

and seminars, although some training may take place at such events;

3. "School district sponsored events" means conferences, conventions, receptions, or special meetings, where the school district plans, develops, implements, and coordinates the event and is the event's primary financial backer. School district employees are actively involved in working the event and other employees may attend as participants;

4. "Regular school district business travel" means all regular official business travel, including attendance at meetings, conferences and any other gatherings which are not covered by the definitions included in 1, 2 and 3 above. Regular school district business travel also includes attendance at regularly scheduled in-state county meetings and Department sponsored or association sponsored events provided free of charge and regularly scheduled in-state professional development activities with a registration fee that does not exceed \$150.00 per employee or board member. Beginning in 2009-2010, the \$150.00 limit per employee or board member may be adjusted by inflation; and

5. "Retreats" means meetings with school district employees and school board members, at which organizational goals and objectives are discussed.

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

"Unrestricted State aid" means State aid as defined in N.J.S.A. 18A:7F-37.

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

"Weighted resident enrollment" means the differentials in costs based on the efficiency standards established pursuant to N.J.S.A. 18A:7F-46(a) 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-50.

Special amendment, R.2009 d.35, effective December 18, 2008.
See: 41 N.J.R. 642(a).

Added definitions "Adjusted for inflation", "Authorized membership of the school board", "Bilingual education pupil", "Capital maintenance", "Capital outlay", "Capital reserve account", "Charter school", "Combination pupil", "Concentration of at-risk pupils", "County superintendent roundtable", "Emergent circumstance", "Emergent condition", "Energy costs", "Excess costs", "Extraordinary costs", "Forensic audit", "Health care costs", "Household income", "Immediate family member", "Individualized education program", "Insurance", "Lease purchase payment", "Line item account", "Long-range facilities plan", "Net budget",

"New school facility", "Non-discretionary fixed costs", "Other capital project", "Prebudget year adjusted tax levy", "Preliminary budget", "Required maintenance", "Spending growth limitation", "State support", "Subsistence", "Travel expenditures", "Underbudgeted revenue", "Unrestricted State aid", "Unused spending authority" and "Weighted resident enrollment"; in definition "Board of trustees", substituted "seq" for "sq" at the end; in definition "Capital projects fund", inserted the third sentence; in definition "Chief school administrator", inserted ", or the lead person of a charter school as defined at N.J.A.C. 6A:11-1.2"; and deleted definition "State Health Benefits Program".

Amended by R.2011 d.054, effective February 7, 2011.

See: 42 N.J.R. 2524(a), 42 N.J.R. 2665(a), 43 N.J.R. 284(a).

Added definitions "Additional district salary increment", "Annual salary", "High School", "High school salary increment" and "Maximum salary amount".

Administrative change.

See: 46 N.J.R. 1743(a).

SUBCHAPTER 2. EXECUTIVE COUNTY SUPERINTENDENT OF SCHOOLS

6A:23A-2.1 General powers and duties of Executive County Superintendent

(a) Each Executive County Superintendent shall exercise and perform the general powers and duties vested in him or her pursuant to N.J.S.A. 18A:7-8.

(b) Nothing in this section shall be construed or interpreted to contravene or modify the provisions of the New Jersey Employer-Employee Relations Act, P.L. 1941, c. 100, (N.J.S.A. 34:13A-1 et seq.), or to limit or restrict the scope of negotiations as provided pursuant to law, or to require an employer to enter into a subcontracting agreement which affects the employment of any employee in a collective bargaining unit represented by a majority representative during the time that an existing collective bargaining agreement with the majority representative is in effect.

6A:23A-2.2 School district regionalization and consolidation of services advisory committee

(a) Each Executive County Superintendent shall create a School District Regionalization and Consolidation of Services Advisory Committee (Advisory Committee) for the purpose of providing advice and consultation to the Executive County Superintendent on the issue of regionalization of school districts or consolidation of school district services. The Advisory Committee shall consist of representation from each district in the county and shall meet on a monthly basis. At least quarterly, county representatives from the New Jersey Leadership for Educational (LEE) Group will be invited by the Executive County Superintendent to attend and participate in the meetings of the Advisory Committee. The LEE Group is composed of the New Jersey Education Association, the New Jersey Principals and Supervisors Association, the New Jersey School Boards Association, New Jersey Association of School Business Officials, the New Jersey Association of School Administrators, and the New Jersey Congress of Parents and Teachers. The Executive County Superintendent

may designate the county superintendent roundtable as the Advisory Committee, if appropriate. If the roundtable is used, attendance by the above organizations shall include only the portion of the roundtable meeting dedicated to the issue of regionalization and consolidation of services.

(b) The Executive County Superintendent, in his or her discretion, may create one or more advisory subcommittees that address issues by subject matter, by region or by some other method. Members of the subcommittees may be local taxpayers or residents, school board members, school district employees, school district parents, local government officials, representatives of State or local education associations, or others, as deemed appropriate by the Executive County Superintendent. The membership shall reflect the diversity of the county to the extent possible.

(c) The Executive County Superintendent, in his or her discretion, shall determine the working structure of the advisory subcommittees as he or she deems most effective and efficient.

(d) The Executive County Superintendent shall coordinate the work of the advisory subcommittees and shall report on the progress of that work to the Advisory Committee at its monthly meetings.

(e) The Executive County Superintendent shall report on the progress of the advisory committee and advisory subcommittees work at the regularly scheduled county superintendent roundtables, where appropriate.

(f) The Executive County Superintendent may, in his or her discretion where necessary, take appropriate action to engage consultants to perform the work and studies required by these rules, including assisting districts in submission of applications for funds under the SHARE program pursuant to N.J.S.A. 40A:65-30.

(g) The Executive County Superintendent shall encourage the advisory subcommittees to solicit input, to the extent possible, from current school employee representatives regarding regionalization and consolidation of services proposals.

6A:23A-2.3 Consolidation and sharing of services; joint and cooperative purchasing

(a) The Executive County Superintendent, in consultation with the Advisory Committee, shall study the consolidation of local public school districts' administrative services, to the extent practical. In particular, the Executive County Superintendent shall focus on identifying opportunities for consolidation of administrative services in the following types of districts:

excess of the maximum salary amount plus, if applicable, additional district salary increment(s) and/or a high school salary increment. No contract for a superintendent who is to be paid on a per diem basis shall include a per diem payment amount that exceeds 1/260th of the maximum salary amount plus, if applicable, additional district salary increment(s) and/or a high school salary increment. This paragraph shall be construed consistent with any tenure rights acquired pursuant to N.J.S.A. 18A:6-10 et seq.

3. No contract shall include provisions that are inconsistent with the travel requirements pursuant to N.J.S.A. 18A:11-12 and N.J.A.C. 6A:23A-7 including, but not limited to, the provisions for mileage reimbursement and reimbursement for meals and lodging in New Jersey. Any contractual provision that is inconsistent with law is superceded by the law.

4. No contract shall include provisions for the reimbursement or payment of employee contributions that are either required by law or by a contract in effect in the district with other teaching staff members, such as payment of the employee's State or Federal taxes, or of the employee's contributions to FICA, Medicare, State pensions and annuities (TPAF), life insurance, disability insurance (if offered), and health benefit costs.

5. No contract shall contain a payment as a condition of separation from service that is deemed by the Executive County Superintendent to be prohibited or excessive in nature. The payment cannot exceed the lesser of the calculation of three months pay for every year remaining on the contract with proration for partial years, not to exceed 12 months, or the remaining salary amount due under the contract.

6. No contract shall include benefits that supplement or duplicate benefits that are otherwise available to the employee by operation of law, an existing group plan, or other means; for example, an annuity or life insurance plan that supplements or duplicates a plan already made available to the employee. Notwithstanding the provisions of this section, a contract may contain an annuity where those benefits are already contained in the existing contract between that employee and the district.

7. Contractual provisions regarding accumulation of sick leave and supplemental compensation for accumulated sick leave shall be consistent with N.J.S.A. 18A:30-3.5. Supplemental payment for accumulated sick leave shall be payable only at the time of retirement and shall not be paid to the individual's estate or beneficiaries in the event of the individual's death prior to retirement. Pursuant to N.J.S.A. 18A:30-3.2, a new board of education contract may include credit of unused sick leave days in accordance with the new board of education's policy on sick leave credit for all employees.

8. Contractual provisions regarding accumulation of unused vacation leave and supplemental compensation for

accumulated unused vacation leave shall be consistent with N.J.S.A. 18A:30-9. Contractual provisions for payments of accumulated vacation leave prior to separation can be included but only for leave accumulated prior to June 8, 2007 and remaining unused at the time of payment. Supplemental payments for unused vacation leave accrued consistent with the provisions of N.J.S.A. 18A:30-9 after June 8, 2007 as well as unused vacation leave accumulated prior to June 8, 2007 that has not been paid, shall be payable at the time of separation and may be paid to the individual's estate or beneficiaries in the event of the individual's death prior to separation.

9. Contractual provisions that include a calculation of per diem for 12-month employees shall be based on a 260-day work year.

10. No provision for a merit bonus shall be made except where payment is contingent upon achievement of quantitative merit criterion and/or qualitative merit criterion:

i. A contract may include no more than three quantitative merit criteria and/or two qualitative merit criteria per contract year.

ii. The Executive County Superintendent shall approve or disapprove the selection of quantitative merit and/or qualitative merit criteria and the data that forms the basis of measuring the achievement of quantitative merit and/or qualitative merit criteria.

iii. A contract may provide for merit bonuses in an amount not exceeding 3.33 percent of annual salary for each quantitative merit criterion achieved and 2.5 percent of annual salary for each qualitative merit criterion achieved. Any such merit bonus shall be considered "extra compensation" for purposes of N.J.A.C. 17:3-4.1 and shall not be cumulative.

iv. The local board of education shall submit a resolution to the Executive County Superintendent certifying that a quantitative merit criterion or a qualitative merit criterion has been satisfied and shall await a confirmation of the satisfaction of that criterion from the Executive County Superintendent prior to payment of any merit bonus.

11. No provision for a bonus shall be made except where payment is contingent upon achievement of measurable specific performance objectives expressly contained in a contract approved pursuant to this section, where compensation is deemed reasonable relative to the established performance objectives and achievement of the performance objectives has been documented to the satisfaction of the district board of education.

12. No provision for payment at the time of separation or retirement shall be made for work not performed except as otherwise authorized above.

13. No contract shall include a provision for a monthly allowance except for a reasonable car allowance. A reason-

able car allowance cannot exceed the monthly cost of the average monthly miles traveled for business purposes multiplied by the allowable mileage reimbursement pursuant to applicable law and regulation and New Jersey Office of Management and Budget (NJOMB) circulars. If such allowance is included, the employee cannot be reimbursed for business travel mileage nor assigned permanently a car for official district business. Any provision of a car for official district business must conform with N.J.A.C. 6A:23A-6.12 and be supported by detailed justification. No contract can include a provision of a dedicated driver or chauffeur.

14. All superintendent contracts shall include the required provision pursuant to N.J.S.A. 18A:17-51 which states that in the event the superintendent's certificate is revoked, the contract is null and void.

15. No contract shall include a provision for additional compensation upon the acquisition of a graduate degree unless the graduate degree is conferred by a duly accredited institution of higher education as defined in N.J.A.C. 6A:9-2.1. No contract shall include a provision for assistance or tuition reimbursement, or for additional compensation, for graduate school coursework, unless such coursework culminates in the acquisition of a graduate degree conferred by a duly accredited institution of higher education as defined in N.J.A.C. 6A:9-2.1.

(f) Any actions by the Executive County Superintendent undertaken pursuant to this subchapter may be appealed to the Commissioner pursuant to the procedures set forth at N.J.A.C. 6A:3.

Special amendment, R.2009 d.35, effective December 18, 2008.

See: 41 N.J.R. 642(a).

In (e)2, inserted "and N.J.A.C. 6A:23A-7"; and added (e)13.

Amended by R.2011 d.054, effective February 7, 2011.

See: 42 N.J.R. 2524(a), 42 N.J.R. 2665(a), 43 N.J.R. 284(a).

Rewrote the introductory paragraph of (a) and (b); added new (e)2; recodified former (e)2 through (e)8 as (e)3 through (e)9; added new (e)10; and recodified former (e)9 as (e)11 and former (e)10 through (e)13 as (e)12 through (e)15.

6A:23A-3.2 Required actions relative to early termination of superintendent

(a) Pursuant to N.J.S.A. 18A:17-20.2a, the district board of education shall submit to the Commissioner for prior approval an early termination of employment agreement for its superintendent that includes the payment of compensation as a condition of separation.

(b) Early termination of employment agreements shall only be for involuntary separation of the superintendent where the district board of education documents that the separation agreement is in the best interests of the district's students and/or district's operations.

(c) No payment of compensation as a condition of separation shall be made when such separation is the result of:

1. Indictment for a felony unless subsequently cleared or acquitted;
2. Conviction of a felony;
3. Documented cause such as gross mismanagement, purposeful waste or fraud;
4. Revocation of certification; or
5. Finding(s) of ethical violations by the School Ethics Commission.

(d) No early termination of employment agreement shall contain payment of compensation as a condition of separation when the existing employment contract already contains provisions for compensation as a condition of separation.

(e) No early termination of employment agreement shall include payment for unspecified future work or for work not actually performed, such as a retainer for unspecified consultation or for advice subsequent to separation.

(f) Early termination agreements shall not include the value of any accrued, unused sick days except as permitted by N.J.S.A. 18A:30-3.5.

(g) Early termination agreements containing compensation for separation cannot exceed the lesser of the calculation of three months pay for every year remaining on the contract with proration for partial years, not to exceed 12 months, or the remaining salary amount due under the contract, except as noted in (g)1 below:

1. The value of any accrued, unused vacation days shall not exceed the sum of accrued, unused vacation days as of June 8, 2007, unused vacation days accrued in the school year in which the separation agreement is entered and unused vacation days accrued in the year preceding the school year in which the separation agreement is entered, to the extent permitted by N.J.S.A. 18A:30-9, provided payment for accrued, unused vacation days is an express provision of the existing contract.

(h) No early termination of employment agreement shall include extended payment, or payment for retroactive salary increases, bonuses, overtime, longevity, accrued vacation or other time benefit, or any other benefit neither expressly contained in the employment agreement being terminated early nor earned according to performance or other criteria established in the agreement.

Special New Rule, R.2009 d.35, effective December 18, 2008.

See: 41 N.J.R. 642(a).

6A:23A-3.3 Certification review under certain conditions

The State Board of Examiners shall review the certification of the superintendent and SBA of the district pursuant to N.J.S.A. 18A:6-38.2 when the appointment of a State monitor pursuant to N.J.S.A. 18A:7A-55 is authorized.

Special New Rule, R.2009 d.35, effective December 18, 2008.
 See: 41 N.J.R. 642(a).

6A:23A-3.4 Noncompliance with GAAP, review of certification of a SBA

The Commissioner, pursuant to N.J.S.A. 18A:6-38.3, shall recommend to the State Board of Examiners that it review the certification of the district's SBA when any school district's accounting system and financial reports are not in compliance with GAAP within one year of March 15, 2007.

Special New Rule, R.2009 d.35, effective December 18, 2008.
 See: 41 N.J.R. 642(a).

SUBCHAPTER 4. SCHOOL DISTRICT FISCAL ACCOUNTABILITY

6A:23A-4.1 Additional powers of Commissioner to achieve fiscal accountability

(a) The Commissioner may appoint an external entity to perform a compliance audit of a district's general fund spending upon identification that the district may be spending State

education funds for purposes that are not in compliance with State education laws and regulations.

(b) The final report shall include, as applicable:

1. Specific findings of:
 - i. Spending that was not in compliance with Federal and State law and regulations;
 - ii. Procedural noncompliance with Federal and State law and regulations;
 - iii. Noncompliance with GAAP and/or generally accepted business practices;
 - iv. Weaknesses in the system of internal controls; and
 - v. Questionable or inefficient spending practices;
2. The cause of each finding;
3. Specific corrective recommendations; and
4. The school district response to each finding and recommendation.

(c) The Commissioner may use the audit report as evidence for the appointment of a State fiscal monitor pursuant to N.J.S.A. 18A:7A-55.

(d) The district shall reimburse the Department the total cost of the compliance audit where the audit determined State aid spending was not in compliance with State education law and regulation.

6A:23A-4.2 Compliance with requirements for income tax

(a) SBAs or any other person designated by the board of education shall certify to the Department of the Treasury on a form provided by the Department of the Treasury that all documentation prepared for income tax related purposes, in regard to superintendents, assistant superintendents, and SBAs, complies fully with the requirements of Federal and State laws and regulations regarding the types of compensation which are required to be reported.

(b) The personal use of a school district vehicle and/or use of driver services shall be taxable to the employee as a non-cash fringe benefit pursuant to the IRS Code. "Personal use" includes commuting to and from work as well as personal travel. Pursuant to N.J.A.C. 6A:23A-3.1 and 6.12, a district cannot assign a vehicle permanently to an individual for the primary purpose of commuting nor can a district provide a dedicated driver or chauffeur. Incidental personal use, however, is permitted and shall be taxable pursuant to the IRS Code.

1. The SBA or designee shall be responsible for notifying the affected employees, within 30 days of providing them with the use of a school district vehicle, of the valuation method to be used to calculate their vehicle fringe benefit.

2. The value of the services provided by a driver to the individual assigned a school district vehicle shall also be included in determining the total taxable fringe benefit.

3. The total taxable non-cash fringe benefit amount shall be the proportional share of personal use and commutation value to total value of the school district vehicle and driver salary.

4. The taxable non-cash fringe benefit amount shall be included in the gross wages of the final pay period of the calendar year, and displayed in the box entitled "Taxable Benefits" on the W-2 Forms of the affected employees.

5. The taxable non-cash fringe benefit amount shall be included in taxable Federal wages and taxable State wages for New Jersey residents.

6. FICA and Medicare contributions, if required, shall be withheld for affected employees on the final pay period of the calendar year.

(c) Other fringe benefits and perquisites shall be taxable to the employee in accordance with State or Federal law.

6A:23A-4.3 Annual audit to assure income tax reporting compliance

The annual audit conducted pursuant to N.J.S.A. 18A:23-1 shall include test measures to assure that documentation prepared for income tax related purposes complies fully with the requirements of Federal and State laws and regulations regarding the compensation which is required to be reported.

6A:23A-4.4 Repeat annual audit recommendations; action required

(a) Districts that had repeat audit findings in the Auditor's Management Report submitted with the CAFR in any year shall, within 30 days of the CAFR submission, submit to the Executive County Superintendent or State fiscal monitor, as applicable, a specific corrective action plan for addressing the repeat audit findings noted in the Auditor's Management Report. The corrective action plan shall include the following:

1. Conditions that caused the repeat recommendation(s);
2. Corrective actions taken or to be taken and the dates or projected dates of such actions;
3. Internal controls put in place or to be put in place to prevent another repeat of the recommendation and the dates or projected dates of implementation of such controls; and
4. The administrator directly responsible for implementing the actions and controls in (a)2 and 3 above.

SUBCHAPTER 5. ADDITIONAL MEASURES TO ENSURE EFFECTIVE AND EFFICIENT EXPENDITURES OF DISTRICT FUNDS

6A:23A-5.1 Order to show cause to withhold or recover State aid due to excessive, unreasonable, ineffective or inefficient expenditures

(a) If the Department of Education identifies ineffective or inefficient expenditure(s) by a school district or county vocational school district, including, but not limited to, the practices prohibited in N.J.A.C. 6A:23A-5.2 through 5.9, the Commissioner shall, except as otherwise provided in (h) below, provide the school district or county vocational school district the opportunity to be heard as to why the amount of the ineffective or inefficient expenditure(s) shall not be withheld from State aid or refunded to the Department.

(b) The proceeding shall be instituted by an Order to Show Cause filed by the petitioner. The filing shall include a statement of factual findings along with a letter memorandum

setting forth the basis for the position that the expenditure(s) were ineffective or inefficient.

(c) The respondent(s) to whom the order is directed shall file, within 15 days, a response to the letter memorandum and an answer that meets the filing, service and format requirements for answers as set forth in N.J.A.C. 6A:3, Controversies and Disputes.

(d) The petitioner may file a reply to the response within 10 days.

(e) Upon review of the filings, the Commissioner may decide to hear the matter directly pursuant to N.J.S.A. 52:14F-8 or refer the matter to the Office of Administrative Law. If the Commissioner decides to transmit the matter to the Office of Administrative Law, such transmission shall be done on an expedited basis.

(f) If the Commissioner is hearing the matter directly, upon receipt of the filings set forth above, or upon expiration of the time for their submission, the Commissioner shall review the total record before him or her and render a written decision.

(g) The Commissioner's decision shall include a determination of whether the expenditure was ineffective or inefficient and, if so, the amount of funds to be withheld from State aid or refunded by the district.

(h) Nothing shall preclude the Commissioner from immediately and summarily withholding State aid, consistent with N.J.S.A. 18A:55-2, if, at any time, it is determined that the fiscal practices, actions or expenditures of a school official, board member, board or any other party under the Commissioner's jurisdiction are in violation of any statute, regulation, rule or directive of the State Board of Education or Commissioner of Education.

6A:23A-5.2 Public relations and professional services; board policies; efficiency

(a) Each school district and county vocational school district board shall establish by policy or policies a strategy or strategies in order to minimize the cost of public relations as defined in N.J.A.C. 6A:23A-9.3(c)14, and professional services. The policy or policies shall include, to the extent practical and cost effective, but need not be limited to, the following provisions:

1. A maximum dollar limit, established annually prior to budget preparation, for public relations, as defined in N.J.A.C. 6A:23A-9.3(c)14, and each type of professional service, with appropriate notification to the board of education if it becomes necessary to exceed the maximum. Upon such notification, the board of education may adopt a dollar increase in the maximum amount through formal board action;

2. Establishment of procedures to ensure the prudent use of legal services by employees and board of education members and the tracking of the use of those services.

3. Districts with legal costs that exceed 130 percent of the Statewide average per pupil amount should establish the following procedures and, if not established, provide evidence that such procedures would not result in a reduction of costs:

i. A limitation on the number of contact persons with the authority to request services or advice from contracted legal counsel;

ii. Criteria or guidance to prevent the use of legal counsel unnecessarily for management decisions or readily available information contained in district materials such as policies, administrative regulations or guidance available through professional source materials;

iii. A provision that requests for legal advice shall be made in writing and shall be maintained on file in the district offices and a process to determine whether the request warrants legal advice or if legal advice is necessary; and

iv. A provision to maintain a log of all legal counsel contact including name of legal counsel contacted, date of contact, issue discussed and length of contact. Legal bills shall be compared to the contact log and any variances shall be investigated and resolved;

4. A provision that requires that contracts for legal services comply with payment requirements and restrictions pursuant to N.J.S.A. 18A:19-1 et seq. and as follows:

i. Advance payments shall be prohibited;

ii. Services to be provided shall be described in detail in the contract;

iii. Invoices for payment shall itemize the services provided for the billing period; and

iv. Payment shall only be for services actually provided;

5. Professional services contracts are issued in a deliberative and efficient manner that ensures the district receives the highest quality services at a fair and competitive price or through a shared service arrangement. This may include, but is not limited to, issuance of such contracts through a request for proposals (RFP) based on cost and other specified factors or other comparable process; and

6. Professional services contracts are limited to non-recurring or specialized work for which the district does not possess adequate in-house resources or in-house expertise to conduct.

(b) School districts and county vocational school districts are prohibited from contracting with legal counsel or using in-house legal counsel to pursue any affirmative claim or

cause of action on behalf of district administrators and/or any individual board members for any claim or cause of action in which the damages to be awarded would benefit an individual rather than the district as a whole.

(c) School district and county vocational school district publications shall be produced and distributed in the most cost-efficient manner possible that will enable the district to inform and educate the target community. The use of expensive materials or production techniques where lower cost methods are available and appropriate, such as the use of multi-color glossy publications instead of suitable, less expensive alternatives, is prohibited.

(d) School districts and county vocational school districts are prohibited from distributing, via mass mailings or other means to the district community at large, publications that include the picture(s) of any members of the district board of education within 90 days before any election in which any board member is seeking any elective office or any election relating to district operations held in the district. Moreover, any publication(s) distributed by the district board of education via mass mailings or other means to the district community at large within 60 days before any election in which any board member is seeking any elective office or any election relating to district operations held in the district must be submitted to the Executive County Superintendent for review prior to distribution to ensure that the public funds are being expended in a reasonable and cost-effective manner.

(e) Public relations activities, such as booths at Statewide conferences, marketing activities and celebrations for opening schools and community events, and TV productions that are not part of the instructional program or do not provide, in a cost-effective way, information about district or board operations to the public, that are excessive in nature are prohibited. All activities involving promotional efforts to advance a particular position on school elections or any referenda are prohibited.

(f) Nothing in this section shall preclude boards of education from accepting donations or volunteer services from community members, local private education foundations and local business owners to conduct or assist in public relations services. Examples include, but are not limited to:

1. Providing district flyers, newsletters or other materials containing district related information of public concern to local businesses, public meeting places or other local organizations to display or make available for dissemination;
2. Making district related information of public concern available to local newspapers to publish related articles; and
3. Utilizing volunteered services of local community members, district employees, members of parent organizations or local businesses with expertise in related areas such as printing, advertising, publishing or journalism.

Special amendment, R.2009 d.35, effective December 18, 2008.
See: 41 N.J.R. 642(a).

In (c), inserted "and appropriate".

Amended by R.2009 d.394, effective December 21, 2009.

See: 41 N.J.R. 2381(a), 41 N.J.R. 4721(a).

In (a)2, substituted a period for "that should include:" at the end; added new (a)3; recodified former (a)3 through (a)5 as (a)4 through (a)6; and in (a)5, deleted "such as through a request for proposals based on cost and other specified factors or other comparable process" following "manner"; and inserted ". This may include, but is not limited to, issuance of such contracts through a request for proposals (RFP) based on cost and other specified factors or other comparable process".

6A:23A-5.3 Failure to maximize Special Education Medicaid Initiative (SEMI)

(a) Every school district and county vocational school district, with the exception of any district that obtains a waiver of the requirements of N.J.A.C. 6A:23A-5.3 pursuant to the procedures set forth at (b) below, shall take appropriate steps to maximize its revenue from the Special Education Medicaid Initiative (SEMI) Program by following the policies and procedures to maximize participation in the program as set forth in (d) below and to comply with all program requirements as set forth in (e) below.

(b) School districts and county vocational school districts may seek, in the prebudget year, a waiver of the requirements of N.J.A.C. 6A:23A-5.3 upon demonstration that for the subsequent school year: the district projects, based on reliable evidence, that it will have 40 or fewer Medicaid eligible classified students; or the district demonstrates that efforts to participate in SEMI would not provide a cost benefit to the district, based on the projection of the district's available SEMI reimbursement for the budget year as set forth in (c) below.

1. For the 2008-09 school year, the waiver request must be submitted to the Executive County Superintendent by September 1, 2008. The Executive County Superintendent shall promptly review the request and render a decision no later than September 30, 2008.

2. Beginning with the 2009-2010 school year, the application for a waiver of the requirements of this section shall be made to the Executive County Superintendent no less than 45 days prior to the submission of the district's proposed budget for the school year to which the waiver request applies. The Executive County Superintendent shall notify the district of the decision on the waiver application within 20 days of receipt of the waiver request. If the waiver is not granted, the district shall submit a SEMI action plan to the Executive County Superintendent as required by (f) below as part of its annual district budget submission or demonstrate to the Executive County Superintendent that the district has achieved maximum participation in the SEMI program in the prebudget year.

(c) As part of the annual budget information, the Department shall provide each school district and county vocational school district with a projection of available SEMI reimbursement for the budget year, as determined by the State De-

partment of Treasury's third party administrator for SEMI. The projection shall be based on the following: the number of Medicaid eligible students; assumption of 20 services per eligible students per year; one IEP meeting per eligible student per year; and applicable SEMI reimbursement rates.

1. Beginning with the 2009-2010 school year, the district shall recognize as revenue in its annual district budget no less than 90 percent of said projection.

2. A school district or county vocational school district may seek approval from the Executive County Superintendent to use its own projection of SEMI reimbursement upon demonstration that the numbers it used in calculating the projection are more accurate than the projection provided.

(d) Each school district or county vocational school district shall strive to achieve maximum participation in the SEMI program. For purposes of this section, "maximum participation" means obtaining a 90 percent return rate of parental consent forms for all SEMI eligible students. Districts shall enter all students following their evaluations into the third-party system to identify the district's universe of eligible students. This can be done without parental consent.

(e) Districts participating in the SEMI reimbursement program shall comply with program requirements as follows:

1. Each school district or county vocational school district board shall implement a policy concerning the effective and efficient administration of the SEMI reimbursement program consistent with the requirements of this section. A complete listing of requirements and information are available at the SEMI/MAC website <http://www.state.nj.us/treasury/administration/SemiMac.htm>.

2. Any service submitted to Medicaid for reimbursement shall be rendered by a Medicaid qualified practitioner, or rendered by a provider under the supervision of a Medicaid qualified practitioner. The following outlines the required documentation for each related service provider:

- i. Nurses – copy of license (Department of Education (DOE) certification is not required for SEMI);
- ii. Occupational Therapist – copy of license and DOE certification;
- iii. Physical Therapist – copy of license and DOE certification;
- iv. Psychologist – copy of DOE certification;
- v. Social Worker – copy of DOE certification; and
- vi. Speech Therapist:

(1) A copy of DOE certification and American Speech-Language-Hearing Association (ASHA) certification;

(2) A copy of DOE certification and past or present license (on or after January 1, 1993); or

(3) A copy of DOE certification and documentation that the equivalent educational requirements and work experience necessary for ASHA certification have been met.

3. Practitioners who are not Medicaid qualified can deliver services under the direction of Medicaid qualified practitioners. These include certified occupational therapist assistants (COTAs), physical therapist assistants (PTAs) and speech correctionists.

4. Any direct therapy or other related service shall be prescribed in the related services section of the student's Individualized Education Plan (IEP) prior to submitting a claim to Medicaid for reimbursement. Delivery of nursing services and dispensing of medication must be referenced in the IEP and supported by physicians' orders or prescriptions. These documents must be maintained on file. Supporting documentation to be maintained by the district shall be the cover/signature page, related services section of the IEP, therapy logs, and the evaluations and assessments conducted by the Medicaid-qualified practitioners.

5. Entities where the district has placed SEMI eligible students shall take steps to enable districts to maximize participation, including either logging the eligible services provided directly through the vendor or the sending district, as mutually agreed upon with the district, and obtaining SEMI provider qualification certifications. Every out-of-district placement must provide copies of SEMI provider qualifications, certifications and licenses. This paragraph applies to the following out-of-district placement options:

- i. Approved private schools for students with disabilities;
- ii. Educational services commissions;
- iii. Jointure commissions;
- iv. Vocational half-time programs;
- v. Department of Education regional day schools; and
- vi. Special Service School Districts.

6. All supporting documentation for a Medicaid claim shall be maintained on file and available for audit or State review for at least seven years from the date of service. Supporting documentation shall include provider certification (current and historical for each provider), provider service logs, licenses and certifications, **physician authorizations** for nursing services, parental consent forms, attendance records, and copies of the student IEP.

(f) Each district that has less than 90 percent participation of SEMI eligible students in the 2007-2008 school year or has failed to comply with all program requirements set forth in (e)

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 executive 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 second 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 second 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 second 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 second school year following the contract year. The executive 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 second 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 second 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 second year following the contract year;
- ii. Exclude from the net budget cap calculation, if applicable, the budgeted fund balance and appropriation of the legal reserve in the second 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 = 0.5x(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.

Recodified from N.J.A.C. 6A:23-3.1 and amended by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

In the introductory paragraph of (b), substituted "18A:7F-50" for "18A:7F-13" and "18A:7F-55" for "18A:7F-19", and inserted the last sentence; rewrote (b)3; in (e)1i, inserted "and"; in (e)1ii, deleted "; and" from the end; deleted (e)1iii; in (e)2v, inserted "executive"; in the introductory paragraph of (e)3 and of (e)4, inserted "and"; in the introductory paragraph of (e)4, substituted "(b)" for "(a)"; in the introductory paragraph of (e)7i, deleted "except for special education programs," following "determined,"; in (e)7i(3), substituted "have" for "has"; rewrote (e)8i; deleted (e)8ii; in (f)1, substituted "18A:7F-45" for "18A:7F-3"; in (f)3, (f)5 and (f)7, inserted "executive"; in (f)3, (f)6, (f)7, the introductory paragraph of (f)8, (f)8i and (f)8ii, substituted "second" for "third"; and in (f)8)ii, inserted ", if applicable,".

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).

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).

6A:23A-17.2 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 second 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 second 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 second 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 second 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".

Recodified from N.J.A.C. 6A:23-3.2 and amended by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

In (c) and (d), substituted "second" for "third" twice.

6A:23A-17.3 County vocational-technical school districts funding; public school district tuition payments, post-secondary vocational-technical education fund sources

(a) This section will be effective with the calculation of certified rates beginning with fiscal year 2010-2011. The board of education of any county vocational-technical school district may receive, but not be limited to, the following general fund revenue and fund sources for programs and services provided to students of local public school districts within or outside the county:

1. State aid received pursuant to N.J.S.A. 18A:7F-43 et seq. and other sources of unrestricted State aid;

(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:9B 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:9B and 6A:23A-18.1 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:9B that require certification and N.J.A.C. 6A:23A-18.1 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:9B-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:23A-18.5(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:23A-18.2(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.

Recodified from N.J.A.C. 6A:23-4.2 and amended by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

Updated the N.J.A.C. references throughout.

Administrative change.

See: 46 N.J.R. 1743(a).

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 [now N.J.A.C. 6A:23A-18.2] 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).

6A:23A-18.3 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:23A-18.2(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:23A-18.2.

(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.

Recodified from N.J.A.C. 6A:23-4.3 and amended by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

In (e)3 and (g), updated the N.J.A.C. reference.

Case Notes

Department's revocation of a school's status as an approved private school for the disabled was proper where the parties' settlement agreement provided that the school had until March 31, 2008, to comply with the regulatory requirement for an average daily enrollment of 24 public school placement students and the school did not meet the requirement; the agreement was entered into freely by both parties after conferring before the ALJ, the terms of the settlement were clear, and there was no evidence that the Department entered into the agreement in bad faith (decided under former N.J.A.C. 6A:23-4.3) (adopting with modification 2009 N.J. AGEN LEXIS 326). *Kentwood Academy v. Davy* (On Remand), OAL Dkt. No. EDU 7165-08, 2009 N.J. AGEN LEXIS 638, Final Decision (July 27, 2009).

6A:23A-18.4 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 supplemented as prepared, published and distributed by the Com-

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.

Recodified from N.J.A.C. 6A:23-4.5 and amended by R.2009 d.395,
effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

Updated the N.J.A.C. references throughout.

Petition for Rulemaking.

See: 44 N.J.R. 2966(b).

Petition for Rulemaking.

See: 45 N.J.R. 57(a).

Administrative change.

See: 46 N.J.R. 1743(a).

Case Notes

Under former regulations (see now N.J.A.C. 6A:23A-18.1 et seq.), the New Jersey Department of Education acted arbitrarily, unreasonably, or improperly when it disallowed certain costs and expenses that a private school for the handicapped included in tuition rates charged to the sending public school districts; other disallowances were proper (adopting in part, rejecting in part, and remanding 2008 N.J. AGEN 812). *Archway Programs, Inc. v. N.J. Dep't of Educ.*, OAL Dkt. No. EDU 6956-00, EDU 8646-00, EDU 4834-01, EDU 4607-03, EDU 4608-03 and EDU 427-06 (Consolidated), 2008 N.J. AGEN LEXIS 1095, Final Decision (December 4, 2008).

Staff salary increase of 3% given by a non-profit corporation that operated a private school for the handicapped program was an allowable cost in the computation of tuition charged to sending districts under former regulations (see now N.J.A.C. 6A:23A-18.5, 6A:23A-18.4). The delay in the initiation of the payment of the salary increase did not convert it into a bonus, and the school-year budget contained allocated money for the salary increase (adopting in part, rejecting in part, and remanding 2008 N.J. AGEN 812). *Archway Programs, Inc. v. N.J. Dept. of Educ.*, OAL Dkt. No. EDU 6956-00, EDU 8646-00, EDU 4834-01, EDU 4607-03, EDU 4608-03 and EDU 427-06 (Consolidated), 2008 N.J. AGEN LEXIS 1095, Final Decision (December 4, 2008).

New Jersey Department of Education should not have disallowed salary payments of personnel who worked for a period of time without an emergency certification, in the computation of tuition rates charged by a private school for the handicapped to the sending public school districts. There was a shortage of appropriately certified special education personnel in New Jersey during the time period at issue, and the equitable doctrine of substantial compliance applied; the non-profit corporation operating the school filed for the certificates, lengthy processing delays occurred, and, in each case, the staff person had the necessary qualifications and eventually received the certificate, and the sending public school districts did not suffer any prejudice (decided under former rules) (adopting in part, rejecting in part, and remanding 2008 N.J. AGEN 812). *Archway Programs, Inc. v. N.J. Dept. of Educ.*, OAL Dkt. No. EDU 6956-00, EDU 8646-00, EDU 4834-01, EDU 4607-03, EDU 4608-03 and EDU 427-06 (Consolidated), 2008 N.J. AGEN LEXIS 1095, Final Decision (December 4, 2008).

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 estab-

lishing 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 [now N.J.A.C. 6A:23A-18.2] 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 [now N.J.A.C. 6A:23A-18.5(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:23A-18.6 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:23A-18.2(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:23A-18.5(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).
Recodified from N.J.A.C. 6A:23-4.6 and amended by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

In (b) and (c), updated the N.J.A.C. references.

6A:23A-18.7 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:23A-18.2(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).

Recodified from N.J.A.C. 6A:23-4.7 and amended by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

In (d), updated the N.J.A.C. reference.

6A:23A-18.8 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".

Recodified from N.J.A.C. 6A:23-4.8 by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

6A:23A-18.9 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

(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 guardian(s) temporarily moves from one district board of education to another is the district in which the parent(s) or guardian(s) last resided prior to becoming homeless. This district shall be designated as the district of residence for as long as the parent(s) or guardian(s) remains homeless.

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".

Recodified from N.J.A.C. 6A:23-5.2 and amended by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

In (a)1, substituted "18A:7F-45" for "18A:7F-3"; and in (a)2, substituted "most recent" for "initial" and deleted the last sentence.

Case Notes

Residency appeal by a school district, challenging the determination that it was the district of residence of a family for school funding purposes, was time-barred under the 30-day filing requirement where the appeal was not filed until 105 days after the decision. The relaxation rule found at N.J.A.C. 6A:3-1.16 was restricted to the rules set forth in Chapter 3 and, even applying general principles of equity, the district failed to advance a compelling reason to justify excusing it from the 30-day filing requirement (decided under former N.J.A.C. 6A:23-5.2(d)) (adopting 2009 N.J. AGEN LEXIS 168). Bd. of Educ. of Magnolia v. Bd. of Educ. of Deptford, OAL Dkt. No. EDU 994-07 and EDU 8783-07, 2009 N.J. AGEN LEXIS 844, Final Decision (May 5, 2009).

Petitioning Board was responsible for payment of a student's educational program at a residential facility where the ALJ's conclusion that the petitioning Board was the district of residence was not arbitrary, capricious, or unreasonable; the case hinged on the conflicting testimony of witnesses as to the mother's residency and the ALJ decided, as was her prerogative, that the Department's witnesses were more credible than the Board's (decided under former N.J.A.C. 6A:23-5.2) (adopting 2008 N.J. AGEN LEXIS 944). Bd. of Educ. of Bound Brook v. R.B. ex rel. D.B., OAL Dkt. No. EDU 2990-07, 2008 N.J. AGEN LEXIS 1420, Final Decision (December 29, 2008).

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) [now N.J.A.C. 6A:23A-19.2(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:23A-19.3 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 most recent admission to a State facility or placement by a State agency shall be submitted. If the child resides in a resource family home, the present address of the resource family parent(s) shall be submitted pursuant to N.J.S.A. 18A:7B-12.

2. If the child's parents are divorced with joint guardianship, the present address of the individual parent with whom the child resided as of the date required by N.J.A.C. 6A:23A-19.2(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 equally, the present address of both the child's father and mother as of the date required by N.J.A.C. 6A:23A-19.2(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 in a non-resource family home with a relative for less than one year immediately prior to the child's most recent admission to a State facility or most recent placement by a State agency, the present address of the child's parent(s) or guardian(s) at the time this placement is submitted.

6. If the child resides in a non-resource family home with a relative pursuant to N.J.S.A. 18A:38-1d for one or more years immediately prior to the child's most recent admission to a State facility or most recent placement by a State agency, the present address of the child's relative(s) at the time of this 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:23A-19.2(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.

Recodified from N.J.A.C. 6A:23-5.3 and amended by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

Rewrote (a)1 through (a)7.

SUBCHAPTER 20. PURCHASE AND LOAN OF TEXTBOOKS

6A:23A-20.1 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".

Recodified from N.J.A.C. 6A:23-6.1 by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

6A:23A-20.2 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.

Recodified from N.J.A.C. 6A:23-6.2 by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

6A:23A-20.3 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.

Recodified from N.J.A.C. 6A:23-6.3 by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

6A:23A-20.4 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).

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".

Recodified from N.J.A.C. 6A:23-7.2 by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

6A:23A-21.3 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.

Recodified from N.J.A.C. 6A:23-7.3 by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

6A:23A-21.4 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.

Recodified from N.J.A.C. 6A:23-7.4 by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

6A:23A-21.5 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 system 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.

Recodified from N.J.A.C. 6A:23-7.5 by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

6A:23A-21.6 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).

Recodified from N.J.A.C. 6A:23-7.6 by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

SUBCHAPTER 22. FINANCIAL OPERATIONS OF CHARTER SCHOOLS

6A:23A-22.1 Definitions

The words and terms as used in this subchapter are defined in N.J.A.C. 6A:23A-15.1.

New Rule, R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

6A:23A-22.2 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:23A-16.

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:23-9.2 and amended by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

Updated the N.J.A.C. reference.

6A:23A-22.3 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:9B-11.7 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".

Recodified from N.J.A.C. 6A:23-9.3 and amended by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

Updated the N.J.A.C. reference.

Administrative change.

See: 46 N.J.R. 1743(a).

6A:23A-22.4 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".

Recodified from N.J.A.C. 6A:23-9.6 by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

6A:23A-22.5 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".

Recodified from N.J.A.C. 6A:23-9.7 by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

6A:23A-22.6 Public relations and professional services; board policies; efficiency

(a) Each charter school board shall establish by policy or policies a strategy or strategies in order to minimize the cost of public relations as defined in N.J.A.C. 6A:23A-9.3(c)14, and professional services. The policy or policies shall include, to the extent practicable and cost effective, but need not be limited to, the following provisions:

1. A maximum dollar limit, established annually prior to budget preparation, for public relations, as defined in N.J.A.C. 6A:23A-9.3(c)14, and each type of professional service, with appropriate notification to the board of trustees if it becomes necessary to exceed the maximum. Upon such notification, the board of trustees may adopt a dollar increase in the maximum amount through formal board action;

2. Establishment of procedures to ensure the prudent use of legal services by employees and board of trustees' members and the tracking of the use of those services;

3. Charter schools with legal costs that exceed 130 percent of the Statewide average charter school per pupil amount should establish the following procedures and, if not established, provide evidence that such procedures would not result in a reduction of costs:

i. A limitation on the number of contact persons with the authority to request services or advice from contracted legal counsel;

ii. Criteria or guidance to prevent the use of legal counsel unnecessarily for management decisions or readily available information contained in charter school materials such as policies, administrative regulations or guidance available through professional source materials;

iii. A provision that requests for legal advice shall be made in writing and shall be maintained on file in the business office and a process to determine whether the request warrants legal advice or if legal advice is necessary; and

iv. A provision to maintain a log of all legal counsel contact including name of legal counsel contacted, date of contact, issue discussed and length of contact. Legal bills shall be compared to the contact log and any variances shall be investigated and resolved;

4. A provision that requires that contracts for legal services comply with payment requirements and restrictions pursuant to N.J.S.A. 18A:19-1 et seq. and as follows:

i. Advance payments shall be prohibited;

ii. Services to be provided shall be described in detail in the contract;

iii. Invoices for payment shall itemize the services provided for the billing period; and

iv. Payment shall only be for services actually provided;

5. Professional services contracts are issued in a deliberative and efficient manner that ensures the charter school receives the highest quality services at a fair and competitive price or through a shared service arrangement. This may include, but is not limited to, issuance of such contracts through a request for proposals (RFP) based on

cost and other specified factors or other comparable process; and

6. Professional services contracts are limited to non-recurring or specialized work for which the charter school does not possess adequate in-house resources or in-house expertise to conduct.

i. Charter schools are prohibited from contracting with legal counsel or using in-house legal counsel to pursue any affirmative claim or cause of action on behalf of charter school administrators and/or any individual board members for any claim or cause of action in which the damages to be awarded would benefit an individual rather than the charter school as a whole.

ii. Charter school publications shall be produced and distributed in the most cost-efficient manner possible that will enable the charter school to inform and educate the target community. The use of expensive materials or production techniques where lower cost methods are available and appropriate, such as the use of multi-color glossy publications instead of suitable, less expensive alternatives, is prohibited.

iii. Public relations activities, such as booths at Statewide conferences, marketing activities and celebrations for opening schools and community events, and TV productions that are not part of the instructional program or do not provide, in a cost-effective way, information about charter school or board operations to the public, that are excessive in nature are prohibited. All activities involving promotional efforts to advance a particular position on elections or any referenda are prohibited.

iv. Nothing in this section shall preclude boards of trustees from accepting donations or volunteer services from community members, local private education foundations and local business owners to conduct or assist in public relations services. Examples include, but are not limited to:

(1) Providing charter school flyers, newsletters or other materials containing charter school related information of public concern to local businesses, public meeting places or other local organizations to display or make available for dissemination;

(2) Making charter school related information of public concern available to local newspapers to publish related articles; and

(3) Utilizing volunteered services of local community members, charter school employees, members of parent organizations or local businesses with expertise in related areas such as printing, advertising, publishing or journalism.

New Rule, R.2009 d.395, effective December 21, 2009.
See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

6A:23A-22.7 Charter school response to Office of Fiscal Accountability and Compliance (OFAC) investigation report

(a) Any charter school that has been subject to an audit or investigation by the Department's Office of Fiscal Accountability and Compliance (OFAC) shall discuss the findings of the audit or investigation at a public meeting of the charter school board of trustees no later than 30 days after receipt of the findings.

(b) Within 30 days of the public meeting required in (a) above, the charter school board of trustees shall adopt a resolution certifying that the findings were discussed in a public board meeting and approving a corrective action plan to address the issues raised in the findings. This resolution shall be submitted to OFAC within 10 days of adoption by the board of trustees.

New Rule, R.2009 d.395, effective December 21, 2009.
See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

6A:23A-22.8 Verification of payroll check distribution

(a) Beginning with the 2009-2010 school year, at least once every three years, between the months of September through May, charter schools shall require each charter school employee to report to a central location(s) and produce picture identification and sign for release of his or her paycheck or direct deposit voucher. The district may exclude per diem substitutes from the required verification.

(b) Picture identification shall be in the form of a charter school issued identification card, valid drivers' license, official passport or other picture identification issued by a state, county or other local government agency.

(c) The chief school administrator/lead person shall designate an appropriately qualified staff member to match the picture identification to the employee roster maintained by the office of personnel or human resources prior to release of the pay check or direct deposit voucher.

(d) Where no appropriate identification can be produced, the school business administrator shall withhold paychecks or stop direct deposits until such time that the payee/charter school employee can produce appropriate identification or until an investigation and corrective action is concluded, as appropriate to the circumstances.

(e) Upon completion of the payroll check distribution verification procedures set forth in this section, the chief school administrator/lead person shall submit a certification of compliance, in a form prescribed by the Department, to the executive county superintendent. **Verification of the charter school's compliance with the provisions of this section will be required as part of the annual audit.**

New Rule, R.2009 d.395, effective December 21, 2009.
See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).