budget and maximum T & E budget when applied to each school district's weighted resident enrollment.

"Thoroughness standards," means the Core Curriculum Content Standards as approved by the State Board on May 1, 1996 and as thereafter revised by the State Board.

"Unbudgeted revenue" means any general fund revenue realized during the budget year that was not included in the original school district budget certified for taxes.

"Underbudgeted revenue" means any general fund revenue realized during the budget year that exceeds the amount included in the original school district budget certified for taxes.

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

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

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

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

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

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Rewrote definitions "Abbott district", "Capital project", "Capital projects fund", "Comparative Spending Guide", "Comprehensive Annual Financial Report", "Core Curriculum Content Standards", "CPI", "Early Childhood Program Aid", "Efficiency standards", "Enterprise fund", "GAAP", "General fund", "Modified accrual", "Net budget", "T & E program budget", and "T & E range"; in definition "Lease purchase payment", substituted "at" for "by"; in definition "Other capital project" substituted "at" for "by"; in definition "New school facility", inserted "board of education"; in definition "Unused spending authority", substituted "5.a" for "5a"; and added definitions "Administrative cost", "Advised per pupil administrative costs", "A4F", "Annual audit program", "Authorized membership of the school board", "Capital maintenance", "Capital reserve account", "Emergent circumstance", "Emergent condition", "Excess costs", "Internal control", "Legal reserve", "Local share", "Long-range facilities plan", "Maintenance Re-

serve Fund", "Non-discretionary fixed costs", "Required maintenance", "Routine maintenance", "School facilities project", "State support", "Surplus", "Unbudgeted revenue" and "Underbudgeted revenue".

Case Notes

Although the school district had satisfied its obligations under the Individuals with Disabilities Education Act, the district was obligated under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. 794) to provide an aide for an autistic child for an after-school program that operated as a not-for-profit enterprise fund; the relationship between the district and the community school was too close for the community school to be considered an independent third party. K.G. and J.G. ex rel. O.G. v. Morris Bd. of Educ., OAL DKT. NO. EDS 11872-06, 2007 N.J. AGEN LEXIS 480, Final Decision (August 10, 2007).

SUBCHAPTER 2. DOUBLE ENTRY BOOKKEEPING AND GAAP ACCOUNTING

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, Original Pronouncements, 2004, published by the Governmental Accounting Standards Board (GASB; 401 Merriott 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, 2003 Edition 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.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (b), updated references to the current issues for the system of double entry bookkeeping.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (b), substituted "Original Pronouncements, 2004" for "(Statement 34 Edition) 2001" and inserted "Edition".

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:22-8, 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, each capital project as separately identified in the referendum, and each 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 use a common terminology and class-

ification consistently throughout the budget, the accounts and the financial reports of each fund, and shall adopt a chart of accounts prepared in conformity with the following:

1. Each district board of education and charter school board of trustees shall use, for financial reporting to the Department of Education, a uniform minimum chart of accounts published and distributed by the Commissioner consistent with Financial Accounting for Local and State School Systems, 2003 Edition, developed by the National Center for Education Statistics (NCES; K Street NW, Washington DC 20006), incorporated herein by reference, as amended and supplemented.

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

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

(g) Each district board of education and charter school board of trustees shall establish an adequate internal control structure and procedures for financial reporting.

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

(i) Each district board of education and charter school board of trustees shall prepare and publish a Comprehensive Annual Financial Report (henceforth referred to as CAFR) in compliance with the standards set forth by the Government Accounting and Financial Reporting Standards Original Pronouncements, incorporated herein by reference, as amended and supplemented as prepared, published and distributed by the Governmental Accounting Standards Board (GASB 401 Merritt 7, P.O. Box 5116, Norwalk CT 06856-5116) and GAAP, covering all activities of the district board of education and charter school board of trustees. The district board of education and charter school board of trustees shall ensure that the CAFR includes, but is not limited to: an introductory section; basic financial statements; required supplementary information; schedules, narrative explanations, and a statistical section. Each district board of education and charter school board of trustees shall use the uniform program as

published and distributed by the Commissioner for preparing the Comprehensive Annual Financial Report.

1. A district board of education or charter school board of trustees shall cause an audit of the annual financial statements to be made pursuant to N.J.S.A. 18A:23-1 et seq., and shall engage only a licensed public school accountant to conduct the annual audit who has an external peer/quality report performed in accordance with Government Auditing Standards (Yellow Book) by the Comptroller General of the United States (U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001). The district board of education or charter school board of trustees shall ensure that the external peer/quality report is completed within the time established by Government Auditing Standards issued by the Comptroller General of the United States unless the accountant or firm can show good cause as to why there is a delay.

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

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

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

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

3. A district board of education or charter school board of trustees shall engage a public school accountant during the audit engagement period for non-auditing, management, or other consulting services only if the services comply with the independent standards as established in

Government Auditing Standards (Yellow Book) by the Comptroller General of the United States.

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

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

(j) Each district board of education shall, pursuant to N.J.S.A. 18A:4-14, maintain legal reserves as defined at N.J.A.C. 6A:23-1.2 and published by the Governmental Accounting Standards Board (GASB; 401 Merritt 7, P.O. Box 5116, Norwalk, CT) for encumbrances, or state or other government-imposed or permitted legal restrictions. A district board of education may request approval to establish a legal reserve other than those authorized herein by submitting a written request to the Division of Finance in accordance with the annual audit program.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (a), inserted a hyphen following "double"; deleted (f); recodified (g) as present (f); rewrote (f); added new (g); rewrote (i); and added (j).

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

(a) District boards of education subject to the provisions of N.J.S.A. 18A:7F-6.b shall, at the discretion of the Commissioner:

1. Consider Comprehensive Education Improvement and Financing Act (CEIFA) generated revenue and all other State, local and Federal revenue as revenue of the general fund unless expressly restricted by Federal law or written contract, for the purpose of implementing the directives of the Commissioner;

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

3. Obtain written Commissioner approval on forms prescribed by the Commissioner for school level appropriation transfers necessary during the year to effectuate the directives of the Commissioner; and

4. Obtain written approval of the school business administrator, chief school administrator and the Department prior to appropriating for new purposes school level appropriation balances occurring during the year from salary breakage, unanticipated circumstances, overestimated costs, or other events.

i. Upon such approval, a district board of education may transfer such appropriation balances between schools or for district-wide purposes, except where prohibited by any Federal law that may restrict such transfers.

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

(b) A district board of education may require by resolution that appropriations/expenditures be recorded at the school level.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Rewrote the introductory paragraph of (a) and (a)4; and deleted (c).

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

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

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

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (a) substituted "or" for "and" following "education".

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

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

<u>Total School Budget</u>	<u>Minimum Bond Required</u>
Up to \$100,000.00	20 percent of budget (Minimum \$10,000)
\$100,000.01 to \$250,000.00	\$20,000 plus 15 percent of all over \$100,000
\$250,000.01 to \$500,000.00	\$42,500 plus 13 percent of all over \$250,000
\$500,000.01 to \$750,000.00	\$75,000 plus eight percent of all over \$500,000
\$750,000.01 to \$1,000,000.00	\$95,000 plus four percent of all over \$750,000
\$1,000,000.01 to \$2,000,000.00	\$105,000 plus two percent of all over \$1,000,000
\$2,000,000.01 to \$5,000,000.00	\$125,000 plus one percent of all over \$2,000,000
\$5,000,000.01 to \$10,000,000.00	\$155,000 plus ½ percent of all over \$5,000,000
\$10,000,000.01 and upwards	\$180,000 plus ¼ percent of all over \$10,000,000

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

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

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote (c).

6A:23-2.6 Supplies and equipment

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

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

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

(c) Whenever any district board of education or charter school board of trustees elects to purchase food supplies pursuant to this section, it shall adopt a policy stating what food supplies will be purchased without advertising for bids pursuant to N.J.S.A. 18A:18A-5, designating a person or persons authorized to purchase food supplies, describing the procedure by which interested vendors may become eligible to submit quotations, and outlining the method by which the district board of education or charter school board of trustees will solicit and accept quotations. A district board of education or charter school board of trustees shall adopt this policy before the opening of schools each year, and shall make the policy known to the public.

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

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

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

3. Contingent upon approval of the district board of education or charter school board of trustees in its adopted policy, the person(s) designated by the district board of education or charter school board of trustees to purchase food supplies may purchase food supplies for any school cafeteria or home economics class to the extent of not more than \$500.00 in any month without soliciting quotations, provided a statement signed by the purchaser is filed with the invoice indicating the reason why quotations could not be obtained, and shall retain such record for review and for audit.

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

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (a), deleted "presently referred to as Handbook 2R2," preceding "which is established"; in (d)2, inserted "The person(s) designated shall retain" preceding "such justification" and deleted "shall be" following "together with all quotations received".

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (c), inserted "pursuant to N.J.S.A. 18A:18A-5" and "or charter school board of trustees"; and in (d)3, substituted "\$500.00" for "\$250.00".

6A:23-2.7 Mechanical bookkeeping systems

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

6A:23-2.8 Employee organizational dues

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

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

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

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (b), rewrote the first sentence.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (b), deleted "according to directions promulgated by the Commissioner" at the end.

6A:23-2.9 Petty cash fund

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

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

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

(c) Each person designated per (b)3 above shall ensure that all unused petty cash funds are returned to the depository at the close of each fiscal year.

Amended by R.2006 d.361, effective October 2, 2006.
See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (b)3, substituted "employee" for "individual"; and rewrote (b)5 and (c).

6A:23-2.10 Summer payment plan

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

Amended by R.2004 d.322, effective August 16, 2004.
See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the second sentence.

6A:23-2.11 Transfers during the budget year

(a) For the purposes of this section, a district board of education means any local or regional school district established pursuant to chapter 8 and chapter 13 of Title 18A of the New Jersey Statutes, but shall not include county vocational school districts, county special services school districts, educational services commissions, or jointure commissions.

(b) A district board of education may transfer surplus or other unbudgeted or underbudgeted revenue between April 1 and June 30 only upon prior approval of the transfer by the county superintendent, as the Commissioner's designee, pursuant to N.J.S.A. 18A:22-8.1. Requests must be received by June 30. All approved transfer requests must be expended or encumbered by June 30th on approved use, or the district board of education shall reserve and designate such funds for tax relief in the subsequent budget year. To request approval of such transfers, a district board of education shall submit to the county superintendent:

1. Documentation of approval of the transfer by a two-thirds affirmative vote of the authorized membership of the school board;

2. Certification by that same membership that the transfer is necessary to achieve the thoroughness standards for the current year. The certification shall include the purpose, need of transfer and include, at a minimum, a list of specific line items to be transferred into and corresponding amounts. Requests to appropriate surplus for textbooks, computers, equipment or other needs for use and operation for the subsequent school year is not considered a need for the current year and shall not be approved; and

3. The latest board secretary's report as documentation that no other line item balances are available and all appropriation balances are or will be expended or encumbered.

(c) Prior to April 1, a district board of education may petition the Commissioner, by a two-thirds affirmative vote of the authorized membership of the school board, for approval of a transfer of surplus or other unbudgeted or underbudgeted revenue only for an emergent circumstance. Such district board of education shall be subject to an on-site inspection by the county superintendent for verification of the emergent circumstance and other supporting documentation. The district board of education shall submit such board-approved petition to the county superintendent for recommendation to the Commissioner. At a minimum, the district board of education shall include in such submission:

1. Certification that the transfer is necessary for an emergent circumstance, that no other line item balances are or will be available, and that the remaining surplus will enable the district board of education to operate in a fiscally solvent position for the remainder of the budget year;

2. Documentation that the emergent circumstance, if not addressed through an appropriation of additional revenue, would render peril to the health and safety of students or staff, and/or force the school district into an operating deficit as a result of the required implementation of the thoroughness standards;

3. The latest board secretary's report as documentation that no other line item balances are or will be available as set forth in (c)3i below:

i. Any unexpended, unencumbered balances are for non-discretionary fixed costs and supported by historical expenditures or other documentation ensuring that the balances will be expended by June 30; and

4. Evidence of approval of the petition and supporting documentation by a two-thirds affirmative vote of the authorized membership of the school board.

(d) A district board of education may at any time and without Commissioner approval:

1. Appropriate unbudgeted or underbudgeted State aid for which the approval was granted by the Department in the written notification to the district board of education of the additional aid;

2. Appropriate unbudgeted and underbudgeted tuition revenue generated from a school district-specific program, which is not part of a formal sending-receiving relationship pursuant to N.J.S.A. 18A:38-19 and 18A:46-21;

3. Appropriate unbudgeted or underbudgeted school transportation revenue generated from a school district's or Coordinated Transportation Services Agency's role as the host provider of school transportation services pursuant to N.J.S.A. 18A:39-11 and 18A:39-11.1;

4. Appropriate unbudgeted or underbudgeted restricted miscellaneous local revenue;

5. Appropriate unbudgeted or underbudgeted Federal revenue; and

6. Appropriate surplus generated from any Federal and/or State revenue excluded from the excess surplus calculation in the prebudget year in accordance with the annual audit program.

(e) As used in this section, general fund appropriation account means the required advertised appropriation accounts pursuant to N.J.S.A. 18A:22-1 et seq., except where consolidated as follows:

1. Basic skills, bilingual and special education instruction, including other related and extraordinary services;

2. Student activities, student athletics, and other student instructional services;

3. Student support services, including, attendance, health, guidance, child study team, and media;

4. Improvement of instruction and staff training; and

5. Special programs (fund 13).

(f) For all transfers from any general fund appropriation account as defined in (e) above, and as amended to include prior year encumbrances carried forward to the current year and revenue appropriated pursuant to (d) above, the district board of education shall obtain the approval for such transfers by two-thirds affirmative vote of the authorized membership of the school board, pursuant to N.J.S.A. 18A:22-8.1.

1. When the total amount of such transfers, on a cumulative basis, exceeds 10 percent of the amount of the account that was included in the school district's budget as certified for taxes, as amended to include prior year encumbrances carried forward to the current year and revenue appropriated pursuant to (d) above, the district board of education shall request in writing approval from the county superintendent, as the Commissioner's designee, by submitting the request and purpose for the transfer using the report pursuant to (i) below.

i. The district board of education may request approval from the county superintendent prior to obtaining the two-thirds affirmative vote of the authorized membership of the school board for such approval.

ii. A district board of education's written transfer request shall be deemed approved after 10 working days of receipt of such request by the county superintendent if no county superintendent approval or denial is provided within that timeframe. A district board of education shall maintain documentation of the county superintendent receipt of all transfer requests deemed approved under this subsection.

2. Prior to any transfers from capital outlay accounts to current expense, except for equipment, a district board of education shall submit a written request for approval to the county superintendent, with documentation that such transfer is required due to demonstrated hardship.

(g) For all transfers to the advertised appropriation accounts identified as general administration, school administration, central services and administrative information technology or other support services that, on a cumulative basis, exceed 10 percent of the amount of the account included in the school district's budget as certified for taxes, amended to include prior year encumbrances carried forward to the current year, a district board of education shall, prior to such transfer, submit to the county superintendent, in a format prescribed by the Commissioner, a request for such approval.

1. Such approval will not be granted, except as provided in (g)2 below if:

i. The school district's budget currently exceeds the administrative cost limits; or

ii. The transfer would place the school district's budget in excess of the administrative cost limits in the applicable budget year, as prescribed in N.J.A.C. 6A:23-8.2.

2. Transfers may be approved to support a contractual obligation or one-time increase in spending as justified by district board of education documentation. A district board of education that is granted such approval remains subject to the requirements set forth in N.J.A.C. 6A:23-8.2.

(h) For all transfers to the advertised appropriation accounts identified as capital outlay for a capital outlay project not previously approved by the voters or board of school estimate pursuant to N.J.A.C. 6A:23-8.4, a district board of education shall, prior to such transfer, submit to the county superintendent a request for such approval. Approvals are required for unbudgeted or underbudgeted revenue, including those listed and appropriated pursuant to (d) above and shall only be granted for requests with written documentation that supports the existence of an emergent circumstance as defined in (c)2 above and only after an on-site inspection by the county superintendent to verify the emergent circumstance. Transfers to equipment accounts or to supplement a

capital outlay project previously approved by the voters or board of school estimate, pursuant to N.J.A.C. 6A:23-8.4, do not require approval by the county superintendent.

(i) Each district board of education shall maintain a report of current month and year-to-date transfers between general fund appropriation accounts as defined in (e) above, in a format prescribed by the Commissioner, or in a format developed locally and approved by the county superintendent, and submit such report to the county superintendent with any transfer requests and in accordance with the submission requirements of the board secretary's and treasurer's financial reports under N.J.A.C. 6A:23-2.12.

New Rule, R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Former N.J.A.C. 6A:23-2.11, Budgetary controls and overexpenditure of funds, recodified to N.J.A.C. 6A:23-2.12.

6A:23-2.12 Budgetary controls and overexpenditure of funds

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

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

2. A district board of education or charter school board of trustees shall only approve the recording of revenues when measurable and available, in accordance with GAAP, unless otherwise authorized pursuant to N.J.S.A. 18A:22-44.2(a). State aid and tax levy approved in the budget certified for taxes shall be recorded in full as of July 1. State restricted and unrestricted grants shall be recorded in full upon signing and execution of the grant agreement or as otherwise directed by the grantor.

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

4. A district board of education or charter school board of trustees, unless otherwise restricted by law or Commissioner directive, may transfer amounts from line item

accounts with available appropriation balances to permit the approval of encumbrances or expenditures otherwise prohibited in (a)1 and 3 above. A district board of education or charter school board of trustees shall make these transfers prior to the approval of such encumbrances or expenditures. A district board of education or charter school board of trustees shall make all transfers in accordance with N.J.S.A. 18A:22-8.1, 18A:22-8.2, 18A:7F-6.c, and 18A:7G-31 and N.J.A.C. 6A:23-2.11, 2.13 and 2.14.

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

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

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

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

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

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

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

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

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

2. The school business administrator/board secretary shall report to the district board of education or charter school board of trustees any changes in anticipated revenue amounts and revenue sources.

3. A district board of education or charter school board of trustees shall obtain a certification from the school business administrator/board secretary each month that the total of encumbrances and expenditures for each line item account do not exceed the line item appropriation in violation of (a) above.

i. If a violation has occurred, the district board of education or charter school board of trustees shall, by resolution, approve by a two-thirds affirmative vote of the authorized membership of the board, pursuant to N.J.S.A. 18A:22-8.1, to either transfer amounts among line items if no department approvals are required pursuant to N.J.A.C. 6A:23-2.11, or direct the school business administrator/board secretary, or the chief school administrator or charter school lead person, as appropriate, to request approval pursuant to N.J.A.C. 6A:23-2.11 to transfer amounts among line items and/or from undesignated fund balance or other unbudgeted or underbudgeted revenue to eliminate the line item account deficit(s). If the latter option is selected, the appropriate official shall provide a detailed report of approvals granted and the subsequent amounts transferred into and out of the affected line item account(s), undesignated fund balance, or other unbudgeted or underbudgeted revenue account for the board's ratification at the next regularly scheduled meeting.

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

4. A district board of education or charter school board of trustees, after review of the school business administrator/board secretary's and treasurer's monthly financial reports and upon consultation with the appropriate school district or charter school officials, shall certify in the minutes of the board each month that no fund has been overexpended in violation of (b) above, and that sufficient funds are available to meet the district board of education's

or charter school board of trustee's financial obligations for the remainder of the fiscal year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. A district board of education or charter school board of trustees shall apply deficits incurred for State and

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

(f) In those cases where the Commissioner determines that the failure to develop a corrective action plan or take adequate action under (b), (c) or (d) above to avoid or address an overexpenditure or fund deficit impacts the school district's ability to meet its goals and objectives, the Commissioner may recommend to the State Board of Education that the school district's certification be rescinded pursuant to N.J.A.C. 6A:30-1, or in the case of a charter school that its charter be revoked, pursuant to N.J.S.A. 18A:36A-17.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Recodified from N.J.A.C. 6A:23-2.11 and amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Rewrote the section. Former N.J.A.C. 6A:23-2.12, Debt service fund balance, recodified to N.J.A.C. 6A:23-2.15.

6A:23-2.13 Capital reserve

(a) A district board of education or board of school estimate may, at any time, establish by board resolution a capital reserve account, pursuant to N.J.S.A. 18A:21-2 and 18A:7G-31.

(b) A district board of education is prohibited from using the funds in such capital reserve account for current expenses, pursuant to N.J.S.A. 18A:22-8.2, and shall only use such funds:

1. To implement capital projects in the district's LRFP as required pursuant to N.J.S.A. 18A:7G-4(a) and N.J.A.C. 6A:26-2; and

2. To augment a capital project funded in whole or part by bond proceeds only when:

i. The original referendum question separately listed the amount and portion of local share (or portion of total costs of a project receiving debt service aid) to be funded by capital reserve pursuant to N.J.A.C. 6A:26-3.7 and 6A:26-3.12; or

ii. Voter or board of school estimate approval was received to augment the original approved question by special appropriation in a type I school district, by separate question at a special election or through the appropriate line-items and supporting documentation in the base budget at the annual school election pursuant to N.J.A.C. 6A:26-4.4(a)3iii.

(c) A district board of education may increase the balance in the capital reserve account by:

1. Appropriating funds in the annual general fund budget certified for taxes to meet the needs of the LRFP that are not met by State support; or

2. Requesting approval from the county superintendent, as the Commissioner's designee, to appropriate any excess unreserved general fund balance as calculated in the supporting documentation of the proposed budget into a capital reserve in the proposed budget pursuant to N.J.S.A. 18A:7F-7b only when the district board of education has:

- i. Formally established a capital reserve account;
- ii. Obtained an approved long-range facilities plan (LRFP) in accordance with N.J.A.C. 6A:26-2; and
- iii. Appropriated at least 50 percent of the excess surplus in the proposed budget for property tax relief.

(d) A district board of education, at its option, may satisfy the withdrawal approval requirements set forth in (h) below when funds are deposited into the capital reserve account in the annual budget pursuant to (c)1 and 2 above using the designated line item, supporting documentation, and a statement of purpose in the advertised budget. The district board of education shall include in its statement of purpose:

1. The amount of the deposit;
2. A description of the future capital project and purpose; and
3. A statement that "The amount represents expenditures for construction elements or projects that exceed the facilities efficiency standards determined by the Commissioner as necessary to achieve the Core Curriculum Content Standards."

(e) A district board of education may request express approval of the voters for appropriation of additional amounts into the capital reserve by a separate proposal at budget time, or by a special question at one of the four special elections authorized pursuant to N.J.S.A. 19:60-2. A district board of education may request approval of a board of school estimate for appropriation of additional amounts into a capital reserve by a separate proposal at budget time or by special resolution. The amount expressly approved by the voters or board of school estimate for deposit into a capital reserve may be from surplus or unrestricted local miscellaneous revenue only if such source is delineated in the question and/or special resolution.

(f) A district board of education shall not deposit into a capital reserve account audited excess undesignated, unreserved general fund balance. The district board of education shall reserve and designate such funds in the subsequent year's budget pursuant to N.J.A.C. 6A:23-8.6(c).

(g) The district board of education shall maintain an amount of funds in the capital reserve account that does not exceed the amount needed to implement the capital projects in a school district's LRFP that are not met by State support.

1. If the amount in the capital reserve exceeds the amount authorized in (g) above, the district board of education shall withdraw the excess and reserve and designate it in the subsequent year's budget.

2. The district board of education shall ensure that all excess amount in the capital reserve account identified in the annual audit, required pursuant to N.J.S.A. 18A:23-1 and procedures developed by the Commissioner, are reserved and designated in the subsequent year's budget.

(h) A district board of education may withdraw funds from the capital reserve account at any time as follows:

1. By board resolution for the transfer of funds to the line items in the capital outlay major account/fund to fund pre-development or other pre-application costs associated with architects, lawyers and construction managers for school facilities projects included in the approved LRFP;

i. Pursuant to N.J.A.C. 6A:26-4.2(a), a district board of education that used capital reserve for such costs in a capital project funded in part or in whole by bond proceeds has the option to reimburse the general fund from the capital projects fund after approval of the referendum or resolution;

2. By board resolution for the transfer of funds to the line items in the capital outlay major account/fund to fund the local share less any excess costs of a school facilities project as determined in accordance with N.J.A.C. 6A:26-3;

3. By board resolution for the transfer of funds to the capital projects fund pursuant to N.J.A.C. 6A:26-4, after receiving voter, board of school estimate or capital project review board approval, as applicable, of the capital reserve use and specific amount in an approved referendum or resolutions pursuant to N.J.A.C. 6A:26-3.7;

4. By board resolution after receiving voter, board of school estimate or capital project review board approval, as applicable, for the transfer of funds to the line items in the capital outlay major account/fund to fund excess costs of a school facilities project and to fund the local funding for other capital projects as determined in accordance with N.J.A.C. 6A:26, Educational Facilities;

i. Voter, board of school estimate, or capital project review board approval may be obtained through the original budget certified for taxes, in which the district board of education shall include a statement of purpose in the advertised budget, or through a board of school estimate's special appropriation process.

ii. The district board of education or board of school estimate shall include in the statement of purpose or special question for the capital project:

- (1) The total costs;
- (2) The final eligible costs;

(3) The amount requested for withdrawal for excess costs;

(4) A description/purpose of the capital project, or portion thereof, which the excess costs will fund; and

(5) A statement that "The amount represents expenditures for construction elements or projects that exceed the facilities efficiency standards determined by the Commissioner as necessary to achieve the Core Curriculum Content Standards."

iii. If requesting a withdrawal for multiple capital projects, the district board of education or board of school estimate shall include in the statement of purpose or special question the required information identified in (h)4i and ii above separately for each individual capital project.

iv. The district board of education or board of school estimate shall ensure that the amount(s) approved by the voters, board of school estimate or capital project review board are used exclusively for the purpose or purposes contained in the associated statement or question.

v. For any approved amounts that remain unexpended or unencumbered at the end of the school year, the district board of education or board of school estimate shall:

(1) Return such funds to the capital reserve account;

(2) Anticipate such funds as part of the designated general fund balance of the subsequent school year budget; or

(3) Reserve and designate such funds in the second subsequent school year budget.

5. By board resolution and after receiving Commissioner approval in accordance with N.J.A.C. 6A:26-3.13, and voter, board of school estimate or capital project review board approval pursuant to (c)2 above and this subsection, for the transfer of funds to the line items in the capital outlay major account/fund for the purchase of land; or

6. By board resolution for the transfer of funds to the debt service account for the purpose of offsetting locally funded principal and interest payments for bonded projects that are included in the school district's LRF.

(i) Notwithstanding (h) above, a district board of education or board of school estimate may, at any time, apply to the Commissioner for approval to withdraw funds from its capital reserve account for uses authorized in (b) above. A district board of education or board of school estimate may make a withdrawal pursuant to this subsection only upon receipt of written approval of the Commissioner. To obtain Commissioner approval, the district board of education shall establish to the satisfaction of the Commissioner that an emergent

condition exists necessitating an immediate withdrawal of capital reserve account funds.

(j) A district board of education shall administer and account for the capital reserve account as follows:

1. The district board of education shall establish and maintain the capital reserve account in accordance with Generally Accepted Accounting Principles, and shall be subject to annual audit pursuant to N.J.S.A. 18A:23-1 et seq.

2. If the cost to complete an approved school facilities project not funded in whole or part by school bonds exceeds the local share less excess costs, those costs up to 10 percent above the local share less excess costs may be withdrawn from capital reserve in accordance with (h)1 above.

3. The district board of education shall transfer to the capital projects account, and account for separately with the corresponding grant, any funds withdrawn for the local share of a school facilities project that is not using school bonds or loan bonds for all or part of the local share that received a grant pursuant to N.J.S.A. 18A:7G-15. For any unexpended transferred capital reserve funds remaining after completion of such school facilities projects, the district board of education shall:

i. Return such funds to the capital reserve account;

ii. Anticipate such funds as part of the designated general fund balance of the subsequent school year's budget; or

iii. Reserve and designate any unexpended transferred capital reserve funds in the second subsequent year's budget for tax relief.

4. Pursuant to N.J.S.A. 18A:21-3, a district board of education shall increase the capital reserve account by the earnings attributable to the investment of the account's assets, and:

i. Anticipate as miscellaneous income any investment income included in the original annual general fund budget certified for taxes; and

ii. Include any investment earnings in the maximum amount of capital reserve permitted in (g) above.

5. A district board of education shall establish a separate account in the general fund for bookkeeping purposes only in order to account for increases to and withdrawals from the capital reserve account and its balance. The district board of education shall record such capital reserve account on the annual audit's balance sheet in the general fund as follows:

i. Dr: Capital Reserve Account; and

ii. Cr: Reserved Fund Balance—Capital Reserve Account.

(k) Funds in capital reserve accounts in existence prior to July 18, 2000 are subject to the Educational Facilities Construction and Financing Act (EFCFA), P.L. 2000, c. 72, and this subchapter, and the district board of education shall only use such funds for the original purpose for which the funds were deposited.

1. If the original purpose is outside the scope of the district board of education's approved LRFP, the district board of education shall account for such funds separately in the capital reserve fund and appropriate the funds as revenue for such purposes in the annual budget certified for taxes. The district board of education shall restore to the capital reserve account for use pursuant to this subchapter any unexpended capital outlay appropriations up to the amount of such capital reserve funds appropriated. Expenditures are charged first to unrestricted capital outlay fund sources with capital reserve account appropriations expended last. The district board of education shall not deposit any additional funds into the capital reserve account pursuant to (c) through (f) above for such pre-July 18, 2000 purposes.

2. If the original purpose is within the scope of the school district's approved LRFP, the district board of education shall make withdrawals pursuant to (h) above, except that if voter, board of school estimate or capital project review board approval of excess costs or an other capital project was obtained when the funds were deposited into the capital reserve account, the district board of education, by such approval, shall be deemed to have satisfied the requirement for approval of excess costs or other capital projects in (h)2 above.

New Rule, R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Former N.J.A.C. 6A:23-2.13, Internal service funds, recodified to N.J.A.C. 6A:23-2.16.

6A:23-2.14 Maintenance reserve

(a) A district board of education shall establish, by resolution, a maintenance reserve account to be used to implement required maintenance of the school district's facilities. The district board of education is prohibited from using such funds for routine or capital maintenance.

(b) The district board of education shall establish and maintain the maintenance reserve account in accordance with GAAP, and such account is subject to annual audit pursuant to N.J.S.A. 18A:23-1 et seq.

(c) A district board of education or board of school estimate, as appropriate, may increase the balance in the maintenance reserve account by appropriating funds in the annual general fund budget certified for taxes.

(d) A district board of education or board of school estimate, as appropriate, may by resolution withdraw such funds from the maintenance reserve account and appropriate into the required maintenance account lines at budget time or

any time during the year for use on required maintenance activities for a school facility as reported in the comprehensive maintenance plan pursuant to N.J.A.C. 6A:26A-4.

1. Funds withdrawn from the maintenance reserve account are restricted to required maintenance appropriations. A district board of education or board of school estimate shall not transfer such funds to any other line-item account.

(e) In any year that maintenance reserve account funds are withdrawn, the district board of education shall restore any unexpended required maintenance appropriations, up to the amount of maintenance reserve account funds withdrawn, to the maintenance reserve account at year-end.

(f) The district board of education shall, by resolution, transfer to the general fund on an annual basis any interest earned on the investments in the maintenance reserve account. Such interest may be transferred on a more frequent basis at the discretion of the district board of education.

(g) The district board of education shall ensure that the maintenance reserve account balance does not, at any time, exceed four percent of the replacement cost of the school district's school facilities for the current year. If the account exceeds this maximum amount at June 30, the district board of education shall reserve and designate such excess in the subsequent year's budget.

New Rule, R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Former N.J.A.C. 6A:23-2.14, Student activity funds, recodified to N.J.A.C. 6A:23-2.17.

6A:23-2.15 Debt service fund balance

(a) A district board of education shall appropriate annually all unreserved debt service fund balances in the budget certified for taxes unless expressly authorized and documented by the voters in a bond referendum, after transfer of unexpended bond proceeds pursuant to N.J.A.C. 6A:26-4.6(c), or upon formal Commissioner approval after review of documented authorization by the voters in a public meeting.

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

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (a), substituted "A" for "Each" at the beginning, and inserted "after transfer of unexpended bond proceeds pursuant to N.J.A.C. 6A:26-4.6(c)," following "by the voters in a bond referendum".

Recodified from N.J.A.C. 6A:23-2.12 and amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (b), inserted "above," Former 6A:23-2.15, School store business practices, recodified to 6A:23-2.18.

6A:23-2.16 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 or charter school board of trustees 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 or charter school board of trustees 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. A district board of education or charter school board of trustees that is receiving the services shall report user charges in the applicable line item account for the goods or services received.

ii. A district board of education or charter school board of trustees shall report as revenues the sales and purchases of goods and services for a price approximating their external exchange value ("Services Provided to Other Funds") in provider/seller funds.

2. The district board of education or charter school board of trustees shall ensure that the shared service agreement includes an agreed upon mechanism for the use and/or distribution of any unexpended balances.

3. The district board of education or charter school board of trustees shall evaluate annually any unexpended balances 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.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote (b).

Recodified from N.J.A.C. 6A:23-2.13 by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Former 6A:23-2.16, Dismissal or re-assignment of a school business administrator, recodified to 6A:23-2.19.

6A:23-2.17 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 resolution. Such funds are maintained under the jurisdiction of the board of education or charter school board of trustees and supervision of the school business administrator/board secretary, 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. The district board of education or charter school board of trustees shall disburse interest on this account(s) to each student activity fund in proportion to the balances 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. The district board of education or charter school board of trustees shall include in its policy the following minimum requirements:

1. Receipts are detailed showing date, sources, purpose and amount. The district board of education or charter school board of trustees shall promptly deposit all receipts in the bank. The district board of education or charter school board of trustees shall ensure that all deposits agree with the entries in the cash receipt book and are traceable to the actual receipts or groups of receipts.

2. Disbursements are recorded chronologically showing date, vendor, check number, purpose and amount. The district board of education or charter school board of trustees shall make all disbursements by check bearing a minimum of two authorized signatures, and shall support all disbursements by a claim, bill or written order to persons supervising the fund.

3. Book balances are reconciled with bank balances. The district board of education or charter school board of trustees shall retain canceled checks and bank statements 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 are classified by school.

5. Borrowing from the student activity accounts is prohibited.

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

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Recodified from N.J.A.C. 6A:23-2.14 and amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (a), deleted "board" following "activity funds by" and substituted "secretary," for "secretary or responsible charter school employee".

6A:23-2.18 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.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Deleted the N.J.A.C. reference.

Recodified from N.J.A.C. 6A:23-2.15 by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

6A:23-2.19 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.

Recodified from N.J.A.C. 6A:23-2.16 by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

6A:23-2.20 Appeals

(a) Decisions of the Commissioner issued pursuant to this chapter may be appealed to the State Board of Education pursuant to N.J.A.C. 6A:4, Appeals.

(b) Decisions of the Assistant Commissioner and county superintendent issued pursuant to this chapter may be appealed pursuant to N.J.A.C. 6A:3, Controversies and Disputes.

New Rule, R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

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. The receiving district board of education shall include in its calculation all expenditures for each purpose except Federal and State special revenue fund expenditures and those specifically excluded in (e)5 below.

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 receiving district board of education shall reduce as appropriate the "actual cost per student" for all grade and program categories 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. The receiving district board of education shall make such reductions 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 establishes 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 for review and approval in order to change to the certification method in (c)2 above. The receiving district board of education shall indicate reason(s) for the change.

(e) The receiving district board of education shall determine the share of each item of expenditure for each grade/program category on the report in (c)1 above 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 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 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 allocated in pro-

portion 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 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, central services, administrative information technology, 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 that are 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 nonaccredited 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 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 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 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: 100-1 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. In lieu of completing the form specified in (c)1 above, 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 for the budget year or 2.5 percent, whichever is greater. If this option is selected and more than one fiscal year has elapsed since the most recent cost per student certification, the receiving district board of education shall further increase the estimated cost per student by multiplying the above by the sum of one plus the CPI for each additional year.

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 $G = 0.5x(Y1-$

$Y3)/Y3$, where G shall not exceed ± 10 percent, $Y1$ is the ADE two years prior to the year for which the tuition is being estimated, and $Y3$ is the ADE four years prior to the year for which the tuition is being estimated. For the purposes of the tentative tuition contract, a receiving district board of education shall apply the same growth rate calculation (as noted above) to project the number of students to be received from each sending district board of education.

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

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

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

i. Annual budgets including supporting documents;

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

6. If the Commissioner later determines that the tentative tuition charge established by written contractual agreement, except for a contractual agreement for a student enrolled in a special education class, was greater than the actual cost per student during the school year multiplied by the actual average daily enrollment received, the receiving district board of education shall return to the sending district board of education in the third school year following the contract year the amount by which the tentative charge exceeded the actual charge as determined above, or, at the option of the receiving district board of education, shall credit the sending district board of education with the excess amount. The receiving district board of education shall make such adjustment for a contractual agreement for a student enrolled in a special education class 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 established by resolution at June 30. In such case, the district board of education shall:

- i. Make full appropriation of the legal reserve for the tuition adjustment in the third year following the contract year;

ii. Exclude from the net budget cap calculation the budgeted fund balance and appropriation of the legal reserve in the third year following the contract year for such tuition adjustments; and

iii. Transfer to the general fund, by board resolution, any interest earned on the investments in a tuition reserve account on an annual basis. Such transfer may be made on a more frequent basis at the discretion of the district board of education.

(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 charge for the use of the school facilities pursuant to (e)6 above is not adequate, the Commissioner may approve an additional charge for the use of such school facilities.

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

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

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

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In the introductory paragraph of (e), substituted "1" for "2"; in (e)4i, inserted ", central services, administrative information technology,"; in (e)6ii, substituted "State" for "state"; in (e)9, substituted "100-1" for "1001"; rewrote (f)1; in (f)2ii, substituted "Y1-Y3" for "Y1Y3"; in (f)6, substituted "The receiving district board of education shall make such" for "Such", and deleted "shall be made" following "education class", in the last sentence; and rewrote (f)8.

Case Notes

In a dispute between sending and receiving school districts over resource room charges, the sending districts failed to file their appeal within the 90-day limitations period prescribed by N.J.A.C. 6A:3-1.3(i) because they had knowledge of the receiving district's position before the May 14, 2007 letter from the Division of Finance that they claimed started the running of the period. *Bd. of Educ. of Waterford v. Bd. of Educ. of Hammonton*, OAL Dkt. No. EDU 6798-07 and EDU 8091-07 (CONSOLIDATED), 2008 N.J. AGEN LEXIS 261, Commissioner's Decision (March 24, 2008).

In a dispute between sending and receiving school districts over resource room charges, there was no basis for the sending districts to delay filing appeal pending inquiry to and response from the Division of Finance. *Bd. of Educ. of Waterford v. Bd. of Educ. of Hammonton*, OAL Dkt. No. EDU 6798-07 and EDU 8091-07 (CONSOLIDATED), 2008 N.J. AGEN LEXIS 261, Commissioner's Decision (March 24, 2008).

Regulatory provisions at N.J.A.C. 6A:23-3.1(f), rather than any contractual terms between the parties, govern the calculation of tuition credits in a sending-receiving relationship (adopting with modification the ALJ's decision, 2007 N.J. AGEN LEXIS 448). *Bd. of Educ. of Mountainside v. Bd. of Educ. of Berkeley Heights*, OAL Dkt. No. EDU 9700-06, 2008 N.J. AGEN LEXIS 270, Commissioner's Decision (January 17, 2008).

Where a sending and receiving district did not follow the regulatory provisions at N.J.A.C. 6A:23-3.1(f) during their lengthy and still-existing relationship, and a dispute over credits arose, it was necessary to analyze and recast the payments and credits between the parties from the outset of their relationship in 1997 (adopting with modification the ALJ's decision, 2007 N.J. AGEN LEXIS 448). Bd. of Educ. of Mountainside v. Bd. of Educ. of Berkeley Heights, OAL Dkt. No. EDU 9700-06, 2008 N.J. AGEN LEXIS 270, Commissioner's Decision (January 17, 2008).

Provision of N.J.S.A. 18A:38-19 specifying that tuition to be paid by a sending district shall not exceed the actual cost per pupil does not create an "entitlement," outside the scope of the 90-day rule; although a dispute between sending and receiving districts concerning alleged overcharges presented issues of timeliness, the Commissioner decided the merits given the unique circumstances and that both parties were equally to blame, and in the interest of the districts' citizens. Bd. of Educ. of Mountainside v. Bd. of Educ. of Berkeley Heights, OAL Dkt. No. EDU 9700-06, 2008 N.J. AGEN LEXIS 270, Commissioner's Decision (January 17, 2008).

Because N.J.A.C. 6A:23-3.1(f)5 expressly provides for "mediation" by the County Superintendent, as opposed to decisions or determinations, there should be no expectation of a dispositive ruling by the County Superintendent if mediation proves unsuccessful. Bd. of Educ. of Mountainside v. Bd. of Educ. of Berkeley Heights, OAL Dkt. No. EDU 9700-06, 2008 N.J. AGEN LEXIS 270, Commissioner's Decision (January 17, 2008).

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 that 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 receiving district board of education shall submit the established estimated cost or costs per student 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 receiving district board of education shall remit payment or credit for a student who was enrolled in a special education class 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 sending district board of education shall pay the amount owed for a student who was enrolled in a special education class no later than the end of the third school year following the first year of operation.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (a), inserted "receiving district board of education shall submit the" and deleted "shall be submitted" in the second sentence; in (c), inserted "receiving district board of education shall remit" and deleted "shall be made" in the second sentence; in (d), inserted "sending district board of education shall pay the" and deleted "shall be paid" in the second sentence.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (a), substituted "that" for "which".

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. The county vocational district board of education shall determine tuition rates for the following categories:

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

2. The county vocational district board of education shall include in its calculation all expenditures for each purpose except Federal and State grant project expenditures.

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 county vocational district board of education shall adjust the "actual cost per student" for all tuition categories to reflect net costs plus a reasonable surplus.

(b) Each county vocational district board of education will receive 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 county vocational district board of education shall determine the share of each item of expenditure for each tuition category on a pro rata or actual basis as follows:

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

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

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

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

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

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

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

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

2. If the county vocational district board of education's ending general fund free balance is equal to or greater than six percent of its net budget for the year the tuition rate applies, the county vocational district board of education shall not add an amount to the net cost of any tuition category.

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

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

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

Amended by R.2004 d.322, effective August 16, 2004.
See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Amended by R.2006 d.361, effective October 2, 2006.
See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Rewrote the introductory paragraph of (a)1; in (d)1, inserted " , not including post-secondary education students,".

Case Notes

Initial Decision (2005 N.J. AGEN LEXIS 434) adopted, which concluded that a county vocational school is not required to include in-county post-secondary students in attendance at its programs when calculating the non-resident fee for out-of-county secondary students. Gloucester County Inst. of Tech. v. Bd. of Educ. of Lenape Reg'l H.S.

Dist., OAL Dkt. No. EDU 4720-00 (EDU 10120-98 ON REMAND), 2005 N.J. AGEN LEXIS 1279, Commissioner's Decision (October 11, 2005), aff'd, SB No. 48-05 (N.J. State Bd. of Educ. March 1, 2006).

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

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

1. The county special services district board of education shall include all expenditures for each purpose except Federal and State grant project expenditures.

2. "Average daily enrollment" for the purpose of determining the "actual cost per student" is 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 is the divisor less than 180 days.

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

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

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

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

3. Criteria contained in (c) below.

(c) The county special services district board of education shall determine the share of each item of expenditure for each tuition category (special education classes by handicap program type) on a pro rata or actual basis as follows:

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

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

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

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

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

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

2. If the county special services district board of education's ending general fund free balance is equal to or greater than 10 percent of its general fund budget for the year the tuition rate applies, the county special services district board of education shall deduct the amount above 10 percent from amongst the tuition categories in proportion to the average daily enrollment for each category.

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

(g) Calculation of tentative tuition rates, execution of written contractual agreements, payment of tuition (including the nonresident fee) and adjustments to tentative tuition charges

upon certification of actual tuition rates by the Commissioner shall be made by the county special services district board of education in accordance with N.J.A.C. 6A:23-3.1(e) except that the county special services district board of education shall base the tentative tuition rates on the county special services district board of education's estimated adjusted net cost per student consistent with the calculation in (c), (d) and (e) above. The tentative tuition rate and actual cost per student for a given fiscal year shall be calculated in the same manner chosen pursuant to (b) above.

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

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

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Rewrote (e)2; and in (g), added the last sentence.

Case Notes

School board's claim for refund of a surplus held by a special services school district above the 10 percent level permitted by law was moot as a dispute between the parties in light of the State Board of Education's adoption of rules establishing a mechanism for refund of excess surplus to sending districts, and the Department's application of that rule to the school year in question. Bd. of Educ. of Twp. of Pemberton v. Bd. of Educ. of Burlington County Special Services School Dist., OAL Dkt. No. EDU 8568-04, 2007 N.J. AGEN LEXIS 317, Commissioner's Decision (April 12, 2007).

SUBCHAPTER 4. TUITION FOR PRIVATE SCHOOLS FOR STUDENTS WITH DISABILITIES

6A:23-4.1 Definitions

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

"Administrative costs" means those costs defined as administrative costs as prescribed by the Commissioner in the chart of accounts required in accordance with N.J.A.C. 6A:23-4.4(a)7.

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

"Assistant Director" means an individual whose job function includes a majority of the following: the formulation of school goals, plans, policies, and budgets and the recom-

mendation of their approval to the school's board of directors; the recommendations for all staff appointments and other personnel actions, such as terminations, suspensions and compensation, including the appointment of the business manager to the school's board of directors; responsibility for school operations and programs including administration, supervision and evaluation of administrators, supervisors, and all other school staff. The holder of this job title shall hold a bachelor's degree from an accredited institution but is not required to hold a school certification.

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

"Bonus" means any payment to an employee which:

1. Is not part of the employee's executed contracted salary;
2. Is not part of the employee's base salary in the subsequent school year;
3. Is arbitrary and not based on any specific criteria or qualifications; and
4. Is paid solely at the discretion of management.

"Business Manager" means an individual whose job function includes a majority of the following: financial budget planning and administration, insurance/risk administration, purchasing, financial accounting and reporting, facility planning, construction and maintenance; personnel administration; administration of transportation and food services and data processing. The holder of this job title shall hold a bachelor's degree in business, accounting, finance or economics from an accredited institution or shall hold a standard school business administrator's certificate but is not required to hold a school certification.

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

"Compensation increases" means any additional payment made to an employee after the start of the fiscal year that would appear on the employee's W-2 and/or should result in a Form 1099 being issued to the employee.

"Conditional approval status" means the approved private school for students with disabilities is precluded from accepting new students.

"Contingent pay increase" means a staff salary increase of either a certain dollar amount or percentage of contracted salary that is paid to all staff in the event that the approved private school for students with disabilities attains the prede-

termined average daily enrollment for the school year that was filed with and approved by the Commissioner.

"Director" means the same as the Assistant Director above.

"Entertainment expenses" means the cost of providing any type of food/beverage to school officers, school directors/trustees, consultants and/or individuals providing services to the school at any time or to school employees after school hours.

"Executive Director" means the same as the Assistant Director above.

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

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

"Instructional costs" means those costs defined as instructional costs as prescribed by the Commissioner in the chart of accounts required in accordance with N.J.A.C. 6A:23-4.4(a)7.

"Internal Revenue Code" means any Federal tax code section indicated in this subchapter and as amended and supplemented.

"Keyman life insurance" means insurance on staff members for which the school is the beneficiary of the life insurance policy.

"Merit pay increase" means a staff salary increase of either a certain dollar amount or percentage of contracted salary that is based on specific performance criteria that was previously submitted to and approved by the Commissioner.

"New private school for students with disabilities" means an approved private school for students with disabilities in the first two years of operation.

"Private placement student" means a student placed in an approved private school for students with disabilities by other than a New Jersey school district or a New Jersey State agency. For tuition rate purposes for a private placement student, the approved private school for students with disabilities must charge not less than the audited cost per student or the approved private school for students with disabilities must have other means of financing excess costs over the tuition rate charged.

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

"Public school placement student" means a student placed in an approved private school for students with disabilities by a New Jersey school district or a New Jersey State agency.

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

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

"Severance pay" means compensation in addition to regular salaries and wages that is paid by a school to an employee whose employment is being terminated.

"Start up costs" means those costs such as, but not limited to, legal fees, filing fees, furniture, fixtures, equipment and facility costs incurred by a school for the nine-month period prior to receiving Department approval to operate as an approved private school for students with disabilities. A salary is not an allowable start-up cost.

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

"Tentative tuition rate" means the original budgeted tuition rate charged to a sending district board of education for the school year.

Amended by R.2004 d.322, effective August 16, 2004.
See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Amended by R.2006 d.361, effective October 2, 2006.
See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Rewrote definitions "Administrative costs", "Average daily enrollment (ADE)", "Conditional approval status", "Contingent pay increase", "Instructional costs", "Private placement student", "Public school placement student" and "Start up costs"; added definition "Compensation increases"; and substituted definition "New private school for students with disabilities" for "New private school for the disabled".

Case Notes

Initial Decision adopted, which concluded that in order to determine whether salaries of certain individuals are properly considered in establishing tuition rates payable to private schools for students with disabilities, it is necessary to look beyond titles and determine what they actually do; because the duties of an employee whose title was School Business Administrator were more in line with an Executive Director, such salary was allowable in establishing tuition, despite the fact that the individual did not have the certification to make the salary allowable under the titled position (adopting 2007 N.J. AGEN LEXIS 597, as modified). Youth Consultation Service, Inc. v. N.J. State Dep't of Educ., Office of Fiscal Policy & Planning, OAL Dkt. Nos. EDU 3573-06, 3574-06, 3575-06, 3576-06, 3577-06, 3684-06, 3685-06 and 3686-06, 2007 N.J. AGEN LEXIS 1013, Commissioner's Decision (October 4, 2007).

Initial Decision adopted, which concluded that in order to determine whether salaries of certain individuals are properly considered in establishing tuition rates payable to private schools for students with disabilities, it is necessary to look beyond titles and determine what they actually do; because the duties of an employee whose title was Assistant School Business Administrator were more in line with an Assistant Director or Business Manager, such salary was allowable in establishing tuition, despite the fact that the titled position was an unrecognized position title (adopting 2007 N.J. AGEN LEXIS 597, as modified). Youth Consultation Service, Inc. v. N.J. State Dep't of Educ., Office of Fiscal Policy & Planning, OAL Dkt. Nos. EDU 3573-06, 3574-06, 3575-06, 3576-06, 3577-06, 3684-06, 3685-06 and 3686-06, 2007 N.J. AGEN LEXIS 1013, Commissioner's Decision (October 4, 2007).

6A:23-4.2 Tuition rate procedures

(a) The board of directors of an approved private school for students with disabilities located in New Jersey shall

determine the final tuition rate charged to be an amount less than or equal to the certified actual cost per student. The board of directors shall identify the certified actual cost per student and final tuition rate charged in the audited financial statements submitted to the Department pursuant to N.J.A.C. 6A:23-4.9.

1. When determining the actual allowable costs for the program, the board of directors shall ensure that such costs are:

- i. Based on all costs required for student instruction from July 1 through June 30;
- ii. Consistent with the students' individualized education programs (IEP);
- iii. Inclusive of all costs required to implement all students' IEPs and all related services;
- iv. Reasonable, that is, ordinary and necessary and not in excess of the cost which would be incurred by an ordinarily prudent person in the administration of public funds; and
- v. Based on goods actually received and placed in service in the fiscal year they are expensed.

2. If the approved private school for students with disabilities proposes to charge a final tuition rate in excess of 10 percent above the tentative tuition rate charged, the private school shall notify each sending district board of education and the Assistant Commissioner, Division of Finance that such an increase will be charged and the reason for the increase on or before the following dates: December 15th for the first quarter, March 15th for the second quarter, June 15th for the third quarter and September 15th for the fourth quarter, or the next business day when applicable. The determination of a final tuition rate in excess of 10 percent above the tentative tuition rate charged shall be based on the completion of the required quarterly financial report in accordance with N.J.A.C. 6A:23-4.4(a)11.

i. If the sending district board of education and the Assistant Commissioner, Division of Finance are not notified on or before the dates noted in (a)2 above, the approved private school for students with disabilities shall charge an increase not to exceed 10 percent of the tentative tuition rate charged.

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

i. For the 2006-2007 school year and thereafter, minimum instructional costs of 55 percent and maximum administrative costs of 25 percent.

4. Unless otherwise determined pursuant to (b) below, the approved private school for students with disabilities shall charge one tentative tuition rate, charge one final

tuition rate, and calculate one certified actual cost per student for the school year.

i. An approved private school for students with disabilities shall report all tuition rates on a per diem and school year basis, calculated as the number of enrolled days in the school year multiplied by the per diem rate.

ii. An approved private school for students with disabilities that operates both a 10-month and an extended school year shall report tuition rates for both the July/August through June and September through June school years.

5. Except for extraordinary services, an approved private school for students with disabilities shall not bill the sending district board of education separately for related services that are required by a student's initial or subsequent IEP.

6. For programs in operation less than the minimum of 180 days of instruction (September 1 through June 30) the approved private school for students with disabilities shall calculate total costs minus 1/180 for each day less than the 180-day requirement to determine actual allowable costs.

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

8. For fiscal reporting purposes, an extended school year program means a program in which activities commence on or after July 1 and end on or before August 31 of the same year. For program activities that begin prior to July 1, an approved private school for students with disabilities shall report all costs and revenues in the prior fiscal year.

(b) An approved private school for students with disabilities may charge one tuition rate per school location for the school year, or separate tuition rates by class type and by school location for the school year. Approved private schools for students with disabilities that choose to charge by class type shall:

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

2. Charge a separate tuition rate for each class type served;

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

4. Determine on a pro rata basis the individual share of a particular allowable cost item for a class type, when it is not possible to charge the actual amount expended, in

accordance with the following ratios or an alternative method as approved by the Commissioner:

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

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

iii. Direct costs.

(c) An approved private school for students with disabilities shall record direct costs that can be specifically attributed to a program and/or revenue source, in the prescribed bookkeeping and accounting system pursuant to N.J.A.C. 6A:23-4.4(a)8.

(d) For indirect costs, which are incurred for a common or joint purpose and not readily assignable to a program and/or a revenue source, an approved private school for students with disabilities may establish indirect cost pools as appropriate for allocation between common or joint purposes at the end of the fiscal year.

(e) An entity that operates only as an approved private school for students with disabilities and operates one or more tuition programs at one or more locations shall charge their costs as follows:

1. Direct costs for each program as determined pursuant to (c) above; and

2. Indirect costs in accordance with an equitable allocation plan approved by the Commissioner, or in accordance with either of the following ratios:

i. Direct costs for each program determined pursuant to (c) above to total direct costs; or

ii. Average daily enrollment for each program to total average daily enrollment.

(f) An entity that operates other programs in addition to an approved private school for students with disabilities program(s) at one or more locations shall charge their costs as follows:

1. Direct costs for each program as determined pursuant to (c) above;

2. Indirect cost centers established as follows:

i. A cost center, which shall include indirect costs that are allowable costs in accordance with N.J.A.C. 6A:23-4; and

ii. A cost center, which shall include indirect non-allowable costs in accordance with N.J.A.C. 6A:23-4.

3. Allowable indirect costs shall be included on a consistent basis in the respective actual cost per student in accordance with an equitable allocation plan approved by the Commissioner or in accordance with either of the following ratios:

i. Direct costs for each program determined pursuant to (c) above to total direct costs; or

ii. Average daily enrollment for each program to total average daily enrollment.

(g) Whenever a facility used by an approved private school for students with disabilities is also used for unrelated activities and/or enterprises by related or unrelated parties, all costs, direct or indirect, associated with such facilities and operations shall be charged according to the associated activities and/or enterprises which they benefit. Indirect costs

shall be distributed in accordance with an equitable allocation plan approved by the Commissioner.

(h) A tentative tuition rate shall be established by written contractual agreement between the approved private school for students with disabilities and the sending district board of education. The tentative tuition rate charged shall be an amount not in excess of the maximum tentative tuition rate established in accordance with (i) and (j) below for the ensuing school year, and shall not be changed during the school year regardless of the private school's financial or other circumstances. The written contract shall be on the mandated tuition contract

form prescribed by the Commissioner and shall be executed prior to the enrollment of a student.

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

2. If applicable, the contractual agreement shall require the sending district board of education to pay the approved private school for students with disabilities the tentative tuition charge for extraordinary services.

3. The contractual agreement shall require the sending district board of education to pay the approved private school for students with disabilities the tentative tuition charge based on one of the following options as determined by the approved private school for students with disabilities. The approved private school for students with disabilities shall use the same option for all students enrolled in the approved private school for students with disabilities:

i. Option 1: A sending district board of education shall pay the approved private school for students with disabilities no later than the first of each month prior to the services being rendered.

(1) For a student already enrolled in the approved private school for students with disabilities, the sending district board of education shall pay the tentative tuition charge by the first day of the second month after services begin. A sending district board of education that fails to pay tuition by the 30th day after services begin may be charged interest by the private school calculated at the rate of one percent per month on the unpaid balance.

(2) For a student enrolled after the first of the month, the sending district board of education shall pay the tentative tuition charge for the first two months of enrollment no later than 60 days after the first day services begin. Payment in subsequent months are due by the first of each month prior to the services being rendered. A sending district board of education that fails to pay tuition by the 30th day after services begin may be charged interest by the approved private school for students with disabilities calculated at the rate of one percent per month on the unpaid balance.

ii. Option 2: A sending district board of education shall pay the approved private school for students with disabilities no later than 60 days after the last day of each month in which services were rendered. A sending district board of education that fails to pay tuition by the 60th day after the last day of a month in which services

were rendered may be charged interest by the private school calculated at the rate of one percent per month on the unpaid balance.

(i) The Commissioner will issue notification of the maximum tentative tuition rate for each approved private school for students with disabilities no later than January 1 for the ensuing school year, calculated as follows:

1. The maximum tentative tuition rate per student shall equal the product of the audited actual cost per student for the school year prior to the current school year inflated by twice the spending growth limitation of 2.5 percent and any applicable change to this percentage identified in N.J.S.A. 18A:7F-5.d or the CPI, whichever is greater.

2. The maximum tentative tuition rate includes:

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

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

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

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

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

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

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

2. When a student's Individualized Education Program team determines the need for extraordinary services.

(k) The Commissioner will issue notification of certifying that the final tuition rates charged are based on the certified actual cost per student pursuant to (a) above.

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

(m) If the tentative tuition rate for the school year established by written contractual agreement pursuant to (h) above is less than the final tuition rate charged for the school year, the approved private school for students with disabilities may charge each sending district board of education all or part of the difference owed, but the same final tuition rate shall be charged to each sending district board of education. The sending district board of education shall pay the difference on a mutually agreed upon date during the second school year following the year for which the actual cost per student is certified.

(n) The approved private school for students with disabilities shall prepare the contract and the form to establish the tentative tuition rate for the ensuing school year, and if applicable, the tentative tuition rate for extraordinary services on forms prepared by the Commissioner.

(o) An approved private school for students with disabilities shall reference as guidance the list of maximum allowable salaries by job title and county according to the job titles contained in N.J.A.C. 6A:9 which pertain to approved private schools for students with disabilities that is published by the Commissioner. Except for administrative job titles referenced in (p) below, maximum allowable salaries are based on the highest contracted salaries (not including payment of unused sick and vacation days and severance pay) of certified staff by job title in a district board of education for any prior year indexed by the average increase in salary between the two preceding school years for each job title. Such salaries are based on a 12-month contract period from July 1 through June 30 and the maximum allowable salary of an approved private school for students with disabilities staff member shall be prorated for staff employed for less than 12 months. Under no circumstances shall the maximum allowable salary calculated be less than the corresponding salary in the prior year for the same job title and county. Unrecognized job titles shall be correlated to similar job titles in public schools based on their functional activities. The maximum allowable salary of a staff member holding a part-time or split-time position shall be prorated including the salary of staff employed in entities defined in (e) and (f) above.

(p) An approved private school for students with disabilities shall reference as guidance a list of maximum allowable salaries by administrative and job titles and county according to the job titles contained in N.J.A.C. 6A:9 and 6A:23-4.1

which pertain to approved private schools for students with disabilities that is published by the Commissioner. Maximum allowable salaries are based on the highest contracted salary (not including payment of unused sick and vacation days and severance pay) by administrative job title for the entire State in a district board of education, special services district board of education and educational services commissions with comparable average daily enrollments for any prior year, indexed by the average increase in salary between the two preceding school years for each job title. Such salaries are based on a 12-month contract period from July 1 through June 30 and the maximum allowable salary of the private school staff member shall be prorated for staff employed for less than 12 months. Each district board of education, special services district board of education and educational services commission with an ADE equal to or less than the highest approved private school for students with disabilities ADE will be considered comparable. Under no circumstances shall the maximum allowable salary calculated, be less than the corresponding salary in the prior year for the same job title. The maximum allowable salary of a staff member holding a part-time or split-time position shall be prorated including the salary of staff employed in entities defined in (e) and (f) above.

(q) For the 2006-2007 school year and years thereafter:

1. For a staff member who was employed by the approved private school for students with disabilities prior to the 2006-2007 school year whose salary is greater than the maximum allowable salary in accordance with (o) and (p) above, such salary shall be frozen at the 2005-2006 salary level or until such time as the maximum allowable salary in accordance with (o) and (p) above exceeds the 2006-2007 salary level;

2. For a staff member who was employed by the approved private school for students with disabilities prior to the 2006-2007 school year whose salary is less than the maximum allowable salary in accordance with (o) and (p) above, the maximum salary shall be determined in accordance with (o) and (p) above; and

3. For a staff member in a new private school for students with disabilities opening on or after July 1, 2006, for a staff member whose employment commences on or after July 1, 2006 at private schools existing as of June 30, 2006 and for a staff member employed by a private school prior to June 30, 2006 whose job title changes effective July 1, 2006 or any time thereafter, the maximum salaries shall be determined in accordance with (o) and (p) above.

(r) An approved private school for students with disabilities shall employ staff pursuant to the list of the recognized job titles in accordance with N.J.A.C. 6A:9 that require certification and N.J.A.C. 6A:23-4.1 that require a bachelor's degree, which is published by the Commissioner. An approved private school for students with disabilities 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 that are approved annually in accordance with N.J.A.C. 6A:9-5.5. The approved private school for students with disabilities 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. If an approved private school for students with disabilities hires staff in administrative or support job titles such as but not limited to Chief Executive Officer or Chief Financial Officer, the maximum salaries of such job titles shall be limited to the maximum salary of a director in accordance with N.J.A.C. 6A:23-4.2(p).

(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 an approved private school for students with disabilities 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 approved private school for students with disabilities, the student shall be considered a full time student of the private school, 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 approved private school for students with disabilities shall compute the tuition rate as follows:

1. The approved private school for students with disabilities shall calculate the student's ADE based on the number of hours enrolled in the program relative 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.

Amended by R.2004 d.322, effective August 16, 2004.
See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Amended by R.2006 d.361, effective October 2, 2006.
See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Rewrote the section.

Case Notes

Adopting Initial Decision's conclusion that in establishing the tuition rate payable to certain private special education schools, the duties of employees holding the title of "Head Teacher," which primarily involved direct student instruction rather than direction and guidance of the work of instructional personnel, correlated to the duties of a certified Teacher of the Handicapped rather than to a Supervisor, and thus the lack of a Supervisor's certificate was not a basis for disallowing the salaries (adopting 2007 N.J. AGEN LEXIS 597, as modified). Youth Consultation Service, Inc. v. N.J. State Dep't of Educ., Office of Fiscal Policy & Planning, OAL Dkt. Nos. EDU 3573-06, 3574-06, 3575-06,

3576-06, 3577-06, 3684-06, 3685-06 and 3686-06, 2007 N.J. AGEN LEXIS 1013, Commissioner's Decision (October 4, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 286) adopted, which concluded that the Department of Education properly withheld tuition payments for the non-allowable expense related to a private special-education school's failure to provide the mandated four hours of instructional time on half-days; the school did not sustain its burden of establishing that the Department's determination was arbitrary, capricious, or unreasonable. Titusville Acad., Inc. v. N.J. Dep't of Educ., OAL Dkt. No. EDU 651-06, 2007 N.J. AGEN LEXIS 545, Commissioner's Decision (July 6, 2007).

Regulations establishing a maximum allowable salary for purposes of the tuition rate chargeable to public school districts apply to the President/CEO of Youth Consultation Service (YCS), which the Department of Education properly analogized to a Chief School Administrator/Executive Director/Director in setting the allowable salary for the position. The Department's action placed no limit on the actual salary YCS could pay to the President/CEO, only on the portion of it that could be charged to public school districts for the President/CEO's services to YCS's private schools for the disabled (adopting in part 2005 N.J. AGEN LEXIS 1041). Youth Consultation Service, Inc. v. N.J. State Dep't of Educ., OAL Dkt. No. EDU 3361-04, 2006 N.J. AGEN LEXIS 570, Commissioner's Decision (July 26, 2006), aff'd, SB No. 34-06 (N.J. State Bd. of Educ. March 7, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 332) adopted, which concluded that because a private school for the disabled failed to comply with the then applicable 45-day requirement for notifying sending school districts of a final tuition rate in excess of 10% of the tentative rate, the school was properly limited to a maximum tuition increase of 10%. Where auditors provided sufficient information from which it was readily ascertainable that the increase would be greater than 10%, the school director's claim of ignorance did not excuse the school and its board of trustees from having to comply with the notice requirement (decided under former version of rule). Cerebral Palsy League, Inc. v. N.J. Dep't of Educ., OAL Dkt. No. EDU 9024-04, 2006 N.J. AGEN LEXIS 670, Commissioner's Decision (June 6, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 262) adopted, which concluded that, in light of New Jersey boasting a variety of excellent quality theaters, a \$2,635 cost of a student field trip to a Broadway show should be disallowed from the final approved tuition rate for the 2002-03 fiscal year of an approved private school for the disabled; common sense should have alerted the school's administration that, in this era of fiscal restraint and recurring budget crisis, the luxury of sending school children to Broadway plays at public expense is a questionable use of scarce resources. Forum School v. N.J. State Dep't of Educ., OAL Dkt. No. EDU 3879-05, 2006 N.J. AGEN LEXIS 656, Commissioner's Decision (May 4, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 244) adopted, which determined that the Department of Education appropriately disallowed certain legal fees from the final approved tuition rates of six private schools for the disabled, where the legal fees were incurred for defense against criminal charges and two former directors and the schools were ultimately convicted of theft by deception. In addition, even assuming, arguendo, that the Commissioner had the authority to extend the 30-day timeline prescribed by N.J.A.C. 6A:23-4.2 for the repayment of the monies, public policy and the equities militated against such an action. Windsor Learning Center, Inc. v. N.J. State Dep't of Educ., Office of Compliance, OAL Dkt. Nos. EDU 5983-04, EDU 5984-04, 2006 N.J. AGEN LEXIS 663, Commissioner's Decision (April 6, 2006), aff'd, SB No. 23-06 (N.J. State Bd. of Educ. November 1, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 492) adopted, which concluded that the cost of a field trip (\$16.50 per student) was improperly disallowed in setting the tuition rate that an approved private school for the disabled charged to the sending public school district. Bergen Center for Child Dev., Inc. v. N.J. Dep't of Educ., OAL Dkt. No. EDU 1807-05, 2005 N.J. AGEN LEXIS 1150, Commissioner's Decision (October 14, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 492) adopted, finding that a luncheon away from school intended to teach students appropriate behavior in social situations (such as etiquette and table manners) was consistent with the social and life skills objectives of the individualized education programs of disabled students and thus satisfied N.J.A.C. 6A:23-4.2(a)iii, where the Department produced no countervailing evidence. *Bergen Center for Childhood Dev., Inc. v. N.J. Dep't of Educ.*, OAL DKT. NO. EDU 1807-05, 2005 N.J. AGEN LEXIS 1150, Commissioner's Decision (October 14, 2005).

6A:23-4.3 New approved private schools for students with disabilities

(a) A prospective applicant shall file an application to establish an approved private school for students with disabilities with the Office of Special Education Programs and obtain approval of such application from the Commissioner prior to operating an approved private school for students with disabilities.

1. A currently approved private school for students with disabilities which is expanding a program to another location or opening a new program is considered a new private school subject to (a) above.

2. A currently approved private school for students with disabilities that 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 students with disabilities 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 students with disabilities shall provide evidence to the Department that there is sufficient need for the new private school as defined as follows:

1. The applicant shall file an application to establish an approved private school for students with disabilities with the Office of Special Education Programs and document the need for a minimum of 24 public school placement students in order to be approved by the Commissioner.

(c) Applicants 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 24 public school placement students by the end of the second school year;

i. A school meeting the minimum ADE of 24 public school placement students by the end of the second school year shall receive new school approval;

ii. A school not meeting the minimum ADE of 24 public school placement students by the end of the second school year shall have its preliminary approval status revoked and shall no longer be considered an approved private school for students with disabilities;

iii. Any previously approved private school for students with disabilities that falls below the previous minimum ADE of 16 public school placement students in a school year shall have its status as an approved private school for students with disabilities rescinded and shall be considered preliminarily approved. The school shall attain a minimum ADE of 16 public school placement students by the end of the third school year after the year in question or its approval shall be rescinded and it shall no longer be considered an approved private school for students with disabilities;

iv. Any new private school for students with disabilities approved in 2004-05 or thereafter that falls below an ADE of 24 public school placement students in a subsequent school year shall be considered preliminarily approved. The school shall attain a minimum ADE of 24 public school placement students by the end of the third school year after the year in question or its approval shall be rescinded and it shall no longer be considered an approved private school for students with disabilities;

v. Approved private schools for students with disabilities operating in and affiliated with a public school are exempt from (b)2 and (c)1i, ii, iii and iv above; and

vi. An approval for an approved private school for students with disabilities operating in and affiliated with a public school is restricted to operate in the public school district location only. An approved private school for students with disabilities operating in and affiliated with a public school that chooses to move to a location other than in a public school location shall comply with (a) and (b) above and this section.

(d) An approved private school for students with disabilities shall amortize start-up costs, if any, over a 60-month period.

(e) For the first two years of operation of an approved private school for students with disabilities, the tentative tuition rate charged at each site shall be established annually and be based on budgeted allowable costs. An approved private school for students with disabilities shall submit such estimated cost(s) to the Assistant Commissioner, Division of Finance for approval no later than 90 days preceding the beginning of each school year. The proposed budget shall be on a form prepared by the Assistant Commissioner, Division of Finance which provides for, but is not limited to, the following:

1. Fiscal and programmatic data;
2. Projected allowable cost items and projected enrollments;
3. A projected budget that 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 tentative tuition rate charged, 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 tentative tuition rate charged differs from the final tuition rate charged, the tentative tuition charges will be adjusted in accordance with N.J.A.C. 6A:23-4.2.

(h) In addition to this section, new approved private schools for students with disabilities shall be regulated in accordance with this subchapter.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Section was "New private schools for the disabled". Rewrote the section.

6A:23-4.4 Bookkeeping and accounting

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

1. An approved private school for students with disabilities shall maintain accounts 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, an approved private school for students with disabilities shall use accrual accounting on a quarterly basis.

3. An approved private school for students with disabilities shall capitalize fixed asset expenditures of \$2,000 or more and depreciate such expenditures using the straight line depreciation method and using a useful life consistent with current Federal tax law as defined in Internal Revenue Code Section 168 and class lives as defined in that section (also see IRS Publication 946), 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. An approved private school for students with disabilities shall capitalize leasehold improvements and depreciate such improvements using the straight-line method and a useful life equal to that of the lease, but not less than five years.

5. An approved private school for students with disabilities shall maintain asset, liability and fund balance accounts, as well as expenditure and revenue accounts.

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 approved private school for students with disabilities. Effective July 1, 2002, a uniform minimum chart of accounts consistent with Financial Accounting for Local and State School Systems 2003, developed by the National Center for Education Statistics, incorporated herein by reference, as amended and supple-

mented as prepared, published and distributed by the Commissioner for use in the accounting systems of all approved private schools for students with disabilities 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 approved private school for students with disabilities 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. An approved private school for students with disabilities shall maintain documentation to verify all amounts recorded in the general ledger. 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 and services. 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. An approved private school for students with disabilities shall prepare a payroll that is 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 minimum semi-monthly. An employee time record shall be prepared for all employees of the private school for students with disabilities including all administrative employees.

11. An approved private school for students with disabilities shall prepare a financial report 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 and its acceptance shall be documented in the minutes of the meetings.

12. An approved private school for students with disabilities shall maintain acceptable internal control prac-

tices, which include the separation of duties such as the recording and authorizing of checks and purchase approvals.

13. An approved private school for students with disabilities 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 approved private school for students with disabilities or the sending district board of education with prior written approval by the Commissioner.

14. An approved private school for students with disabilities that incurs contingent pay increases shall have in place an employee contract that contains the criteria by which the increase will be paid. The plan shall be submitted to the Commissioner for approval prior to implementation. The private school shall make payment of such increase upon achievement of the contractual contingencies as set forth in the approved plan. Such payment shall not be at the discretion of management. The employee contract shall contain the following:

- i. The date and signature of both the staff member and authorized school representative;
- ii. The average daily enrollment contingency the approved private school for students with disabilities must achieve in order to generate the increase; and
- iii. The specific dollar amount or percentage of original contracted salary to be paid pursuant to (a)14ii above.

15. An approved private school for students with disabilities 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 submitted for approval to the Commissioner prior to implementation. The private school shall make payment of such merit pay increase upon achievement of the criteria set forth in the approved plan, but no later than the following January 31st. Such payment shall not be at the discretion of management. 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) and those costs shall be excluded from the actual allowable costs. 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:

- i. A profit-making approved private school for students with disabilities shall submit a copy of the Internal Revenue Service (IRS) tax return; and
- ii. A non-profit approved private school for students with disabilities shall submit a copy of IRS form 990.

20. An approved private school for students with disabilities 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 students with disabilities 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.

- i. 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.
- ii. Within 90 days of filing the required year-end audited financial statements with the Department in accordance with N.J.A.C. 6A:23-4.9, the private school shall submit to 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 students with disabilities 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 required pursuant to N.J.A.C. 6A:23-4.1 to provide the services being rendered.

(b) An approved private school for students with disabilities that 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 to 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 students with disabilities shall execute an employment contract annually with each school employee whose position requires a certificate, license or a bachelor's degree, which contains the following information:

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

(d) An approved private school for students with disabilities shall request approval from the Department to purchase or rent in a related party transaction an administrative or business office at a location outside of the approved private school for students with disabilities. At the Department's request:

1. 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
2. The approved private school for students with disabilities shall submit documents to the Assistant Commissioner, Division of Finance that substantiate the need for additional space.

(e) An approved private school for students with disabilities shall ensure that its employees provide:

1. The instructional program to the students for which they are compensated during the hours the school is in session; and
2. All administrative and business functions on premises that are either owned or leased by the approved private school for students with disabilities, and during the private school's normal hours of operation with the exception of meetings and/or conferences held offsite related to the job function. If this is not deemed feasible for any administrative or business function, the school shall provide written justification to the Assistant Commissioner, Division of Finance and request approval of any reasonable alternative work location.

(f) An approved private school for students with disabilities shall establish, maintain and distribute an employee handbook to all staff. The approved private school for

students with disabilities shall include in the employee handbook an outline of all employee fringe benefits. All employee fringe benefits shall be adopted in a board of directors meeting and documented in the board minutes prior to implementing the fringe benefit. Employee fringe benefits that are consistent with N.J.A.C. 6A:23-4.5(a)23 for which costs are deemed allowable are as follows:

1. Health insurance coverage (including dental and vision);
2. Life insurance;
3. Type(s) and qualification for retirement plan(s);
4. Severance pay;
5. Vacation;
6. Long term disability;
7. Sick day and personal day benefits;
8. Premium-only plans;
9. Cafeteria plans;
10. Section 125 plans;
11. Tuition reimbursement; and

12. Other benefits for which an approved private school for students with disabilities has applied and received written approval from the Commissioner.

(g) An approved private school for students with disabilities that loans funds to any party shall charge interest at a rate equal to the prime rate. The independent auditor 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. If the approved private school for students with disabilities has not incurred any interest costs, the imputed interest revenue shall be netted against costs incurred in account numbers classified as undistributed expenditures—business and other support services.

(h) An approved non-profit private school for students with disabilities that 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 submit to the Assistant Commissioner, Division of Finance within 60 days after the end of the third fiscal year a corrective action plan to reduce the net deficit fund balance. The approved private school for students with disabilities shall be subject to monitoring by the Department to ensure implementation of and adherence to the corrective action plan. If the private school fails to decrease the deficit within three years, the private school shall be placed on conditional approval status until such time that the deficit decreases.

(i) An approved private school for students with disabilities that accumulates employee 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 shall include these costs in program expenses only when the compensation is actually paid.

(j) An approved private school for students with disabilities shall use the job titles that are in use in the public schools in accordance with N.J.A.C. 6A:9 and the list published each year by the Commissioner, or those approved in accordance with N.J.A.C. 6A:9-5.5.

(k) An approved private school for students with disabilities shall issue compensation increases after the start of the fiscal year only in accordance with N.J.A.C. 6A:23-4.2(q), and when the increase:

1. Is due to a staff member(s) promotion that results in additional job responsibilities;
2. Is due to a staff member(s) attaining a higher degree or certification;
3. Is due to a staff member(s) additional job responsibilities such as a coach, class or school advisor or mentor;
4. Is in accordance with (a)14 or 15 above; or
5. Has been approved by the Department after review of a formal written request to the Assistant Commissioner, Division of Finance documenting the facts supporting the increase, if none of the above applies.

(l) An approved private school for students with disabilities shall ensure that employees which are new to the positions listed below on or after July 1, 2006 possess the appropriate bachelor's degree as defined in N.J.A.C. 6A:23-4.1. In addition, approved private schools for students with disabilities shall ensure that employees functioning in the following positions on or before June 30, 2006 either currently possess the appropriate bachelor's degree as defined in N.J.A.C. 6A:23-4.1 or, will obtain the proper bachelor's degree no later than June 30, 2006, or will be removed from the position:

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

(m) An approved private school for students with disabilities that incurs costs for a retirement plan(s) in accordance with N.J.A.C. 6A:23-4.5(a)31 and/or medical benefits for retired employees in accordance with N.J.A.C. 6A:23-4.5(a)56 shall include these costs in the certified actual cost per student on the cash basis of accounting.

(n) An approved private school for students with disabilities shall have the paraprofessional staff approved in accordance with N.J.A.C. 6A:9-7.1 and any changes to an approved job description shall be resubmitted for approval.

(o) An approved private school for students with disabilities shall comply with the maximum salaries determined in accordance with N.J.A.C. 6A:23-4.2(o) and (p) and restricted in accordance with N.J.A.C. 6A:23-4.5(a)6, 8 and 9 regardless of the job titles used and whether these job titles comply with the list of job titles published by the Commissioner.

(p) An approved private school for students with disabilities shall under no circumstances other than in accordance with N.J.A.C. 6A:23-4.4(k), provide compensation increases after the start of the fiscal year.

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

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

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

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Rewrote the section.

Case Notes

When a charter school special education student received home instruction and thus there was no placement of a public school student in an approved private school for the disabled, a condition precedent to use of the Department of Education's mandated tuition contract form under N.J.A.C. 6A:23-4.4(a)13, there was no contract between a school district and a charter school. *Golden Door Charter School v. State-Operated School Dist. of Jersey City*, OAL Dkt. No. EDU 1169-06, 2007 N.J. AGEN LEXIS 302, Commissioner's Decision (March 15, 2007), aff'd, SB No. 10-07, 2007 N.J. AGEN LEXIS 887 (N.J. State Bd. of Educ. August 1, 2007), aff'd per curiam, 2008 N.J. Super. LEXIS 129 (App.Div. 2008).

Initial Decision (2006 N.J. AGEN LEXIS 332) adopted, which concluded that the Department of Education properly disallowed merit pay awards from the computation of the approved tuition rates of two private schools for the disabled, because the schools failed to file copies of merit award plans with the Department until after expiration of the fiscal year, thereby depriving the Department of any opportunity to review and approve the payout (decided under former version of rule). *Cerebral Palsy League, Inc. v. N.J. Dep't of Educ.*, OAL Dkt. No. EDU 9024-04, 2006 N.J. AGEN LEXIS 670, Commissioner's Decision (June 6, 2006).

6A:23-4.5 Non-allowable costs

(a) Costs that are not allowable in the calculation of the certified actual cost per student include 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)3;
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 for students with disabilities actual allowable costs not including advertising;

4. Any cost associated with lobbying including salaries and fringe benefits;

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. 6A:9 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 allowable 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.

i. An approved private school for students with disabilities shall prorate salaries for such part-time or split-time positions including salaries in entities described in N.J.A.C. 6A:23-4.2(e) and (f);

ii. The part-time and split-time maximum allowable salary is calculated as follows:

(1) Multiply the staff member's total salary by the percentage of time attributed to the approved private school for students with disabilities position;

(2) Multiply the maximum allowable full time salary for the position by the percentage of time attributed to the approved private school for students with disabilities position; and

(3) Subtract the amount calculated in (a)8ii(2) above from the amount calculated in (a)8ii(1) above and if the result is a positive amount this is the non-allowable part-time or split-time salary.

9. A salary of an employee not covered by (a)6 above in excess of the lowest maximum allowable salary in the same county according to the list of maximum allowable 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.

i. An approved private school for students with disabilities shall prorate salaries for such part-time or split-time positions including salaries in entities described in N.J.A.C. 6A:23-4.2(e) and (f).

ii. The part-time and split-time maximum allowable salary is calculated as follows:

(1) Multiply the staff member's total salary by the percentage of time attributed to the approved private school for students with disabilities position;

(2) Multiply the lowest maximum allowable salary in the same county by the percentage of time attributed to the approved private school for students with disabilities position; and

(3) Subtract the amount calculated in (a)9ii(2) above from the amount calculated in (a)9ii(1) above and if the result is a positive amount this is the non-allowable part-time or split-time salary.

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

11. A legal, accounting or consultant fees 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 factors that include, but may not be limited to, the following:

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

12. A consultant fee for services:

i. That are not detailed in an executed written contract that includes 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; and

ii. Are performed by a consultant who does not possess the appropriate school certification when such certification exists;

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

14. Depreciation that is unacceptable under N.J.A.C. 6A:23-4.4(a)3 and (a)4, and depreciation:

- i. On donated goods and assets;
- ii. That is not based on estimated straight-line method;
- iii. On autos in excess of the dollar or percentage limitation contained under Internal Revenue Service Code Section 280F including any passenger vehicle not used in transporting students or supplies without regard to weight class exceptions defined in Section 280F(d)(5)(A);
- iv. On a stepped up basis resulting from the sale to a related party as defined in Internal Revenue Service Code Section 318 for Constructive Ownership of Stock. For a not-for-profit organization, Section 318 will apply to the members of the Board of Directors or related parties as defined in Section 267(b) or 267(c) of the Internal Revenue Code unless the gain from such a sale was used to offset tuition for a prior year; and

v. On a stepped up basis from transfer from one spouse to another upon death as defined in Internal Revenue Code Section 1014;

15. The yearly cost of a lease for a vehicle in excess of the maximum depreciation allowed in any given year

without regard to special deductions allowed by the Internal Revenue Code under Section 280F(a)(1)(A) (for example: \$4,100 for second year can be applied to all years of the lease) including the amortization of the lease down payment over the term of the lease. This applies to any passenger vehicle not used for transporting students or supplies without regard to the weight class exceptions under 280F(d)(5)(A);

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

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

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

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

20. The cost of meals:

i. For students when the meals do not meet the nutritional requirements of the Child Nutrition Program as administered by the New Jersey Department of Agriculture;

ii. Effective July 1, 2007, for students when a non-profit approved private school for students with disabilities has not applied for and received funding from the Child Nutrition Program as administered by the New Jersey Department of Agriculture except when the private school has received, on an annual basis prior to the start of the fiscal year, school board resolutions from a majority of the school districts that have contracted to send students to the private school in that fiscal year, which resolves the district board of education does not require the private school to apply for and receive funding from the Child Nutrition Program (CNP);

iii. Effective July 1, 2007, for students when the approved private school for students with disabilities has not charged students for paid and reduced meals in accordance with the income eligibility criteria established by the Child Nutrition Program as administered by the New Jersey Department of Agriculture except when the private school has received, on an annual basis prior to the start of the fiscal year, school board resolutions from a majority of the school districts that have contracted to send students to the private school in that fiscal year, which resolves the district board of education does not require the private school to charge students for a reduced and/or paid meal; and

iv. For staff except as allowable in accordance with N.J.A.C. 6A:23-4.5(a)18;

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 including, but not limited to, class of employee whether by title or position rather than on an existing written uniform policy based on an equitable standard of distribution, such as years of service or education. The criteria cannot be exclusionary regardless if based on an equitable standard of distribution, such as years of service or education;

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; and

iii. When the benefit is not listed in N.J.A.C. 6A:23-4.4(f) or not approved by the Commissioner;

24. The cost of fund raising, such as a financial campaign, an endowment drive or solicitation of a gift and bequest that 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 has not been 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 that 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. Retirement plan 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 exceed costs allowed by the Internal Revenue Service;

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

iii. For a defined contribution plan in excess of the maximum percentage and maximum dollar amount, (see Internal Revenue Code Section 415(c)) as the lesser of 100 percent of the employee's compensation or \$44,000;

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 55 times the highest three year average salary and at an age prior to age 55;

v. For contributions to a retirement plan that are not applied consistently in accordance with (a)23 above even if in compliance with ERISA. Such excess contributions as determined will be deemed a non-allowable cost;

vi. Not paid to a qualified plan within nine months of the end of the fiscal tax year of the approved private school for students with disabilities;

vii. Not paid in accordance with the fringe benefits criteria in (a)23 above; and

viii. If applicable, not in conformance with a church plan as defined in ERISA;

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

33. The costs of a contingent pay 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 contingent pay increase or merit pay award(s) are not consistent with the plan(s) submitted to and approved by the Commissioner prior to implementation;

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, in which case, the approved private school for students with disabilities shall obtain documentation from 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 as amended and supplemented;

36. A payment of a bonus;
37. A loss on an investment;
38. The cost of staff salaries, supplies or printing and reproduction of a material for a research activity;
39. Payment of Federal, State and local income taxes on income other than tuition;
40. Any cost associated with travel to and from the officer's or employee's home and the school or agency;
41. All personal expenses, such as a personal travel expense or repair on a personal vehicle;
42. Personal use of a school-owned or leased vehicle, which includes to/from work commutation as determined in accordance with N.J.A.C. 6A:23-4.4(a)18;
43. Any costs associated with a school-owned vehicle, leased vehicle or vehicle contained in a related party transaction involving the purchase of transportation services where a mileage log was not maintained;
44. A business-incurred charge for a privately owned vehicle in excess of the mileage rate allowed by the United States Internal Revenue Service for automobile travel;
45. Transportation costs for a student to and from school, except where the student's IEP requires after school activities;
46. Rental costs for buildings and equipment when the lessor is not a separate legal entity;
47. Costs related to transactions between related parties in which one party to the transaction is able to control or substantially influence the actions of the other. Such transactions are defined by the relationship of the parties and include, but are not limited to, those between divisions of an institution; institutions or organizations under common control through common officers, directors, or members; and an institution and a director, trustee, officer, or key employee of the institution or his or her immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. Such costs shall include, but are not limited to:
 - i. Rental costs for buildings and equipment in excess of the actual allocated costs of ownership (for example, straight line depreciation in accordance with N.J.A.C. 6A:23-4.4(a)3, mortgage interest, real estate taxes, property insurance and maintenance costs) incurred by the related property owner including a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The approved private school for students with disabilities shall include in the lease agreement a list of anticipated costs to be incurred

by the property owner, prepared in the format supplied by the Commissioner, signed by the property owner and notarized;

- ii. Rental costs under a sub-lease arrangement with a related party for buildings and equipment in excess of the actual allocated costs related to the lease (such as rent, lease commission expense and maintenance costs) incurred by the sub-lessor. Profit, return on investment or windfall of any kind shall not be included in the sub-rental cost. The sub-lease agreement shall include a list of anticipated costs to be incurred by the sub-lessor, signed by the sub-lessor and notarized;

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

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

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

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

- i. The related parties' tax returns; and
- ii. The related parties' paid bills and canceled checks concerning the transaction;

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

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

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

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

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

ii. For membership in an organization that devotes any activities to influencing legislation or state regulation(s) not directly related to the educational instruction program of disabled students and such activities are not subsidized by sources other than membership fees from approved private schools for students with disabilities;

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

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

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

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

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

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

57. Costs of salaries and fringe benefits of unrecognized position titles that are not properly approved in accordance with N.J.A.C. 6A:9-5.5;

58. Cost of employee severance pay:

i. In excess of four weeks' salary; and

ii. If, in addition, the cost of a buyout of the employee's contract;

59. Cost of a buyout of an employee contract:

i. In excess of 90 days' salary; and

ii. If, in addition, the cost of the employee's severance pay;

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

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

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

63. Start-up costs in excess of those allowed in N.J.A.C. 6A:23-4.3(d);

64. Costs including salaries and fringe benefits of employees providing services not in compliance with N.J.A.C. 6A:23-4.4(e)2;

65. The cost of a violation in accordance with N.J.S.A. 18A:6-7.5 for any staff member that does not have:

i. A criminal history clearance prior to starting employment or;

ii. An application for employment on an emergent basis in accordance with N.J.S.A. 18A:6-7.1c;

66. Legal costs for an approved private school for students with disabilities and/or for a school representative(s), which includes an owner, employee or agent that have plead guilty and/or are found to be guilty or liable in a case involving the misuse of funds or fraud (criminal or civil);

67. The salary in excess of the associated maximum salary identified in N.J.A.C. 6A:23-4.2(r) and determined in accordance with N.J.A.C. 6A:23-4.4(o) and (p); and

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

Amended by R.2004 d.322, effective August 16, 2004.
See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Amended by R.2006 d.361, effective October 2, 2006.
See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Rewrote the section.

Case Notes

Initial Decision adopted, which concluded that in order to determine whether salaries of certain individuals are properly considered in establishing tuition rates payable to private schools for students with disabilities, it is necessary to look beyond titles and determine what they actually do; because the duties of an employee whose title was School Business Administrator were more in line with an Executive Director, such salary was allowable in establishing tuition, despite the fact that the individual did not have the certification to make the salary allowable under the titled position (adopting 2007 N.J. AGEN LEXIS 597, as modified). Youth Consultation Service, Inc. v. N.J. State Dep't of Educ.,

Office of Fiscal Policy & Planning, OAL Dkt. Nos. EDU 3573-06, 3574-06, 3575-06, 3576-06, 3577-06, 3684-06, 3685-06 and 3686-06, 2007 N.J. AGEN LEXIS 1013, Commissioner's Decision (October 4, 2007).

Initial Decision adopted, which concluded that in order to determine whether salaries of certain individuals are properly considered in establishing tuition rates payable to private schools for students with disabilities, it is necessary to look beyond titles and determine what they actually do; because the duties of an employee whose title was Assistant School Business Administrator were more in line with an Assistant Director or Business Manager, such salary was allowable in establishing tuition, despite the fact that the titled position was an unrecognized position title (adopting 2007 N.J. AGEN LEXIS 597, as modified). Youth Consultation Service, Inc. v. N.J. State Dep't of Educ., Office of Fiscal Policy & Planning, OAL Dkt. Nos. EDU 3573-06, 3574-06, 3575-06, 3576-06, 3577-06, 3684-06, 3685-06 and 3686-06, 2007 N.J. AGEN LEXIS 1013, Commissioner's Decision (October 4, 2007).

Adopting Initial Decision's conclusion that in the absence of School Psychologist certification, the salaries of two "Mental Health Clinicians" were not allowable in establishing tuition rates payable by sending districts to private schools for students with disabilities, where the job descriptions for the positions suggested a level of service beyond that of a professional counselor and no contrary evidence was presented (adopting 2007 N.J. AGEN LEXIS 597, as modified). Youth Consultation Service, Inc. v. N.J. State Dep't of Educ., Office of Fiscal Policy & Planning, OAL Dkt. Nos. EDU 3573-06, 3574-06, 3575-06, 3576-06, 3577-06, 3684-06, 3685-06 and 3686-06, 2007 N.J. AGEN LEXIS 1013, Commissioner's Decision (October 4, 2007).

Adopting Initial Decision's conclusion that in establishing the tuition rate payable to certain private schools for students with disabilities, a "Training Coordinator," charged with authority and responsibility for the continuing direction and guidance of the work of instructional personnel, was a Supervisor, rather than occupying an administrative position; because this individual did not hold a Supervisor's certificate, the individual's salary was properly disallowed (adopting 2007 N.J. AGEN LEXIS 597, as modified). Youth Consultation Service, Inc. v. N.J. State Dep't of Educ., Office of Fiscal Policy & Planning, OAL Dkt. Nos. EDU 3573-06, 3574-06, 3575-06, 3576-06, 3577-06, 3684-06, 3685-06 and 3686-06, 2007 N.J. AGEN LEXIS 1013, Commissioner's Decision (October 4, 2007).

Adopting Initial Decision's conclusion that in the absence of proof of proper certifications, the salaries of individuals holding the titles of Director of Speech, Speech Language Specialist, and Substitute Floater Registered Nurse were not allowable in establishing the tuition rate payable to certain private schools for students with disabilities (adopting 2007 N.J. AGEN LEXIS 597, as modified). Youth Consultation Service, Inc. v. N.J. State Dep't of Educ., Office of Fiscal Policy & Planning, OAL Dkt. Nos. EDU 3573-06, 3574-06, 3575-06, 3576-06, 3577-06, 3684-06, 3685-06 and 3686-06, 2007 N.J. AGEN LEXIS 1013, Commissioner's Decision (October 4, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 24) adopted, which concluded that \$8,778 in Social Security Integration Pension Benefits paid by a state-approved private school for learning disabled and handicapped children to its employees during the 2002-03 school year was a non-allowable fringe benefit which had to be excluded from the calculation of the school's certified actual cost per pupil for that period. Due to the social security integration, the pension contributions calculation of four of the school's directors exceeded the same benefit made available to all other full-time employees by 5.7% of their earnings, and did not conform to the requirements of the regulation requiring that an equitable standard of distribution be attainable for all full-time employees in order for a fringe benefit to be considered an allowable cost in the calculation of the actual cost per pupil. *Deron School of New Jersey v. N.J. State*

Dep't of Educ., OAL Dkt. No. EDU 3367-05, 2007 N.J. AGEN LEXIS 304, Commissioner's Decision (March 7, 2007), aff'd, 2007 N.J. AGEN LEXIS 897, SB No. 9-07 (N.J. State Bd. of Educ. August 1, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 332) adopted, which concluded that the Department of Education properly disallowed merit pay awards from the computation of the approved tuition rates of two private schools for the disabled, because the schools failed to file copies of merit award plans with the Department until after expiration of the fiscal year, thereby depriving the Department of any opportunity to review and approve the payout. *Cerebral Palsy League, Inc. v. N.J. Dep't of Educ.*, OAL Dkt. No. EDU 9024-04, 2006 N.J. AGEN LEXIS 670, Commissioner's Decision (June 6, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 172) adopted, which concluded that both the weight of the evidence and the doctrine of estoppel supported a decision in favor of a private, non-profit school for the disabled, in its appeal from a determination that salaries and benefit costs for nine of the school's teachers were required to be disallowed due to the teachers' alleged failure to obtain emergency certification (decided under former rules). *Search Day Program, Inc. v. N.J. Dep't of Educ.*, OAL Dkt. No. EDU 8569-04, 2006 N.J. AGEN LEXIS 574, Commissioner's Decision (June 2, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 262) adopted, which concluded that, in light of New Jersey boasting a variety of excellent quality theaters, a \$2,635 cost of a student field trip to a Broadway show should be disallowed from the final approved tuition rate for the 2002-03 fiscal year of an approved private school for the disabled; common sense should have alerted the school's administration that, in this era of fiscal restraint and recurring budget crisis, the luxury of sending school children to Broadway plays at public expense is a questionable use of scarce resources. *Forum School v. N.J. State Dep't of Educ.*, OAL Dkt. No. EDU 3879-05, 2006 N.J. AGEN LEXIS 656, Commissioner's Decision (May 4, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 244) adopted, which determined that the Department of Education appropriately disallowed certain legal fees from the final approved tuition rates of six private schools for the disabled, where the legal fees were incurred for defense against criminal charges and two former directors and the schools were ultimately convicted of theft by deception. In addition, even assuming, arguendo, that the Commissioner had the authority to extend the 30-day timeline prescribed by N.J.A.C. 6A:23-4.2 for the repayment of the monies, public policy and the equities militated against such an action. *Windsor Learning Center, Inc. v. N.J. State Dep't of Educ.*, Office of Compliance, OAL Dkt. Nos. EDU 5983-04, EDU 5984-04, 2006 N.J. AGEN LEXIS 663, Commissioner's Decision (April 6, 2006), aff'd, SB No. 23-06 (N.J. State Bd. of Educ. November 1, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 492) adopted, which concluded that a student luncheon away from school was a "field trip," so that the cost of the luncheon was not an "ordinary living expense" under N.J.A.C. 6A:23-4.5(a)30. *Bergen Center for Childhood Dev., Inc. v. N.J. Dep't of Educ.*, OAL Dkt. No. EDU 1807-05, 2005 N.J. AGEN LEXIS 1150, Commissioner's Decision (October 14, 2005).

6A:23-4.6 Surcharge

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

(b) For profit-making schools, interest earned in accordance with N.J.A.C. 6A:23-4.2(h) is an unrestricted revenue and is not part of the school's surcharge computation.

(c) For profit-making schools, the allowable Federal, State and local income tax liability in N.J.A.C. 6A:23-4.5(a)39 is computed using only the public school placement tuition income and all allowable and non-allowable approved private school for students with disabilities expenses that are allowable tax deductions on the school's Federal, State and local income tax returns.

(d) Any gain or loss on the sale of fixed assets (except for buildings and/or land) or items originally purchased through funds charged in the certified actual cost per student shall be netted against or if applicable added to the total allowable costs to determine the certified actual cost per student.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Designated current text as (a); added (b) and (c).

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Rewrote (c); and added (d).

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

(a) For approved non-profit private schools for students with disabilities, the school's tuition rate may include an amount that will permit the school to establish a public school placement restricted working capital fund of up to 15 percent of the private school's allowable actual costs, for the 2006-2007 through 2007-2008 school year, but the private school shall not include an amount in excess of 2.5 percent of the private school's allowable actual costs per year.

(b) Interest and/or dividends earned from the investment of tuition funds shall be netted against the school's total allowable costs incurred in account numbers classified as undistributed expenditures—business and other support services when calculating the certified actual cost per student.

(c) Any gain or loss on the sale of fixed assets (except for buildings and/or land) or items originally purchased through funds charged in the certified actual cost per student shall be netted against or if applicable added the total allowable costs to determine the certified actual cost per student.

(d) Interest earned in accordance with N.J.A.C. 6A:23-4.2(h) is unrestricted revenue and is not part of the school's public school placement restricted working capital fund computation.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (a), substituted "that" for "which" following "include and amount" and "the private school shall" for "annually may" following "allowable actual costs, but"; rewrote (b); added (d).

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Rewrote (a) and (c).

6A:23-4.8 Calculation of student attendance

(a) Each approved private school for students with disabilities shall maintain a school register in accordance with N.J.A.C. 6A:32-8, to record all student attendance.

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

(c) Each approved private school for students with disabilities shall identify private placements in the register.

(d) Each approved private school for students with disabilities shall maintain a separate register by class type.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (b), inserted "school" preceding "year".

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Substituted "students with disabilities" for "the disabled" throughout; and in (a), substituted "6A:32-8" for "6:3-9".

6A:23-4.9 Audit requirements

(a) Regardless of the fiscal year of the school, each approved private school for students with disabilities shall submit to the Commissioner audited financial statements based on the July 1 to June 30 school year which must be post-marked on or before November 1 or the following business day if November 1 falls on a weekend or holiday.

1. The approved private school for students with disabilities shall engage only an independent registered municipal accountant of New Jersey or an independent certified public accountant of New Jersey to conduct the annual audit, who holds a valid registration license as a public school accountant of New Jersey. The approved private school for students with disabilities shall ensure the independent status of the auditor in accordance with standards set forth in the Code of Professional Ethics issued by, and available from, the American Institute of Certified Public Accountants (AICPA). Additionally, upon review by the Department, an accountant shall not be considered independent, if such accountant or members of his or her firm are engaged to perform services other than the year-end audit and tax return functions for the approved private school for students with disabilities.

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

1. The approved private school for students with disabilities shall ensure that the audit includes basic financial statements, required supplementary information, schedules and narrative explanations.

(c) The approved private school for students with disabilities shall ensure that the audited financial statements reflect the certified actual cost(s) per student as determined by the independent auditor and final tuition rate(s) charged at the end of the school year as determined by the school's management.

(d) The approved private school for students with disabilities management representative(s) shall discuss with the auditor the results of the auditor's determination of the certified actual cost per student in order for management to determine the final tuition rate charged as a result of the audit.

1. The approved private school for students with disabilities shall charge as the final tuition rate an amount equal to or less than the certified actual cost per student.

2. The approved private school for students with disabilities shall ensure that the audit report contains a letter signed by both the school auditor and an authorized school representative indicating that both parties have met and discussed the audit, and that the determination of the final tuition rate charged was a management decision.

(e) Within 60 days of receipt of the year-end audit, school management shall develop a corrective action plan pursuant to this subchapter in response to recommendations contained in the year-end audit, and shall submit such corrective action plan to the Assistant Commissioner, Division of Finance for review and approval.

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

(g) Any adjustments that result from the certified audit or a tuition audit performed by the Commissioner that are in excess of \$10.00 per sending district board of education will be paid in accordance with N.J.A.C. 6A:23-4.2(f) and (m).

(h) An approved private school for students with disabilities that files an audit postmarked after November 1 shall cause the tentative tuition rate per student for the ensuing school year to be calculated based upon the audited actual cost per student for the school year two years prior to the current school year, and N.J.A.C. 6A:23-4.2(j) will not apply.

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

(j) Upon request, the approved private school for students with disabilities shall submit to the Department a copy of the corporation's agency wide audited financial statements.

Amended by R.2004 d.322, effective August 16, 2004.
See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Rewrote the section.

6A:23-4.10 Appeals

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

(b) The decision of the Assistant Commissioner, Division of Finance in regard to certification may be appealed in accordance with N.J.A.C. 6A:3.

(c) The decision of the Commissioner in regard to N.J.A.C. 6A:23-4.3, New private schools for students with disabilities, may be appealed to the State Board of Education in accordance with N.J.S.A. 18A:6-27 and N.J.A.C. 6A:4.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (c), substituted "students with disabilities" for "the disabled".

6A:23-4.11 Out-of-State approved private schools for students with disabilities

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

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

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

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

2. An approved private school for students with disabilities which is licensed as a child care facility by the

New Jersey Department of Human Services shall determine a tuition rate through mutual agreement between the approved private school for students with disabilities, the sending district board of education and the Department of Human Services, Office of Education. The tuition rate shall be agreed upon prior to the child's placement and documentation of such rate shall be forwarded to the Commissioner.

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

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In (a), substituted "(f)" for "(e)".

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Section was "Out-of-State approved private schools for the disabled". Substituted "students with disabilities" for "the disabled" throughout.

6A:23-4.12 Inspection of records

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

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

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

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (a) and (b), substituted "students with disabilities" for "the disabled".

6A:23-4.13 Fiscal monitoring of approved private schools for students with disabilities and corrective action plans

(a) The Commissioner or his or her representative(s) shall monitor approved private schools for students with disabilities

in accordance with this subchapter. On site monitoring shall be conducted at least every six years.

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

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

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

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

1. Objective and strategies for correcting each noncompliance item; and

2. The dates by which noncompliance will be corrected.

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

1. Issue a conditional approval status when noncompliance with State rules and/or implementation of the corrective action plan is demonstrated; or

2. Immediately remove program approval when it is documented that the health, safety or welfare of the students is in danger.

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

(h) Annually, the Department shall publish the results of the on-site fiscal monitoring of private schools for students with disabilities.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (a), inserted "or his or her representative(s)" following "The Commissioner".

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Section was "Fiscal monitoring of private schools and corrective action plans". In (a), (f) and (h), substituted "students with disabilities" for "the disabled"; and in (c), inserted "approved" and "for students with disabilities".

6A:23-4.14 Fiscal information

(a) Annually, each approved private school for students with disabilities shall submit information to the Assistant Commissioner, Division of Finance including, but not limited to:

1. Fiscal and program information, including:

- i. The number of students served;

- ii. The number of and types of class types;
 - iii. Number of schools days; and
 - iv. The daily hours in session;
2. Staffing information, including:
- i. A staff roster, including, but not limited to, names, job titles, salaries, hours worked, certification(s), degree(s) and license(s) held;
3. An affidavit that the program meets the standards of, and is conducted in full compliance with the Individuals with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and Title II and III of the Americans with Disabilities Act, P.L. 101-336, N.J.S.A. 18A:46-1 et seq., this subchapter, and N.J.A.C. 6A:14; and
4. An affidavit that the owners/operators of the program are aware of the non-allowable costs contained in N.J.A.C. 6A:23-4.5 and that such costs charged as allowable costs in the private school for students with disabilities tuition rate are consistent with the individualized education program of a disabled student and shall be reasonable, that is, ordinary and necessary and not in excess of the cost which would be incurred by an ordinarily prudent person in the administration of public funds.

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

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

Amended by R.2004 d.322, effective August 16, 2004.
See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (a), inserted "Assistant Commissioner" following "submit information to the", in the introductory paragraph.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In the introductory paragraph of (a), in (a)4 and (c), substituted "students with disabilities" for "the disabled" throughout; and in (b), substituted "Students with Disabilities" for "the Disabled".

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

The Department may place an approved private school for students with disabilities 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.

Amended by R.2006 d.361, effective October 2, 2006.
See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Substituted "students with disabilities" for "the disabled".

6A:23-4.16 Sale of assets of an approved private school for students with disabilities

In the event of the sale of the assets from one approved private school for students with disabilities to either a new approved private school for students with disabilities or an existing approved private school for students with disabilities, the selling school must provide the Department with a copy of the sale agreement, copy of the allocation of purchase price as defined in Section 1060 of the Internal Revenue Code (Internal Revenue Service Form 8594) and the selling school must provide a final financial report within 90 days of the sale showing the disposition of its assets and any corresponding refunds to the sending districts based on the sale of assets (books, supplies, desks, computers, equipment under \$2,000, depreciable equipment, etc) other than Class VI or VII as defined in the IRC cited above (goodwill, going concern, etc).

New Rule, R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Section was "Sale of assets of a private school". Inserted "approved" and "for students with disabilities" throughout.

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 to the county superintendent as follows:

- i. A resolution that indicates the specific requested amount of emergency aid and identifies the emergency condition that exists within the school district;

- ii. A 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 board secretary's latest monthly financial report, accompanied by 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

- iv. A statement included 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. The district board of education shall separately account for disbursements against emergency aid funds in its 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 Division of Finance to 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 will 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 will not recommend the emergency aid request.

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

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote (b); in (d), substituted "will" for "shall" following "the Department" in 1 and 2; rewrote (e).

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (b)1i, inserted "school"; and rewrote (d).

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, approved private school for students with disabilities 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 immediately prior to his or her most recent admission to a State facility or most recent placement by a State agency.

3. If the State becomes the child's legal guardian after the date of the child's initial placement by a State agency, the State will assume financial responsibility for the child's educational costs in subsequent school years.

(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. In order to prevent a lapse in the child's education and/or child study services, the district board of education 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 of a dispute to the 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, Controversies and Disputes.

(g) As prescribed by N.J.S.A. 18A:7B-12, the "district of residence" for a homeless child whose parent(s) or guard-

ian(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.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (a), rewrote the last sentence in 2 and added 3; in (c), rewrote the second sentence.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (a)2, inserted "approved" and "for students with disabilities"; in (d), substituted "notification of a dispute to the Division" for "notification that a dispute exists to the Assistant Commissioner, Division"; and in (f), inserted ", Controversies and Disputes".

Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 32) adopted, which concluded that a residency appeal by a school district, challenging the County Superintendent's determination that it was the district of residence of certain children for school funding purposes, was time-barred under the 30-day filing requirement of N.J.A.C. 6A:23-5.2(d); petitioner did not file its appeal with the Division of Finance until 142 days after the Superintendent's decision. North Brunswick Bd. of Educ. v. Bd. of Educ. of Somerville, OAL Dkt. No. EDU 10499-07, 2008 N.J. AGEN LEXIS 249, Commissioner's Decision (March 3, 2008).

Where a student had been assigned to the KidsPeace program in Pennsylvania, and about the same time, the student's father was evicted and moved in with his parents, the Department of Education correctly assigned costs to the school district where the student lived when he was placed in KidsPeace, and from which the father was evicted, because the costs are to be assigned to the last district where the student resided before placement, and there was no clear evidence in the record of the date of eviction, nor did the record indicate any intent on the part of the student's father to remain with his parents; a school district challenging a residency determination bears the burden of proving the Department of Education's determination was arbitrary, capricious, or without merit. Bd. of Educ. of Twp. of Delaware v. N.J. Dep't of Educ., OAL Dkt. No. EDU 08011-05S, 2006 N.J. AGEN LEXIS 644, Commissioner's Decision (May 10, 2006).

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 resides in a foster home or with relatives, the present address of the foster parent(s) or relatives 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's parents are divorced with joint guardianship and the child resides with each parent one-half of

the time, the present address of both the child's father and mother as of the date required by N.J.A.C. 6A:23-5.2(a) 1 or 2 shall be submitted.

4. If the child's sole parent or legal guardian resides in a State facility, the State will assume financial responsibility for the child's educational costs until such time as the parent or guardian no longer resides in the State facility.

5. If the child resides with a relative such as an aunt or grandmother for less than one year immediately prior to the child's initial admission to a State facility or initial placement by a State agency, the present address of the child's parent(s) or guardian(s) at the time this initial placement is submitted.

6. If the child resides with a relative such as an aunt or grandmother pursuant to N.J.S.A. 18A:38-1d for one or more years immediately prior to the child's initial admission to a State facility or initial placement by a State agency, the present address of the child's relative(s) at the time of this initial placement is submitted.

7. If the child is age 18 or older, or has been legally emancipated and has lived on his or her own before the initial placement, the present address of the child as of the date required by N.J.A.C. 6A:23-5.2(a)1 or 2 is submitted.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (a), substituted "child resides in a foster home or with relatives" for "child is in a foster home" in the second sentence in 1, rewrote 3 and 4, and added 5 through 7.

6A:23-5.4 Early Childhood Program Aid

(a) For the purposes of this section and pursuant to N.J.S.A. 18A:7F-3, a district board of education means any local or regional school district established pursuant to Chapter 8 or Chapter 13 of Title 18A of the New Jersey Statutes, but shall not include county special services school districts, educational services commissions, or jointure commissions.

(b) A district board of education shall appropriate Early Childhood Program Aid (ECPA) in a special revenue fund and use the aid for preschool, full-day kindergarten, and other early childhood programs and services, except as allowed pursuant to N.J.A.C. 6A:10A.

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

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

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

(d) A district board of education pursuant to (b) above shall submit to the county superintendent fiscal and program operational plans for ECPA for review and approval and shall be subject to monitoring by the Department. The county superintendent shall review each line item in the school

district's fiscal and program operational plans to determine if it is appropriate. The district board of education shall revise the fiscal and program operational plans annually to reflect changes in program and fiscal components.

(e) A district board of education pursuant to (b) above shall maintain separate accounts for pre-kindergarten, kindergarten and grades one through three in the special revenue section of the school district budget and financial records in accordance with GAAP and N.J.A.C. 6A:23-2.

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

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

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

New Rule, R.2002 d.253, effective August 5, 2002.

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

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (b), substituted "6A:10A" for "6A:24"; in (d), inserted "school"; and in (e), inserted "the school".

6A:23-5.5 Demonstrably Effective Programs Aid

(a) For the purposes of this section and pursuant to N.J.S.A. 18A:7F-3, a district board of education means any local or regional school district established pursuant to Chapter 8 or Chapter 13 of Title 18A of the New Jersey Statutes, but shall not include county special services school districts, educational services commissions, or jointure commissions.

(b) A district board of education receiving Demonstrably Effective Programs Aid (DEPA) pursuant to N.J.S.A. 18A:7F-18 shall utilize these funds exclusively for demonstrably effective programs in the schools for which the aid eligibility and amount was determined, except as allowed pursuant to N.J.A.C. 6A:10A.

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

ing, programs to ensure that schools are safe and drug free, summer school and outreach for dropouts.

(c) A district board of education in accordance with (b) above receiving DEPA shall develop school level operational plans which provide a detailed budget for each school, a description of the demonstrably effective program or programs in use in the school, and a mechanism for annual program evaluation. The district board of education shall include in its operational plan goals, objectives, activities, annual benchmarks and an evaluation process.

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

(d) A district board of education receiving DEPA in accordance with (b) above shall maintain separate school accounts in the special revenue section of school district budget and financial records in accordance with GAAP and N.J.A.C. 6A:23-3.

(e) Demonstrably Effective Programs Aid is a dedicated, nonlapsing source of funds for a district board of education in accordance with (b) above. A district board of education receiving DEPA in accordance with (b) above shall classify DEPA revenue which is not expended or encumbered by June 30 of the budget year as deferred revenue in the financial accounts and statements of the district, and shall either:

1. Add such revenue to the DEPA revenue of the subsequent year when identified prior to the preparation of the subsequent year budget;
2. Appropriate such revenue during the subsequent year with the approval of the Commissioner or his or her designee; or
3. Retain such revenue as deferred revenue until the second subsequent year budget.

(f) A district board of education receiving DEPA in accordance with (b) above shall use all new or deferred revenues only for approved demonstrably effective programs, strategies or services pursuant to N.J.A.C. 6A:23-5.5.

(g) A district board of education receiving Demonstrably Effective Programs Aid in accordance with (b) above that fails to use such aid as required by N.J.A.C. 6A:23-5.5 shall be subject to rescission of aid and additional monetary penalties as established by the Commissioner on a case-by-case basis.

New Rule, R.2002 d.253, effective August 5, 2002.

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

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (b), substituted "6A:10A" for "6A:24"; in (b)1, inserted "school" preceding "districts"; and in (d), inserted "school" preceding "district".

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 school 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.

Amended by R.2006 d.361, effective October 2, 2006.
See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (b), inserted "school" preceding "district".

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

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

Amended by R.2004 d.322, effective August 16, 2004.
See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).
Rewrote the section.

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 are addressed to the district board of education in which the nonpublic school is located.

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

(c) Individual requests are due on or before March 1 preceding the school year.

(d) A district board of education shall purchase textbooks in accordance with district board of education policy and purchasing practices.

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

Amended by R.2004 d.322, effective August 16, 2004.
See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (d), substituted "A district board of education shall purchase textbooks" for "Textbooks purchased shall be ordered"; substituted references to are for shall throughout.

6A:23-6.4 Ownership and storage of textbooks

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

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

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

Amended by R.2004 d.322, effective August 16, 2004.
See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

6A:23-6.5 Accounting entries

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

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

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

Amended by R.2004 d.322, effective August 16, 2004.
See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

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

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

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

SUBCHAPTER 7. MANAGEMENT OF PUBLIC SCHOOL CONTRACTS

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

(a) Changes in quantities, work performed, services rendered, materials, supplies or equipment delivered or provided shall not be authorized, permitted or accepted, except by the procedures established in this section. All change orders are subject to N.J.A.C. 5:30-11 as applicable, and the following:

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

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

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

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

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

(c) Change orders for capital project contracts are governed by N.J.A.C. 6A:26-4.9.

(d) Change orders for contracts for materials, supplies and equipment that are not part a capital project contract are governed by the following:

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

- i. Unit prices were sought at the time of advertising and included in the contract; and
- ii. The advertising and the contract included a provision that the unit prices could be so used.

2. Change orders may not be used to substantially change the quality or character of the items to be provided,

inasmuch as such factors would have been a factor in the original bidding.

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

4. Availability of funds shall be certified by the school business administrator/board secretary prior to authorizing any change orders that increase costs.

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

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

- i. There has been a determination by the school board attorney that such a price adjustment is authorized by law;
- ii. That the original bidding specifications and contract so authorize;
- iii. That an objective price benchmark not under the direct control of the supplier is utilized to establish the price changes, and that the changes are not for the purpose of correcting asserted bidding errors; and
- iv. That adequate funds have been certified as being available.

(e) Change orders for professional and extraordinary unspecified services (EUS) contracts are governed by the following:

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

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

- i. If the contract was awarded without competitive bidding being required by law or rule (as in the case for professional services and certain authorized extraordinary, unspecifiable services per N.J.S.A. 18A:18A-5(a)(2)), any change beyond the original scope of activities may be made by amendatory contract; and
- ii. If the consulting contract was not a professional service and was required to be subject to competitive

bidding, any change beyond the original scope of activity shall be by new contract based on new bidding.

3. The school business administrator/board secretary shall certify the availability of funds and that all required approvals have been received pursuant to N.J.A.C. 6A:23-2.11 prior to authorizing any change order that increases costs.

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

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

1. A district board of education or charter school board of trustees shall not use orders under open-end contracts 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 district board of education or charter school board of trustees shall execute such contract for a period not to exceed the requirements of N.J.S.A. 18A:18A-1 et seq., the Public School Contracts Law, unless specifically authorized by law;

3. The district board of education or charter school board of trustees shall execute a certificate of availability of funds 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 of the open-end contract 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. The school official authorized to serve as purchasing agent pursuant to N.J.S.A. 18A:18A-2 shall place such orders 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".
Amended by R.2004 d.322, effective August 16, 2004.
See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.
Amended by R.2006 d.361, effective October 2, 2006.
See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Section was "Open-end contracts". Recodified (a) as (f); and added (a) through (e).

6A:23-7.2 Acceptance of bonds under the Public School Contracts Law

(a) A district board of education or charter school board of trustees may require the following bonds, as authorized by N.J.S.A. 18A:18A-23 to 25:

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, the district board of education or charter school board of trustees shall ensure that such bid bond:

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) The district board of education or charter school board of trustees shall ensure that the bond is 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 or charter school board of trustees in whose favor the bonds are given.

(d) The district board of education or charter school board of trustees shall ensure that the "penalty" or "penal sum" on performance bonds, labor and material bonds, and all other such bonds is expressed in words and figures as a specific number of dollars and not as a percentage of the bid.

(e) The district board of education or charter school board of trustees shall ensure that the "penalty" or "penal sum" on performance and labor and material bonds is in the amount of 100 percent of the contract price.

Amended by R.2004 d.322, effective August 16, 2004.
See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.
Amended by R.2006 d.361, effective October 2, 2006.
See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).
Section was "Bonds".

6A:23-7.3 Public sale of bonds

(a) A district board of education may accept a financial surety bond in lieu of a certified, cashier's or treasurer's check as a bid deposit pursuant to N.J.S.A. 18A:24-41.a, and in accordance with the rule adopted by the Local Finance Board at N.J.A.C. 5:30-2.10.

(b) A district board of education may choose to conduct the public sale of bonds through the submission of electronic bids or proposals, as authorized at N.J.S.A. 18A:24-36.a, and in accordance with the rules adopted by the Department of Community Affairs at N.J.A.C. 5:32-9 and 10.

New Rule, R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Former N.J.A.C. 6A:23-7.3, Contracts for behind-the-wheel driver education, recodified to N.J.A.C. 6A:23-7.4.

6A:23-7.4 Contracts for behind-the-wheel driver education

(a) A district board of education or charter school board of trustees shall negotiate or award by resolution at a public meeting contracts with private driver education schools providing behind-the-wheel driver education for any term not exceeding in the aggregate three years, pursuant to N.J.S.A. 18A:18A-42.i, without public advertising for bids. The district board of education or charter school board of trustees shall indicate in such resolution that the private driver education school is required to 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) A district board of education or charter school board of trustees shall negotiate or award such contracts with approved private driver education schools. A driver education school holding a current license or certificate of approval issued by the Chief Administrator of the Motor Vehicle Commission is considered 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.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Recodified from N.J.A.C. 6A:23-7.3 and amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (a), inserted “; pursuant to N.J.S.A. 18A:18A-42.i.”. Former N.J.A.C. 6A:23-7.4, Joint purchasing systems, recodified to N.J.A.C. 6A:23-7.5.

6A:23-7.5 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 sys-

tem is effective only upon approval of the Director of the Division of Local Government Services in the Department of Community Affairs.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Substituted “is” for “shall become” in the second sentence.

Recodified from N.J.A.C. 6A:23-7.4 by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Former N.J.A.C. 6A:23-7.5, Multi-year leasing, recodified to N.J.A.C. 6A:23-7.6.

6A:23-7.6 Multi-year leasing

A district board of education or charter school board of trustees shall execute multi-year leases only as authorized by the Public School Contracts Law at N.J.S.A. 18A:18A-42f and in accordance with rules promulgated by the Department of Community Affairs at N.J.A.C. 5:34-3.

New Rule, R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Recodified from N.J.A.C. 6A:23-7.5 by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

SUBCHAPTER 8. ANNUAL BUDGET DEVELOPMENT, REVIEW AND APPROVAL**6A:23-8.1 Budget review and approval**

(a) For the purposes of this subchapter and pursuant to N.J.S.A. 18A:7F-3, a district board of education means any local, regional, or county vocational school district established pursuant to Chapter 8, Chapter 13, or Chapter 54 of Title 18A of the New Jersey Statutes, but shall not include county special services school districts, educational services commissions, or jointure commissions.

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

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

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

(e) The county superintendent as designated by the Commissioner shall review and approve each district board of

education's proposed budget prior to its advertisement. The county superintendent shall only approve budgets when:

1. The base budget portion of the budget application and supporting documentation submitted by the district board of education provides curriculum and instruction that are designed and will be delivered in such a way that all students will have the opportunity to achieve the knowledge and skills defined by the Core Curriculum Content Standards;
2. The base budget contains funds sufficient to meet all existing statutory and regulatory mandates; and
3. The base budget is within the applicable regional limit pursuant to N.J.A.C. 6A:23-8.2.

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

1. The thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-4a and b;
2. The annual report (Quality Assurance Annual Report) required under N.J.S.A. 18A:7A-11 and N.J.A.C. 6:8-3.1;
3. Pupil achievement on or progress in meeting existing State assessment standards;
4. Annual independent audits and other external reviews by a State or Federal agency or reviews required by statute and regulation;
5. The comparative spending guide;
6. The school report card;
7. Contractual obligations;
8. The Comprehensive Maintenance Plan pursuant to N.J.A.C. 6A:26A; and
9. The section of Long-Range Facilities Plan (LRFP), submitted pursuant to N.J.S.A. 18A:7G-4, that includes the capital projects proposed in the budget.

(g) The county superintendent shall not approve any base budget unless it has been determined that it ensures that curriculum and instruction are designed and shall be delivered in such a way that all students have the opportunity to achieve the knowledge and skills defined by the Core Curriculum Content Standards, and that all proposed expenditures are suitable and appropriate as school district expenditures. The county superintendent shall order any changes in expenditure proposals that are found unsuitable or inappropriate including administrative spending pursuant to N.J.S.A. 18A:7F-5, except that no modification of non-remote busing proposals shall be made, pursuant to N.J.S.A. 18A:7F-6e.

(h) The county superintendent shall not approve any base budget unless it includes the required annual maintenance amount pursuant to N.J.A.C. 6A:26A.

(i) The county superintendent shall annually review expenditures of each district board of education pursuant to N.J.S.A. 18A:7F-5, and shall not predicate determinations on past practices. The county superintendent shall direct as appropriate an increase, decrease or the elimination of expenditures contained in the prior year's approved budget.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Added a new (a) and recodified former (a) through (h) as (b) through (i).

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (d), substituted "(b)" for "(a)"; in (e)1, deleted "and" from the end; in (e)2, substituted "; and" for a period at the end; added (e)3; in (f)8, substituted "6A:26A" for "6:24-3.1"; and in (h), substituted "6A:26A" for "6:24".

6A:23-8.2 Administrative cost limits

(a) Each district board of education shall budget and report administrative costs using the minimum chart of accounts and other reporting directives published and distributed by the Commissioner pursuant to N.J.S.A. 18A:4-14 and N.J.A.C. 6A:23-2, which includes, but is not limited to, recording the full salary of the business administrator, chief school administrator, and principal/vice principals as administrative costs. If the chief school administrator also acts as a building principal, the salary may be prorated between general administration and school administration. Consistent with the minimum chart of accounts, a district board of education shall not further prorate the chief school administrator, business administrator or principal/vice principal salaries between other functions, except to instruction, as permitted, and only for any portion of those salaries providing direct classroom instruction as part of the district's regular curriculum.

(b) Each district board of education, except for county vocational school districts and non-operating school districts, shall prepare and submit to the county superintendent a proposed budget consistent with N.J.S.A. 18A:7F-5, N.J.S.A. 18A:22-1 et seq. and this chapter, in which the advertised per pupil administrative cost does not exceed the lower of the following:

1. The school district's adjusted, as of February 1, prebudget year per pupil administrative costs as reported in the proposed budget; or

2. The per pupil administrative cost limit for the school district's region. The per pupil administrative cost limits are calculated individually for each of the three regions, North, Central and South, using audited expenditure data from the 2003-04 school year inflated annually by the CPI or 2.5 percent, whichever is greater. Each district board of education will receive a statement of its regional administrative cost limit with the annual State aid notices.

(c) Each district board of education, pursuant to N.J.S.A. 18A:7F-5, may request approval of the county superintendent, as the Commissioner's designee, to exceed the school district's adjusted, as of February 1, prebudget year per pupil administrative costs up to 2.5 percent or the CPI, whichever is greater, as follows:

1. The district board of education shall submit such request to the county superintendent in writing no less than two weeks prior to budget submission;
2. The request cannot exceed the per pupil administrative cost limits for the district's region in (b)2 above; and
3. The district board of education shall include with such request documentation that supports the request for factors including, but not limited to:
 - i. Enrollment changes;
 - ii. Administrative changes to fulfill mandated requirements;
 - iii. Changes to nondiscretionary fixed costs as defined in N.J.A.C. 6A:23-1.1; and
 - iv. Opening a new school.

(d) Each district board of education subject to (b) above may submit to the county superintendent any shared services agreements and documented costs for the provision of administrative services to other school districts or governmental units. A county superintendent may take into consideration such contractual agreements and documented costs in the calculation of total administrative spending in the prebudget and budget year for purposes of determining the district board of education's adherence with the per pupil administrative cost limits.

(e) Each district board of education subject to (b) above shall submit to the county superintendent a proposed budget in which the advertised per pupil administrative cost is within the per pupil administrative cost limits in (b) above. A district board of education may include as a separate proposal for voter or board of school estimate approval any excess administrative spending above the cost limits only if such proposals are consistent with the requirements at N.J.A.C. 6A:23-8.5.

(f) Each district board of education subject to (b) above that submits to the county superintendent a proposed budget in which the advertised per pupil administrative cost exceeds the per pupil administrative cost limits in (b) above, and has not received county superintendent approval to exceed this requirement as set forth in (c) above, or has not presented documentation to the county superintendent as set forth in (d) above, will not receive budget approval.

1. The district board of education shall resubmit to the county superintendent a budget that has met the administrative cost limits, through either a reduction in admin-

istrative costs and/or submission of a separate proposal for voter or board of school estimate approval of the excess administrative costs, no later than five working days prior to the school district's last day to advertise for the public hearing.

2. A district board of education that does not resubmit a budget in accordance with (f)1 above within this time-frame:

- i. Shall lose the authority and decision-making capacity for development of the final administrative budget for advertisement to the voters or board of school estimate and shift this responsibility to the county superintendent, as the Commissioner's designee. The county superintendent will conduct all necessary budgetary reallocations and reductions to meet these requirements; and

- ii. May be subject to withholding of State aid pursuant to N.J.S.A. 18A:7F-9.

(g) Each district board of education subject to (b) above that fails to submit to the county superintendent an approvable budget in a second consecutive year or any year thereafter shall be subject to:

1. A more restrictive fiscal and budgetary review and approval process as deemed appropriate by the Commissioner; and

2. Withholding of State aid pursuant to N.J.S.A. 18A:7F-9.

New Rule, R.2006 d.361, effective October 2, 2006.
See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

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

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

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

2. Upon two consecutive years of failure, a district board of education shall, as a minimum pursuant to Commissioner direction, be subject to an assessment of the school district's curriculum and budget by the Commissioner as well as to the authority granted to the Commis-

sioner under N.J.S.A. 18A:7F-6.a and consider that assessment as part of the school district's next annual budget submission. The Commissioner may contract to perform the assessment and may direct that the cost of such contracts be included in the school district's budget.

(b) Upon three consecutive years of failure or for school districts which have already experienced at least three consecutive years of failure under existing State assessment methods, the district board of education shall, pursuant to the summary authority granted the Commissioner in N.J.S.A. 18A:7F-6b, be subject to corrective actions as deemed appropriate including, but not limited to:

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

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

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

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

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

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

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

- ii. Community support;

- iii. Operational management which includes finance and facilities;

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

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

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

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

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

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

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

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

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

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

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

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Inserted "school" throughout the section; and in (a)1, substituted "18A:7F-6.a" for "18A:7F".

6A:23-8.4 Capital outlay budget

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

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

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

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

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

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

Amended by R.2004 d.322, effective August 16, 2004.
See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Deleted (d) and recodified former (e) as (d).

Amended by R.2006 d.361, effective October 2, 2006.
See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (a), inserted "non-referendum"; and deleted (d).

6A:23-8.5 Additional spending proposals

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

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

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

3. Any proposed expenditures for items to be utilized as the local share or to reduce the total costs of a school facilities project receiving State debt service aid of a school facilities project pursuant to N.J.A.C. 6A:26-3.7(d), or

4. Any proposed expenditures for programs and services that were included in the school district's prebudget year net budget, pursuant to N.J.S.A. 18A:7F-5d(9).

- i. The district board of education may submit to the county superintendent a written request for approval of an exemption to (a)4 above. The district board of education shall include in such request a board resolution documenting that the cost of retaining the program or service in the base budget will necessitate reduction in programs and services necessary to achieve the thoroughness standards established pursuant to N.J.S.A. 18A:7F-4. Exemption shall be granted after all spending adjustments and banked cap have been utilized.

(b) The district board of education shall frame and adopt, by a recorded roll call majority vote of its full membership, the content of the question or questions to be submitted so that each specific purpose is submitted in a separate question, or all or any number of them are submitted in one question. The district board of education shall submit to the county superintendent for review, pursuant to N.J.S.A. 18A:7F-5d(9), a copy of any such formally adopted question or questions and include it as a part of the legal notice of public hearing on the budget pursuant to N.J.S.A. 18A:22-28, posted

at the public hearing held on the budget pursuant to N.J.S.A. 18A:22-29 and printed on the sample ballot pursuant to N.J.S.A. 19:60-10.

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

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

(e) The district board of education shall ensure upon submission of the separate proposal(s) that all potential efficiencies in the administrative operations of the school district are in effect pursuant to N.J.S.A. 18A:7F-5d(9).

(f) All separate proposals are subject to review by the county superintendent. The county superintendent may disapprove a separate proposal if he or she determines the proposal includes items outlined in (a) above, or pursuant to N.J.S.A. 18A:7F-5d(9), that the district board of education has not implemented all potential efficiencies in the administrative operations of the school district.

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

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

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

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

(j) A district board of education shall maintain a separate accounting of expenditures for each question, and shall expend or encumber approved amounts by the end of the school year. For any unexpended or unencumbered balances, the district board of education shall either anticipate such funds as a part of the designated general fund balance of the subse-

quent school year budget or reserve and designate such funds in the second subsequent school year budget.

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

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

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (a), added 4; in (b), inserted a N.J.S.A. reference in the second sentence.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (a)1, inserted "school"; rewrote (a)4; added new (e) and (f); recodified former (e) through (j) as present (g) through (l); rewrote (g); in (h), substituted "(g)" for "(e)" and "(l)" for "(j)"; rewrote (j); and in (l), inserted "in the budget year and/or".

6A:23-8.6 Designation of general fund balances

(a) Each district board of education shall, at a minimum, designate in the original budget certified for taxes an estimate of unreserved general fund balance at June 30 of the prebudget year in excess of the limitations contained in N.J.S.A. 18A:7F-7, less any excess amounts approved by the Commissioner for deposit into a capital reserve account pursuant to N.J.A.C. 6A:26-9, less any Federal impact aid anticipated to be received in the prebudget year, and any general fund balances reserved by law or regulation or designation.

(b) If a district's audited undesignated general fund balance at June 30 of any school year exceeds the amounts permitted in (a) above, the district board of education shall reserve and designate the excess amount in the subsequent year's budget.

(c) A district board of education that fails to comply with (b) above shall be subject to a deduction in the State aid payable to the district board of education in the subsequent budget year in an amount equal to the audited excess undesignated general fund balance less any Federal impact aid received in the prebudget year.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (a), substituted "approved by the Commissioner for deposit into" for "anticipated to be transferred to" following "less any excess amounts"; deleted (b) through (c); recodified former (d) and (e) as (b) and (c).

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (a), substituted "less any Federal impact aid anticipated to be received in the prebudget year," for "or a maintenance reserve account pursuant to N.J.A.C. 6:24".

6A:23-8.7 Public notice and inspection

(a) Each district board of education upon submission of its budget application to the county superintendent or by the statutory submission date, whichever is earlier, shall make available upon request for public inspection all budget and supporting documentation contained in the budget application and all other documents listed in N.J.A.C. 6A:23-8.1(e) once the budget application has been submitted to the county superintendent for approval. Nothing in this section shall restrict access by the citizens of this state to documents which otherwise qualify as public records pursuant to N.J.S.A. 47:1A-1 et seq., or common law.

(b) Any district board of education which proposes a base budget that contains spending which exceeds its maximum T & E budget shall also:

1. Include the full text of the statement required by N.J.S.A. 18A:7F-5d(10) in the advertised section of the budget pursuant to N.J.S.A. 18A:22-8 and 18A:22-11 and in the legal notice of public hearing, posting at the public hearing and on the sample ballot pursuant to N.J.S.A. 18A:7F-5d(10); and

2. Prepare a narrative statement based on the thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-4 which describes in specific detail the reasons why and to the extent that the school district's proposed budget contains spending which exceeds its maximum T & E budget (that is, the maximum amount needed to deliver curriculum and instruction which will enable all students to achieve the Core Curriculum Content Standards). That statement shall be included with the budget application and other materials for public inspection.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (b)2, inserted "school".

6A:23-8.8 Adjustments to spending growth limitation

(a) When adjusting the spending growth limitation for capital outlay expenditures pursuant to N.J.S.A. 18A:7F-5, a district board of education shall:

1. Adopt and submit with the budget application a true copy of a formal board resolution which contains a narrative description of the capital project(s) and project number as included in the district board of education's long range facilities plan (LRFP), the full amount to be included

in the base budget, and the need for and the amount of the adjustment;

2. Provide evidence of one of the following:

- i. The proposed capital project(s) is directly related to classroom instruction;
- ii. The proposed capital project(s) is part of an established periodic schedule of equipment replacement;
- iii. The proposed capital project(s) is essential to the administration of necessary school level activities;
- iv. The proposed capital project(s) is required to ensure the health and safety of persons using school facilities or sites; or
- v. That the capital outlay portion of the prebudget year was an aberration in that it was the lowest of the previous three budget years;

3. Provide a true copy of the minutes of the board meeting at which the proposal was formally introduced and discussed in public if the proposed capital outlay portion of the budget includes funds to purchase, expand, renovate or construct capital projects or sites;

4. In the event that the capital outlay portion of the budget will not be or is not fully expended or encumbered by the end of the budget year, reserve and designate any balances in the subsequent budget year when determined prior to the adoption of that budget or the second subsequent budget year when determined after adoption; and

5. Use amounts for the purchase, expansion, renovation or construction of school facilities or sites or the major replacement or purchase of equipment exclusively for their intended purposes, and reserve and designate any balances which will not be or are not expended or encumbered by the end of the budget year in the subsequent budget year when determined prior to the adoption of that budget or the second subsequent budget year when determined after adoption. A district board of education may apply to the Commissioner for an exemption to this provision due to unforeseeable conditions which result in other urgent capital outlay needs. The district board of education shall be eligible for an exemption if the existence of such conditions is demonstrated.

(b) A district board of education's adjustment to the spending growth limitation for pupil transportation costs provided pursuant to N.J.S.A. 18A:39-1.1 shall be calculated pursuant to N.J.S.A. 18A:7F-5d(1), and the determination of such costs for the budget and prebudget year shall be calculated as follows:

$$\frac{\text{TNRM}}{\text{TM}} \times \text{TPTC}$$

where:

TNRM is the total mileage for all non-remote pupils provided transportation services pursuant to N.J.S.A. 18A:39-1.1

TM is the total mileage for all remote and non-remote pupils provided transportation services pursuant to N.J.S.A. 18A:39-1.1

TPTC is the total pupil transportation costs contained in the proposed budget

(c) A district board of education's adjustment to the spending growth limitation for changes in enrollment and for special education costs per pupil in excess of \$40,000 shall be provided pursuant to N.J.S.A. 18A:7F-5d.

(d) A sending district's application pursuant to N.J.S.A. 18A:7F-5d(8) for an adjustment to the spending growth limitation for increases in receiving district tuition rates shall not be approved in an amount greater than that which would restore the school district's per pupil net budget, adjusted for inflation and after deducting the tuition rate increase per resident pupil, to its actual prebudget year level. In determining the amount of the adjustment, any available reports, documents or other pertinent information will be considered.

(e) A district board of education's adjustment to the spending growth limitation for opening a new school facility pursuant to N.J.S.A. 18A:7F-5 shall be applied only to the budget year the new facility or addition is scheduled to open for educational purposes, except for cap banking purposes pursuant to N.J.A.C. 6A:23-8.9. The adjustment shall not be applied in subsequent years for the same new school facility.

1. The adjustment includes the incremental cost of opening a new school facility, defined pursuant to N.J.A.C. 6A:23-1.2 as a new school facility or addition to an existing school facility characterized by an increase in the gross square footage of the school facility used wholly or in part for education purposes by the school district, in the following areas:

- i. Salary and benefit costs of new teaching staff members and support staff, including but not limited to, support staff for security, custodial and maintenance;
- ii. Material and supply costs, including custodial and maintenance, related to the opening of a new school facility;
- iii. Equipment costs for which the district board of education has not already received an adjustment to its spending growth limitation under the capital outlay adjustment in (a) above or generated unused spending authority pursuant to N.J.A.C. 6A:23-8.9.
- iv. Energy costs;
- v. Utility costs (water and sewer);
- vi. Insurance costs; and
- vii. Transportation costs.

2. A district board of education shall comply with the following requirements when adjusting the spending growth limitation for opening of a new school facility during the budget year pursuant to N.J.S.A. 18A:7F-5:

i. Adopt and submit with the budget application a true copy of a formal board resolution which contains a narrative description of the new school facility, including square footage, number of classrooms, and enrollment. The district board of education shall also include in the description the full amount to be included in the base budget, the need for and the amount of the adjustment and the capital project number assigned by the Department upon approval of final eligible costs, if applicable and if not applicable, the capital project's name and number as identified in the district board of education's LRFP; and

ii. Provide evidence that the new school facility is scheduled to be completed and opened in the budget year.

(f) A district board of education may apply to the county superintendent, as the Commissioner's designee, for an adjustment to the spending growth limitation for 2006-07 for costs associated with liability insurance, workers compensation insurance, employee group insurance, domestic security preparedness and responses to incidents and threats to domestic security, pursuant to N.J.S.A. 18A:7F-5b (henceforth referred to as the adjustment for insurance and domestic security preparedness).

1. The adjustment for insurance and domestic security preparedness applies to the following costs:

i. Liability insurance, which are the costs budgeted by the district board of education for property insurance;

ii. Workers compensation insurance, which are the costs budgeted by the district board of education to provide workers' compensation insurance for district employees;

iii. Employee group insurance, which are the costs budgeted by the district board of education for the employer's share of health and any other group insurance plan; and

iv. Domestic security preparedness and responses to incidents and threats of domestic security, which are the costs budgeted by the district board of education for staff, training, consultants and supplies related to the preparation for protection against potential homeland security threats or incidents, or recovery efforts in the aftermath thereof.

2. The adjustment for insurance and domestic security preparedness equals the total of the current year costs in (f)1 above for the budget year less the prebudget year costs indexed by 2.5 percent or CPI, whichever is greater.

3. A district board of education shall fully utilize all eligible adjustments to the spending growth limitation under (a) through (c) and (e) above, and banked cap pursuant to N.J.A.C. 6A:23-8.9 prior to submitting to the Commissioner an application for an adjustment for insurance and domestic security preparedness.

4. To apply for an adjustment to the spending growth limitation for insurance and domestic security preparedness, a district board of education shall submit to the Commissioner the following:

i. A budget application with a true copy of a formal adopted board resolution requesting the adjustment; and

ii. Invoices and/or other documentation as requested by the Commissioner to support the district board of education's budgeted costs for insurance and domestic security preparedness.

5. A district board of education that applies to the Commissioner for an adjustment for insurance and domestic security preparedness shall not deposit any excess unreserved general fund balance into a capital reserve account.

6. The accounts subject to an adjustment for insurance and domestic security preparedness pursuant to (f)1 above are restricted, and therefore a district board of education shall only transfer such funds either within the insurance and domestic security preparedness accounts by board resolution or to other accounts not subject to the adjustment upon written request and approval of the County Superintendent during the year based on demonstrated need as follows:

i. The district board of education shall submit to the County Superintendent a formal request for approval of such transfer along with the following documentation:

(1) A board resolution that clearly indicates the reason and specific amount requested for transfer and to which account the funds will be transferred;

(2) A copy of the board minutes including a statement that no other funds can be reallocated within the existing budget without adversely impacting the district's ability to meet the core curriculum content standards; and

(3) Any additional documentation as deemed necessary by the County Superintendent to support the district board of education's request for such transfer of funds.

7. The one-time costs in an approved adjustment for insurance and domestic security preparedness are excluded from the prebudget year net budget for purposes of calculating the spending growth limitation for the subsequent year.

8. Any unused spending authority that results from an adjustment for insurance and domestic security preparedness is excluded from the banked cap provision in N.J.A.C. 6A:23-8.9.

9. County vocational school district boards of education applying for an adjustment for insurance and domestic security preparedness shall reduce fund balance to three percent.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (c), substituted "d" for "(d)"; in (d) and (e)1, inserted "school"; rewrote the introductory paragraph of (f); rewrote (f)2 and (f)3; in (f)5, deleted "or maintenance reserve account" from the end; rewrote the introductory paragraph of (f)6; deleted (f)6ii; and added (f)9.

6A:23-8.9 Unused spending authority (banked cap)

(a) Pursuant to N.J.S.A. 18A:7F-5.a, beginning with the 2004-05 budget year and each year thereafter, a district board of education that increases its net budget between the prebudget year and budget years less than that authorized pursuant to N.J.S.A. 18A:7F-5d, may include 50 percent of the unused spending authority, which is the amount of the difference between its actual net budget and its permitted net budget, in either of the next two succeeding budget years.

(b) A district board of education shall comply with all of the following requirements when including unused spending authority in either of the next two succeeding budget years:

1. Fully exhaust all spending authority authorized pursuant to N.J.S.A. 18A:7F-5d in the budget prior to including unused spending authority calculated under (a) above in that budget year;

2. Adopt and submit with the budget application a true copy of a formal board resolution which contains the need for and the amount of the unused spending authority to be included in the base budget, and a statement that said need must be completed by the end of the budget year and cannot be deferred or incrementally completed over a longer period of time; and

3. Submit with the budget application a true copy of the minutes of the board meeting at which the need for the unused spending authority to be included in the base budget was formally introduced and discussed in public.

(c) Unused spending authority calculated pursuant to (a) above that is created by merging a passed separate proposal(s) with the base budget shall not be considered unused spending authority available to a district board of education in the next two subsequent budget years.

(d) A district board of education shall fully utilize unused spending authority from the prior prebudget year before utilizing unused spending authority from the prebudget year.

(e) The County Superintendent may disapprove use of banked cap pursuant to N.J.S.A. 18A:7F-5.a if he or she determines that the district board of education has not implemented all potential inefficiencies in the administrative operations of the school district.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (a), inserted "beginning with the 2004-05 budget year and each year thereafter" preceding "a district board of education" and inserted "50 percent of" preceding "the unused spending authority"; amended the N.J.S.A. references throughout.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (a) and (b)1, substituted "5d" for "5.d"; and added (e).

6A:23-8.10 Restoration of budget reductions

(a) Procedures following voter defeat of the proposed budget are as follows:

1. A district board of education in which the general fund tax levy proposed in the base budget or any amounts contained in a separate question or questions has been rejected by the voters at the annual school election shall, within two days of the certification of election results, submit to the county superintendent and the governing body or bodies comprising the district, the following information:

- i. A complete line-item budget listing each item by code and line description, including actual expenditures for the previous school year, actual budgeted amount for the current school year, proposed budgeted amount for the ensuing school year as proposed to the voters, the advertised budget for the ensuing school year, and all supporting documentation and narrative explanations including copies of additional spending proposals, indicating which were approved and which were rejected by the voters;

- ii. A copy of the annual report (Quality Assessment Annual Report) submitted to the Commissioner pursuant to N.J.S.A. 18A:7A-11 and N.J.A.C. 6A:32;

- iii. A copy of the school district's most recent annual audit;

- iv. An explanation of any action(s) to reallocate, direct additional expenditures, and so forth, taken by the Commissioner, or the county superintendent on behalf of the Commissioner, pursuant to N.J.S.A. 18A:7F-5 through 7 or a statement to the effect that no such actions were taken;

- v. The numbers of professional and nonprofessional staff during the current school year and projected staff for the ensuing school year, together with reasons for any increase or decrease;

- vi. Pupil enrollment by grade for the school district as of the proceeding June 30, the last school day prior to

the preceding October 16 and as projected for October of the ensuing school year;

vii. Salary schedules for all employees;

viii. The number of schools and classrooms in each school;

ix. Tuition received or paid during the previous school year, anticipated for the current school year and projected for the ensuing school year;

x. Substantiation of need for any proposed capital projects and/or deposits into the capital reserve, including documentation of the projects' inclusion in the LRFP;

xi. Any information required for submission to the county superintendent pursuant to N.J.A.C. 6A:23-8.1 and not specifically enumerated in (a)1i through x above;

xii. The applicable portions of the comparative spending guide;

xiii. The applicable portions of the school report card; and

xiv. Any other documentary materials or records the Commissioner deems appropriate for a specific district board of education.

2. A district board of education with a passed base budget but defeated separate proposal(s) has the option to accept the voter or board of school estimate decision and not submit the defeated separate proposal(s) to the governing body or bodies for review and restoration.

3. The governing body or bodies shall transmit to the district board of education a letter of receipt acknowledging the receipt of the information in (a)1 above.

4. The governing body or bodies comprising the district, or a formally approved committee thereof, shall, as soon as immediately practicable, consult with the district board of education, or a formally approved committee thereof, for purposes of determining the amount of general fund tax levy sufficient to ensure provision' of a T & E education or to maintain the stability of a district's programs.

5. If either the board of education or municipal governing body, or both, will have a majority present at the meeting, then the meeting must be publicly announced and advertised according to the Open Public Meetings Act by the body(ies) with the majority present.

6. On or before May 19, the governing body or bodies shall certify to the county board of taxation an amount to be appropriated for this purpose. Copies of such certification shall be forwarded to the district board of education and County Superintendent. The governing body or bodies shall not certify an amount less than the minimum tax levy

required to meet the required local share established pursuant to N.J.S.A. 18A:7F-5. The governing body does not have the authority to recommend a reduction in the debt service levy, only the general fund tax levy.

i. The general fund tax levy certification, in the form of a resolution, shall be for the sum of the base budget amount, additional amounts approved by the voters of separate questions and additional amounts restored after rejection by the voters of separate questions.

ii. If the amount so certified for the base budget is less than proposed to the voters by the board of education, the governing body or bodies in the form of a resolution shall present to the district board of education and the county superintendent of schools a statement of the specific line-item reductions or increases in budgeted revenues recommended by the governing body or bodies. The governing body or bodies shall also submit with the statement, a certification attesting that the governing body or bodies has reviewed the budget proposed by the district board of education and that it deems the revised budget sufficient for provision of a thorough and efficient system of education.

iii. If the budget resulting from such review under (a)5i above is below the minimum T & E budget prescribed by N.J.S.A. 18A:7F-5, the governing body or bodies shall concurrently present to the district board of education, and to the county superintendent, a specific written explanation and document by clear and convincing evidence for each line item reduced that it either will not adversely affect the ability of the district board of education to meet the thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-4.a and .b, or will not adversely affect the stability of a district board of education's overall operations given the need for long term planning and budgeting.

(b) Procedures following review of the budget by the board of school estimate are as follows:

1. A district board of education when submitting its proposed budget to the board of school estimate, shall also submit to the board of school estimate, the governing body or bodies and the county superintendent, the documents enumerated in (a)1 above.

i. If the amount of money appropriated by the board of school estimate for general fund purposes for the ensuing year, which amount may not be less than the minimum tax levy required to meet the required local share established pursuant to N.J.S.A. 18A:7F-5b, is less than the amount proposed by the district board of education, the board of school estimate shall present to the board of education, the governing body or bodies and the county superintendent a statement of the specific line-item reductions made by the board of school estimate. The board of school estimate shall submit with the statement a certification that the board of school

estimate has reviewed the budget proposed by the board of education and that it deems the revised budget sufficient for provision of a thorough and efficient system of education.

2. The governing body of each municipality comprising the district shall appropriate the amount certified by the board of school estimate.

i. If the amount of money appropriated by the governing body or bodies for general fund purposes for the ensuing year pursuant to N.J.S.A. 18A:22-17, which amount may not be less than the minimum tax levy required to meet the required local share established pursuant to N.J.S.A. 18A:7F-5b, is less than the amount certified by the board of school estimate, the governing body or bodies shall present to the board of school estimate, the board of education and the county superintendent a statement of the specific line-item reductions made by the governing body or bodies. The board of school estimate shall submit with the statement a certification that the amount appropriated for school purposes is sufficient for provision of a thorough and efficient system of education.

ii. If the budget resulting from board of school estimate review or subsequent governing body certification is below the minimum T & E budget pursuant to N.J.S.A. 18A:7F-5.e(2), the board of school estimate and/or governing body or bodies, as the case may be, shall concurrently present a specific written demonstration as to why such reductions will not adversely affect the ability of the school district to provide a thorough and efficient education or the stability of the school district given the need for long term planning and budgeting.

(c) In those instances where the governing body or bodies or the board of school estimate has certified an amount of tax levy less than that proposed by the district board of education as a result of reductions eligible for restoration through application to the Commissioner as set forth in (e) through (g) below, the county superintendent shall schedule a conference between the district board of education, or a formally approved committee thereof, and the governing body or bodies or the board of school estimate, as the case may be, or a formally approved committee thereof, for the purpose of assisting the respective bodies in reaching agreement on the amount of tax levy sufficient to ensure provision of a T & E education consistent with the requirements of N.J.S.A. 18A:7F-1 et seq.

1. If an agreement is reached, any resultant adjustment in tax levy shall be certified forthwith to the county board of taxation.

2. If an agreement is not reached, where tax levy has already been certified pursuant to N.J.S.A. 18A:22-37, the levy will stand as originally certified and application to the

Commissioner for restoration of reductions may be made in accordance with the provisions of this section.

3. Paragraphs (c)1 and 2 above shall not apply to any instance where governing body or bodies or board of school estimate reductions are not eligible for restoration through application to, or automatic review by, the Commissioner as set forth in (e) through (g) below, in which case the amount certified by the governing body or bodies or the board of school estimate shall remain final without further review or consultation.

(d) Pursuant to N.J.S.A. 18A:22-38, in those instances where the governing body or bodies fail to certify by May 19 an amount of tax levy for any item rejected at the annual school election, or certify different amounts, to the county board of taxation, a district board of education shall submit the budget and any reductions recommended pursuant to N.J.S.A. 18A:7F-5.e(1) or (2) by the governing bodies following voter defeat for review and determination by the Commissioner pursuant to (g) below of the tax levy amount to the county board of taxation.

(e) Submission to the Commissioner of a budget subject to automatic review is as follows:

1. A district board of education which has proposed to the voters or the board of school estimate, as the case may be, a general fund budget below the minimum T & E budget prescribed by N.J.S.A. 18A:7F-5, or a district board of education which has had its general fund budget reduced to a level below the minimum T & E budget prescribed by N.J.S.A. 18A:7F-5, shall submit any reductions made pursuant to N.J.S.A. 18A:7F-5.e(2) by the governing body or bodies following voter defeat, or by the board of school estimate, for review by the Commissioner to determine whether such reductions will adversely affect the ability of the school district to provide a thorough and efficient education or the stability of the school district given the need for long term planning and budgeting.

i. Reductions to a general fund budget below the minimum T & E budget prescribed by N.J.S.A. 18A:7F-5 or reduced to a level below the minimum T & E budget that are uncontested by a district board of education and determined sufficient for a thorough and efficient education pursuant to N.J.A.C. 6A:23-8.1 by the county superintendent, are not subject to automatic review by the Commissioner.

ii. A general fund budget proposed to the voters below the minimum T & E budget subject only to an increase in budgeted fund balance or other revenues is subject to automatic review by the Commissioner if contested by the district board of education or if the tax levy certification reduces the estimated unbudgeted fund balance at June 30 of the budget year below \$100,000 or the minimum amount necessary based on the school district's specific circumstances and needs, whichever is greater.

2. Within 10 business days of delivery to the district board of education and the county superintendent, pursuant to (a) or (b) above, of a budget subject to automatic review by the Commissioner, a district board of education may submit to the county superintendent any comments it may wish to make in response to the demonstration provided at the time of certification by the governing body or bodies, or the board of school estimate, that the specific reductions made will not adversely affect the ability of the district to provide a thorough and efficient education or the stability of the district given the need for long term planning and budgeting. A district board of education shall submit a copy of such comments concurrently to the governing body or bodies, or the board of school estimate.

(f) Application to the Commissioner for restoration of reductions is as follows:

1. A district board of education which has proposed to the voters or the board of school estimate, as the case may be, a general fund budget in excess of the maximum T & E budget prescribed by N.J.S.A. 18A:7F-5 may apply for restoration of reductions made pursuant to N.J.S.A. 18A:7F-5.e(1) by the governing body or bodies following voter defeat, or by the board of school estimate, only on grounds that such reductions will negatively impact on the stability of the district given the need for long term planning and budgeting ("stability grounds"), and shall document by clear and convincing evidence its need for restoration of each item reduced. In such cases, a district board of education shall not argue that any of the reductions will adversely affect the district board of education's ability to meet the thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-4.a and .b.

i. "Stability grounds" as used in the Comprehensive Educational Improvement and Financing Act of 1996, N.J.S.A. 18A:7F-1 et seq., means reductions which would require long term planning or budgeting and cannot be accomplished within the budget year; which would adversely affect the district board of education's ability to operate a school system; and which are not a program, service or other expenditure contained within the efficiency standards established pursuant to N.J.S.A. 18A:7F-4b or that are expenditures for items which are in excess of those contained in the efficiency standards established pursuant to N.J.S.A. 18A:7F-4b.

2. A district board of education which has proposed to the voters or the board of school estimate, as the case may be, a general fund budget at or below the maximum T & E budget prescribed by N.J.S.A. 18A:7F-5 may apply for restoration of reductions made pursuant to N.J.S.A. 18A:7F-5e(2) by the governing body or bodies following voter defeat, or by the board of school estimate, on grounds that such reductions either will adversely affect the district board of education's ability to meet the thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-4a and b ("T & E grounds"), or will adversely

affect the stability of a district board of education's overall operations given the need for long term planning and budgeting ("stability grounds").

i. "T & E grounds" means that the reduction or reductions would adversely affect the district board of education's ability to implement programs and services at the level contained in the efficiency standards established pursuant to N.J.S.A. 18A:7F-4b in order to ensure that its students achieve the Core Curriculum Content Standards. The efficiency standards are those contained in the Report on the Cost of Providing a Thorough and Efficient Education.

3. Within 10 business days after the certification of general fund tax levy by the governing body or bodies, or the board of school estimate, a district board of education eligible for restoration pursuant to (f)1 or 2 above may submit an application to the Commissioner for such restoration on a form deemed appropriate by the district, but shall:

i. Address each line-item reduction made by the governing body or bodies or the board of estimate; and

ii. Provide a specific written explanation supported by attached documentation, or specific reference to information contained in materials submitted pursuant to N.J.A.C. 6A:23-8.10(a)1, as to why each reduction will adversely affect the ability of the district to provide a thorough and efficient education or the stability of the district given the need for long term planning and budgeting, whichever criterion or criteria will apply under (f)1 or 2 above.

4. A district board of education shall submit an application for restoration to the appropriate county superintendent, and a copy of the complete application shall concurrently be submitted to the governing body or bodies, or the board of school estimate, as the case may be.

5. Within 10 business days of receipt of the district board of education's application, the governing body or bodies, or the board of school estimate, may submit to the county superintendent any comments it may wish to make on the district board of education's application. A copy of such comments shall concurrently be submitted to the board of education.

6. For the purposes of determining the grounds on which a district board of education can submit an application to the Commissioner pursuant to (f)1 and 2 above, the calculation of the T & E budget does not include a sending district's required tuition payment or number of students sent.

(g) Commissioner review and certification of tax levy, determination of application for restoration and automatic reviews are as follows:

1. Upon receipt of a district board of education's application and the governing body or board of school estimate's comments thereon or upon expiration of the time for their submission, or upon receipt of a board's comments on a budget below minimum T & E level or expiration of the time for their submission, the Commissioner will review the materials submitted and issue an order directing such restorations or reallocations as he or she deems warranted pursuant to the appropriate standard as set forth in N.J.S.A. 18A:7F-5 consistent with the overall intent of the Act. For purposes of assessing budgets for certification of tax levy, assessing applications, or conducting automatic reviews in the case of districts having budgets below the minimum T & E budget, the Commissioner may engage the assistance of such Department of Education staff as he or she deems appropriate.

2. In addition to application materials and responsive comments, and those materials submitted to the county superintendent in accordance with the requirements of (a)1 above, the Commissioner, assessing budgets for certification of tax levy, assessing applications for restoration or conducting automatic budget reviews may consider such additional information as may be available to him or her through established reporting requirements and Department of Education data collection processes, for example, the Fall Report. Additionally, should the Commissioner or a designee determine during the course of review that further information or explanation is required from a district board of education, or a governing body or board of school estimate, such information may be requested at any time during the review process.

3. In the case of budgets subject to Commissioner tax levy certification pursuant to (d) above or applications submitted pursuant to (f) above, the Commissioner may consider enrollment increases or decreases within the school district, the history of voter or board of estimate approval or rejection of school district budgets, the impact on the local tax levy, whether reductions made will impact on the ability of the school district to fulfill its contractual obligations, and the other factors listed in (g)5 below.

4. In the case of reductions requiring review pursuant to (e) above, the governing body or bodies or the board of school estimate which has made the reductions shall affirmatively demonstrate to the Commissioner that such reductions will not adversely affect the district board of education's ability to provide a thorough and efficient education or the stability of the school district given the need for long term planning and budgeting. In reviewing the budget and the governing body or board of estimate's position, the Commissioner may consider enrollment increases or decreases within the school district, the history of voter or board of estimate approval or rejection of school district budgets, the impact on the local tax levy, whether reductions made will impact on the ability of the school district to fulfill its contractual obligations, and the other factors listed in (g)5 below.

5. In determining the impact of reductions on the stability of a school district, the Commissioner may consider the following information:

- i. Increases or decreases in enrollment;
- ii. The history of voter approval or rejection of school district budgets;
- iii. The impact on the local tax levy;
- iv. The ability of the school district to fulfill its existing contractual obligations on the effective date of N.J.S.A. 18A:7F-1 et seq. and the relationship of contractual obligations since the effective date of N.J.S.A. 18A:7F-1 et seq. to Statewide trends in bargaining practices;
- v. The impact on class sizes relative to instructional space;
- vi. The impact on class sizes relative to teaching staff reductions under existing teacher contracts;
- vii. The link between the proposed reduction and classroom instruction or health and safety;
- viii. The nature of the reduction as to whether it is a continuation expenditure or a new or increased expenditure;
- ix. The school district's relative standing in the Comparative Spending Guide on the indicators for Total Administration, Administrative Salaries and Benefits, Total Operations and Maintenance of Plant, Board Contributions to the Food Service Program and Extra-curricular Costs;
- x. The school district's original budget to actual spending and undesignated general fund balance usage and projections trend histories;
- xi. Nonrecurring costs; costs removed from the prebudget year net budget by statutory change, such as the transfer of lease purchase payments to the debt service fund;
- xii. The degree to which a school district exceeds the maximum T & E budget; and
- xiii. Any facts or data which would provide evidence of the reduction's impact.

6. In directing adjustments to budgets which are subject to Commissioner certification, application for restoration or required review, the Commissioner may reallocate or sustain reductions to surplus where such reallocations or reductions do not decrease surplus below \$100,000 or the minimum amount necessary based on the school district's specific circumstances and needs, whichever is greater, notwithstanding that budgeted amounts are within the level permitted by N.J.S.A. 18A:7F-7.

7. Any reallocations directed as a result of review under this subsection shall be made consistent with the provisions of N.J.S.A. 18A:7F-6e.

8. Decisions of the Commissioner issued pursuant to this subchapter are final decisions appealable to the State Board of Education pursuant to N.J.A.C. 6A:4.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (a)3i, substituted "recommended" for "made" following "the governing"; inserted "business" following "within 10" throughout.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Rewrote the section.

SUBCHAPTER 9. FINANCIAL OPERATIONS OF CHARTER SCHOOLS

6A:23-9.1 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Average daily enrollment" for the purpose of determining the adjusted State, local and Federal aid means the sum of the days present and absent of all students enrolled in the register(s) of the program for which the aid is being determined divided by the number of days school was actually in session.

"Categorical aid attributable to the student" means special education aid, bilingual aid, early childhood program aid, demonstrably effective program aid, instructional supplement aid and distance learning network aid as calculated based on student participation.

"Certification" means the endorsement of a person who is employed by a district board of education or a charter school board of trustees to perform duties that are regulated by N.J.A.C. 6A:11 and 6A:23, and N.J.S.A. 18A:26-2.

"Charter school rate" means an amount equal to 90 percent of the program budget per pupil for the specific grade level or 90 percent of the maximum T & E amount, pursuant to N.J.S.A. 18A:36A-12.

"District of residence" means the school district in which a charter school facility is physically located; if a charter school is approved with a region of residence comprised of contiguous school districts, that region is the charter school's district of residence.

"Initial recruitment period" means the period during which there are the first outreach efforts by a charter school to a cross section of the community for the application, random selection process (if applicable) and enrollment of students for the next school year.

"Local share" means that percentage of the school district's program budget that is supported by locally generated funds.

"Non-resident district" means a school district outside the district of residence of the charter school.

"Non-resident student" means a student from a non-resident district attending a charter school.

"Per pupil amount for the specific grade level" means the lower of either 90 percent of the program budget per pupil for the specific grade level in the district or 90 percent of the maximum T & E amount weighted for kindergarten, elementary (grades one through five), middle school (grades six through eight) and high school (grades nine through 12) respectively as set forth in N.J.S.A. 18A:7F-12 for the applicable budget year.

"Prebudget year" means the school fiscal year preceding the year in which the school budget is implemented.

"Program budget" means as it is defined in N.J.S.A. 18A:36A-12(a), or the annual appropriations act for the corresponding fiscal year.

"Program budget per pupil" means the amount derived for each grade level by first apportioning the school district's total program budget based on its weighted resident enrollment in each of the grade levels, then dividing those amounts by the resident enrollment in each of the categories.

"Projected enrollments" means the estimated total enrollments from both the district of residence and non-resident district(s) as follows:

1. For the first year, the projected enrollment is based on the enrollment as indicated in the New Jersey Charter School Application;
2. In subsequent years, projected enrollment is based on actual charter school enrollment from October 15 of the prebudget year, the initial recruitment period that is submitted by January 15 and any approved change of enrollment as specified in the school's charter.

"Region of residence" means the contiguous school districts in which a charter school operates and is the charter school's district of residence.

"Resident student" means a student who resides in the area served by the district board of education that is the same as the district of residence of the charter school.

"School year" means July 1 to June 30 of any given academic year. If operating with an extended school year, this term means an alternate fiscal year beginning no later than September 1 and ending no later than August 31 of any given academic year.

"State share" means the percentage of the school district's program budget that is supported by State aid.

New Rule, R.2004 d.322, effective August 16, 2004.
 See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).
 Amended by R.2006 d.361, effective October 2, 2006.
 See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In definition "Certification" substituted "6A:11" for "6:11"; in definitions "Local share", "Program budget per pupil" and "State Share" inserted "school"; and in definition "Program budget" inserted "annual" following "or the" and substituted "corresponding fiscal" for "affected".

6A:23-9.2 Bookkeeping and accounting for charter schools

A charter school board of trustees shall comply with GAAP and other requirements and provisions as set forth in N.J.A.C. 6A:23-2.

New Rule, R.2004 d.322, effective August 16, 2004.
 See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

6A:23-9.3 Certification

A charter school board of trustees shall employ or contract with a person who holds a New Jersey standard or provisional school business administrator certificate in accordance with N.J.A.C. 6A:11-9.7 to oversee fiscal operations of the charter school.

New Rule, R.2004 d.322, effective August 16, 2004.
 See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).
 Amended by R.2006 d.361, effective October 2, 2006.
 See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Substituted "A charter school" for "The", deleted "of a charter school" following "trustees", and substituted "6A:11" for "6:11".

6A:23-9.4 Per pupil calculations, notification and caps

(a) The resident and non-resident districts shall use projected charter school aid as established by the Commissioner in a report to be distributed no later than February 15 of the prebudget year for budget purposes and to initiate school district payments to the charter school for the subsequent year. The report establishes for each resident and non-resident district a per pupil amount for the specific grade level, local and State shares and categorical aids per student. Once the per pupil amount for the specific grade level is established, it is not adjusted. Projected charter school aid is based on projected enrollments at the charter school. The number of students enrolled in the charter school is adjusted based on average daily enrollment for aid purposes throughout the school year in accordance with the prescribed adjustments listed in N.J.A.C. 6A:23-9.5.

(b) The per pupil amount for the specific grade level comprises local share as defined in (b)1 and 2 below and State share as defined in (b)3 below.

1. The local share per pupil for the specific grade level is that part of the per pupil amount for the specific grade level that includes the following elements of the district of residence's or non-resident district's budget(s):

- i. Designated general fund balance;
- ii. Miscellaneous local general fund revenue; and

iii. General fund tax levy.

2. The general fund tax levy is determined as follows:

i. If the per pupil amount for the specific grade level is the program budget, then the local share per pupil for the specific grade level at the charter school rate is that part of the program budget that is supported by the general fund tax levy.

ii. If the per pupil amount for the specific grade level is the maximum T & E amount, then the local share per pupil for the specific grade level at the charter school rate is that part of the maximum T & E amount that is the portion of the general fund tax levy that supports the district of residence's or non-resident district's maximum T & E amount.

3. The State share per pupil for the specific grade level is that part of the per pupil amount for the specific grade level that includes the following elements of the district of residence's or non-resident district(s)' budget(s):

- i. Core curriculum standards aid;
- ii. Supplemental core curriculum standards aid; and
- iii. Stabilization aid as defined in N.J.S.A. 18A:7F-1 et seq. or the annual appropriations act for the corresponding fiscal year.

(c) The non-resident district's per pupil amount for the specific grade level paid to a charter school is the lower of either:

1. Ninety percent of the non-resident district's program budget per pupil for the specific grade level;
2. Ninety percent of the district of residence's program budget per pupil for the specific grade level; or
3. Ninety percent of the maximum T & E.

(d) If a charter school has a region of residence as its district of residence, the per pupil amount for the specific grade level is the lower of either:

1. Ninety percent of the school district's program budget per pupil for the specific grade level;
2. Ninety percent of the maximum T & E; or
3. The average, which is calculated as follows:

i. For the first school year, the average is based on a projected charter school student population as specified by the charter school in its *New Jersey Charter School Application* or, if not specified, that reflects the relative school population of all the district boards of education in the region of residence.

ii. In subsequent years, the average is based on the actual October 15 charter school student enrollment count from the prebudget year for all the district boards of education in the region of residence.

iii. The projected or actual number of students for a school district is multiplied by the program budget per pupil for the specific grade level for the same school district. This process is calculated for each school district. The total amounts by grade level from all school districts are added and divided by the total number of students by grade level from all school districts in the region of residence to determine the average by grade level.

(e) On or before March 30 of each year, a charter school board of trustees shall submit to the Commissioner a budget summary, budget narrative and cash flow statement for the following fiscal year, all of which are based on the most recent enrollment projections provided to the charter school by the Commissioner.

Amended by R.1998 d.292, effective June 1, 1998.

See: 30 N.J.R. 588(a), 30 N.J.R. 2084(a).

In (b)2, substituted "For the 1997-98 school year only," for "In all school years".

Petition for Rulemaking.

See: 31 N.J.R. 2006(a), 31 N.J.R. 2650(a).

Amended by R.2000 d.403, effective October 2, 2000.

See: 32 N.J.R. 2523(a), 32 N.J.R. 3560(a).

Rewrote section.

Petition for Rulemaking.

See: 33 N.J.R. 329(a).

Amended by R.2002 d.358, effective November 4, 2002.

See: 34 N.J.R. 2920(a), 34 N.J.R. 3806(a).

Deleted (e) and (f); recodified (g) as new (e).

Recodified from N.J.A.C. 6A:11-7.1 and amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Inserted "school" throughout; in (b)3iii, substituted "annual appropriations" for "appropriation" and substituted "corresponding fiscal" for "appropriate"; in (e), inserted "board of trustees".

6A:23-9.5 Enrollment counts, payment process and aid adjustments

(a) In order to enroll in a charter school, the student must first be registered in the school district in which the student resides. For any student who applies for enrollment in a charter school, a district board of education in which the charter school applicant resides shall process the registration of the student for the subsequent school year upon submission of the registration forms. A district board of education shall process in a timely manner all such registrations, including the assessment of residency and the subsequent transfer to the charter school, and shall identify the specific categorical aid for which each student qualifies.

(b) In the subsequent school year, actual average daily enrollment in a charter school shall not exceed the enrollment as specified in the school's charter and approved by the Commissioner.

(c) A district board of education shall pay to a charter school aid the school district receives for categorical programs pursuant to N.J.S.A. 18A:7F-4c(3). Such aid shall be

paid to a charter school in the amount that is attributable to each resident student enrolled in that charter school who participates in the categorical programs listed below:

1. Special education;
2. Bilingual; and
3. Distance learning network.

(d) A district board of education that receives instructional supplemental aid shall pay to a charter school the amount of that aid attributable to each student residing in the school district and attending the charter school when the charter school has a concentration of low-income students that is equal to or greater than five percent and less than 20 percent.

(e) A district board of education that receives early childhood program aid pursuant to N.J.S.A. 18A:7F-16 and/or demonstrably effective program aid pursuant to N.J.S.A. 18A:7F-18 shall pay to a charter school the amount of that aid attributable to a resident student attending that charter school where:

1. The charter school has a concentration of low-income students that is equal to or greater than 20 percent; and
2. The resident student is receiving appropriate services to be funded through that type of aid.

(f) A student attending a charter school shall, for demonstrably effective program aid purposes, be regarded by the district board of education as attending the public school that the student would otherwise be attending if the student were not enrolled in the charter school.

(g) The per-pupil amount of early childhood program aid and demonstrably effective program aid to be paid to a charter school by a district board of education shall be the lesser of:

1. The per-pupil amount provided to the district board of education for that aid category; or
2. The per-pupil amount that would be provided to a district board of education or school with a concentration of low-income students that equals the concentration of low-income students in the charter school.

(h) All categorical aids paid to a charter school by a district board of education shall be accounted for in the general fund of the charter school.

(i) A charter school may apply directly to the Commissioner for aid for high cost placements for a special education student in accordance with N.J.S.A. 18A:7F-19(b) and (c).

(j) Beginning in the 1998-99 school year, a charter school shall be eligible for rewards under the academic achievement reward program in accordance with N.J.S.A. 18A:7F-29.

(k) A district board of education shall process payment(s) and payment adjustments to a charter school during any given school year as follows:

1. The district of residence and non-resident district(s) shall initiate payments to the charter school based on projected enrollment, as set forth in N.J.A.C. 6A:23-9.4(a).

2. The district of residence and non-resident district(s) shall pay directly to a charter school the local share per pupil for the specific grade level at the charter school rate pursuant to N.J.A.C. 6A:23-9.1 and 9.4 in 12 equal installments starting July 15 and thereafter on the 15th of each month.

3. The district of residence and non-resident district(s) shall pay directly to the charter school for the following aids in 20 equal installments on the 2nd and 16th of every month starting with September 2 and ending with June 16, or as established by the Legislature:

i. The State share per pupil at the charter school rate pursuant to section N.J.A.C. 6A:23-9.4; and

ii. Categorical aid attributable to the student pursuant to section N.J.A.C. 6A:23-9.4.

4. The charter school shall submit to the resident school district a listing of all students on roll on October 15th in a format prescribed by the school district for purposes of determining State aid. Pursuant to the guidelines in the school register, the charter shall also submit to the school district copies of all source documents related to the determination of State aid.

5. During the school year, a charter school board of trustees shall conduct an enrollment count on October 15 and the last day of the school year. A charter school board of trustees shall submit each count in a summary school register for the purposes of determining average daily enrollment.

i. The charter school board of trustees shall submit the summary school register to the Commissioner no later than one week after the two required enrollment counts required pursuant to (k)5 above.

(1) All aid paid to the charter school by the school district will be adjusted accordingly from projected enrollment to average daily enrollment on October 15 and the adjustment will be spread evenly over the remaining pay periods in the school year.

(2) A final adjustment will be calculated at year-end to account for changes in the average daily enrollment from October 15 to the end of the school year.

(3) The Commissioner will issue a report for the end of year adjustment to both the charter school and the district of residence and non-resident district(s) after the October enrollment count. If there is a

reduction in aid, the charter school shall pay the full amount to the school district no later than September 30 of the subsequent school year. If there is an increase in aid, the school district shall pay the full amount to the charter school no later than September 30 of the subsequent school year.

6. A district board of education and a charter school board of trustees may change the payment provisions as outlined in (k)2, 3 and 4 above, if mutual agreement can be reached on an alternative payment schedule.

i. Such change in the payment provisions are only effective for the stated school year.

ii. Such change in the payment provisions require the written approval through board resolutions of both the board of trustees of the charter school and the district board of education. The charter school board of trustees and district board of education shall submit copies of such board resolutions to the Commissioner on or before July 1 of the school year in which the payment schedule is effective.

7. In the event a district board of education falls behind by 15 days in the payment schedule in (k)2, 3, 4 and 5 above, a charter school board of trustees may petition the Commissioner to have the amounts owed to the charter school deducted from the district board of education's State aid and paid directly to the charter school.

8. The payment schedule may be adjusted by the Commissioner based on the effective date of the final granting of the charter or based on significant change in enrollment during the school year.

Amended by R.2000 d.403, effective October 2, 2000.

See: 32 N.J.R. 2523(a), 32 N.J.R. 3560(a).

Rewrote section.

Amended by R.2002 d.358, effective November 4, 2002.

See: 34 N.J.R. 2920(a), 34 N.J.R. 3806(a).

In (d), substituted "supplemental" for "supplement"; in (k)li, substituted "April 30" for "June 5"; in (k)lii, substituted "May 15" for "June 15"; in (k)liii, substituted "June 15" for "June 18".

Recodified from N.J.A.C. 6A:11-7.2 and amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

In (c) and (d), inserted "school" preceding "district"; in (k)3, inserted "or as established by the Legislature" at the end; and in (k)5i, inserted "required pursuant to (k)5 above" at the end.

Case Notes

Where the Greater Newark Charter School had placed a charter school special education student at a private school and the student subsequently moved from Newark to East Orange, the East Orange school district was not authorized to change the student's private placement; although the student was required to register in the East Orange district, the student was still an enrollee of the charter school under N.J.S.A. 18A:36A-8(b). A school district's challenge to a charter school's placement of a special education student or to the district's responsibility for costs is through an appeal to the Commissioner of Education, N.J.S.A. 18A:6-9, under the Charter School Program Act, and not through the IDEA. E.M. ex rel. J.B. v. East Orange Bd. of Educ., OAL

Dkt. No. EDS 12493-07, 2008 N.J. AGEN LEXIS 378, Final Decision (June 26, 2008).

Under N.J.S.A. 18A:36A-8(b), a charter school is not allowed to terminate a student's enrollment solely because the student transfers districts. E.M. ex rel. J.B. v. East Orange Bd. of Educ., OAL Dkt. No. EDS 12493-07, 2008 N.J. AGEN LEXIS 378, Final Decision (June 26, 2008).

The Charter School Program Act of 1995, N.J.S.A. 18A:36A-1 et seq., delegates substantive IDEA education program requirements to the charter school in which a disabled student is enrolled. A charter school has the responsibility to develop IEPs for students with disabilities and determine placements, while the district of residence has fiscal responsibilities. When a disabled charter school student placed at a private school changed district of residence, the charter school's IDEA responsibility did not cease. E.M. ex rel. J.B. v. East Orange Bd. of Educ., OAL Dkt. No. EDS 12493-07, 2008 N.J. AGEN LEXIS 378, Final Decision (June 26, 2008).

6A:23-9.6 Financial requirements

(a) A charter school board of trustees may incur debt for a period no greater than 12 months except:

1. During the first year that the charter school is approved when the debt is incurred by the charter school board of trustees for a period no longer than January 15 of the preceding school year to June 30 of the first school year of the charter; and

2. For all other years that the charter school is approved when the debt incurred by the charter school board of trustees for a period of 12 months or greater is:

- i. Fully secured by the value of the real property or other asset, so that the total value of all such debt does not exceed the total appraised value of the property or asset by which the debt is secured; and

- ii. Non-recourse to the charter school.

(b) A charter school board of trustees may acquire real property by a lease or a lease with an option to purchase for use as a school facility providing that the charter school board of trustees shall ensure:

1. The term of the lease does not exceed the length of the charter;

2. The lease contains a provision terminating the obligation to pay rent upon the denial, revocation, non-renewal or surrender of the charter; and

3. The lease does not contain a provision accelerating the obligation to pay rent in the event of default.

(c) A district board of education shall only transmit State and local public funds to a charter school after the final granting of the charter by the Commissioner has occurred. If funds are withheld pending the final granting of the charter, the district board of education shall pay all withheld funds to the charter school with the first scheduled payment after the effective date of the charter.

(d) A charter school shall be subject to monitoring by the Commissioner to ensure that the percentage of school funds spent in the classroom is at least comparable to the average percentage of school funds spent in the classroom in all other public schools in the State. The calculation for this percentage in both the annual budget and the Comprehensive Annual Financial Report is based on National Center for Educational Statistics as published by the U.S. Department of Education.

(e) After completion of the school year, the district board of education may petition the Commissioner for a lower rate for the charter school's per pupil amount for the specific grade level if the charter school spends significantly less than budgeted and has accumulated a sizable surplus.

1. The Commissioner may reduce the rate based on a determination of excessive surplus. The criteria for excess surplus is determined by the Commissioner pursuant to N.J.S.A. 18A:7F-7.

2. A charter school may submit comments to the Commissioner regarding the petition for a lower rate for the charter school's budget amount per pupil for the specific grade level from the district of residence of the charter school or non-resident district(s).

(f) If, at any time, the Commissioner denies, revokes or does not renew a school's charter, or a charter school board of trustees surrenders its charter or becomes insolvent, all assets of the charter school board of trustees, after satisfaction of all outstanding claims by creditors, are subject to equitable distribution by the Commissioner among the participating district of residence and non-resident district(s). A charter school board of trustees shall include a provision in its bylaws concerning distribution of assets upon denial, revocation, non-renewal or surrender of its charter or insolvency of the charter school that is consistent with this rule.

Amended by R.2000 d.403, effective October 2, 2000.

See: 32 N.J.R. 2523(a), 32 N.J.R. 3560(a).

Rewrote section.

Amended by R.2002 d.358, effective November 4, 2002.

See: 34 N.J.R. 2920(a), 34 N.J.R. 3806(a).

Rewrote section.

Recodified from N.J.A.C. 6A:11-7.3 and amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Rewrote the section.

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Inserted "board of trustees" throughout; in (a)1 and (a)2, substituted "the" for "a" preceding "charter school".

6A:23-9.7 Public school contract law

(a) A charter school board of trustees shall be subject to the provisions of the public school contracts law, N.J.S.A. 18A:18A-1 et seq.

(b) Any agency, corporation, person or entity which enters into a contract or agreement on behalf of the charter school to provide administrative, educational or other services shall be

subject to the provisions of the public school contract law,
N.J.S.A. 18A:18A-1 et seq.

New Rule, R.2000 d.403, effective October 2, 2000.
See: 32 N.J.R. 2523(a), 32 N.J.R. 3560(a).

Recodified from N.J.A.C. 6A:11-4.12 and amended by R.2004 d.322,
effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (a), inserted "board of trustees" following "A charter school".