

**SUBCHAPTER 16. DOUBLE-ENTRY BOOKKEEPING AND GAAP ACCOUNTING**

- 6A:23A-16.1 Prescribed system of double-entry bookkeeping and GAAP accounting
- 6A:23A-16.2 Principles and directives for accounting and reporting
- 6A:23A-16.3 Conflicts between legal provisions and GAAP
- 6A:23A-16.4 Minimum bond requirements for treasurer of school moneys
- 6A:23A-16.5 Supplies and equipment
- 6A:23A-16.6 Mechanical bookkeeping systems
- 6A:23A-16.7 Employee organizational dues
- 6A:23A-16.8 Petty cash fund
- 6A:23A-16.9 Summer payment plan
- 6A:23A-16.10 Budgetary controls and overexpenditure of funds
- 6A:23A-16.11 Internal service funds
- 6A:23A-16.12 Student activity funds
- 6A:23A-16.13 School store business practices
- 6A:23A-16.14 Dismissal or reassignment of a school business administrator
- 6A:23A-16.15 Appeals

**SUBCHAPTER 17. TUITION PUBLIC SCHOOLS**

- 6A:23A-17.1 Method of determining tuition rates for regular public schools
- 6A:23A-17.2 Method of determining tuition rate in a new district board of education
- 6A:23A-17.3 County vocational school districts funding; public school district tuition payments, post-secondary vocational-technical education fund sources
- 6A:23A-17.4 Method of determining tuition rates for county vocational school districts
- 6A:23A-17.5 County special services school districts funding; budget limitations; tuition payments
- 6A:23A-17.6 Calculation of maximum general fund budget net of county contribution and maximum average tuition rate
- 6A:23A-17.7 Method of determining tuition rates for county special services schools

**SUBCHAPTER 18. TUITION FOR PRIVATE SCHOOLS FOR STUDENTS WITH DISABILITIES**

- 6A:23A-18.1 Definitions
- 6A:23A-18.2 Tuition rate procedures
- 6A:23A-18.3 New approved private schools for students with disabilities
- 6A:23A-18.4 Bookkeeping and accounting
- 6A:23A-18.5 Non-allowable costs
- 6A:23A-18.6 Surcharge
- 6A:23A-18.7 Public school placement restricted working capital fund
- 6A:23A-18.8 Calculation of student attendance
- 6A:23A-18.9 Audit requirements
- 6A:23A-18.10 Appeals
- 6A:23A-18.11 Out-of-State approved private schools for students with disabilities
- 6A:23A-18.12 Inspection of records
- 6A:23A-18.13 Fiscal monitoring of approved private schools for students with disabilities and corrective action plans
- 6A:23A-18.14 Fiscal information
- 6A:23A-18.15 Failure to comply with Department directives
- 6A:23A-18.16 Sale of assets of an approved private school for students with disabilities

**SUBCHAPTER 19. EMERGENCY STATE AID AND RESIDENCY DETERMINATION**

- 6A:23A-19.1 Emergency aid
- 6A:23A-19.2 Method of determining the district of residence
- 6A:23A-19.3 Address submission for determining the district of residence

**SUBCHAPTER 20. PURCHASE AND LOAN OF TEXTBOOKS**

- 6A:23A-20.1 Eligibility
- 6A:23A-20.2 Responsibility of the district board of education
- 6A:23A-20.3 Individual requests
- 6A:23A-20.4 Ownership and storage of textbooks
- 6A:23A-20.5 Accounting entries
- 6A:23A-20.6 Charge for textbook loss or damage

**SUBCHAPTER 21. MANAGEMENT OF PUBLIC SCHOOL CONTRACTS**

- 6A:23A-21.1 Change orders and open-end contracts
- 6A:23A-21.2 Acceptance of bonds under the Public School Contracts Law
- 6A:23A-21.3 Public sale of bonds
- 6A:23A-21.4 Contracts for behind-the-wheel driver education
- 6A:23A-21.5 Joint purchasing systems
- 6A:23A-21.6 Multi-year leasing

**SUBCHAPTER 22. FINANCIAL OPERATIONS OF CHARTER SCHOOLS**

- 6A:23A-22.1 Definitions
- 6A:23A-22.2 Bookkeeping and accounting for charter schools
- 6A:23A-22.3 Certification
- 6A:23A-22.4 Financial requirements
- 6A:23A-22.5 Public school contract law
- 6A:23A-22.6 Public relations and professional services; board policies; efficiency
- 6A:23A-22.7 Charter school response to Office of Fiscal Accountability and Compliance (OFAC) investigation report
- 6A:23A-22.8 Verification of payroll check distribution
- 6A:23A-22.9 Board of trustees expenditures for non-employee activities, meals, and refreshments
- 6A:23A-22.10 Nepotism policy
- 6A:23A-22.11 Contributions to board members and contract awards
- 6A:23A-22.12 Internal controls
- 6A:23A-22.13 Segregation of duties; organization structure
- 6A:23A-22.14 Standard operating procedures (SOPs) for business functions
- 6A:23A-22.15 Approval of amounts paid in excess of approved purchase orders; board policy

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

(a) The purpose of this chapter is to assure the financial accountability of district boards of education through enhanced State monitoring, oversight, and authority, and to ensure each district board of education adopts an annual budget that provides adequate resources to meet the State Constitution's mandate for a thorough and efficient system of free public schools for all children. This chapter sets forth the roles of the Commissioner of Education and the executive county superintendent in overseeing district board of education budgeting and expenditures. The chapter also establishes mechanisms to ensure the efficient expenditure of budgeted funds in a manner consistent with a school district's approved annual budget.

(b) Pursuant to this chapter, the Commissioner delegates to the executive county superintendent powers, tasks, and duties

that further support efficiency of school district operation pursuant to N.J.S.A. 18A:7F-43 et seq., and that complement the powers, tasks, and duties set forth in N.J.S.A. 18A:7-1 et seq.

1. The rules effectuate the provisions of P.L. 2006, c. 15; P.L. 2007, c. 53; P.L. 2007, c. 62; P.L. 2007, c. 260; P.L. 2007, c. 63; P.L. 2008, c. 36; P.L. 2008, c. 37; P.L. 2009, c. 19; P.L. 2010, c. 39; P.L. 2010, c. 44; P.L. 2010, c. 49; P.L. 2010, c. 121; P.L. 2011, c. 202; P.L. 2012, c. 78; P.L. 2013, c. 173; P.L. 2013, c. 280; P.L. 2015, c. 46; and P.L. 2015, c. 157.

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

In (b)1, substituted a comma for "and" preceding "P.L. 2007", and inserted ", and P.L. 2008, c. 37".

Amended by R.2017 d.089, effective May 1, 2017.

See: 48 N.J.R. 2665(a), 49 N.J.R. 1038(a).

Rewrote the section.

## 6A:23A-1.2 Definitions

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

"Additional administrative position salary increment" means \$5,000 for an additional administrative position held by a superintendent, as set forth in N.J.A.C. 6A:23A-3.1(e)2.

"Additional school district salary increment" means \$15,000 for each additional school district served by a single superintendent pursuant to N.J.S.A. 18A:17-24.1.

"Adjusted tax levy" means the property tax levy for current purposes, excluding any debt pursuant to N.J.S.A. 18A:7F-37.

"Administrative cost" means total administrative costs as reflected in the Taxpayers' Guide to Education Spending and defined in the Uniform Minimum Chart of Accounts for New Jersey Public Schools and by the National Center for Education Statistics (NCES), as referred to at N.J.A.C. 6A:23A-16.2(f)1, and other reporting directives published and distributed by the Commissioner pursuant to N.J.S.A. 18A:4-14 and N.J.A.C. 6A:23A-16.2.

"Administrator" means as set forth in N.J.S.A. 18A:12-23.

"Annual audit" means the audit conducted pursuant to the provisions of N.J.S.A. 18A:23-1 et seq. and the Federal Single Audit Act of 1984, Public Law 98-502, amended by Public Law 104-156, of the district board of education's Comprehensive Annual Financial Report.

"Annual audit program" means the uniform program published and distributed by the Commissioner for preparation of the Comprehensive Annual Financial Report by a district board of education pursuant to N.J.S.A. 18A:4-14 and N.J.A.C. 6A:23A-16.2(i).

"Annual salary" shall include, but not be limited to, base pay, increments, stipends, or payments for additional positions, annuities, and/or longevity, and the total of per diem payments.

"Authorized membership of the district board of education" means the full membership of the district board of education as established pursuant to Title 18A of the New Jersey Statutes.

"Base budget" means the district board of education's school budget that contains an adjusted tax levy calculated pursuant to the provisions of N.J.S.A. 18A:7F-38 and 39, State aid, other than preschool education aid, received pursuant to the provisions of N.J.S.A. 18A:7F-43 et seq., miscellaneous revenue estimated pursuant to GAAP, and designated general fund balance; but exclusive of additional spending proposals submitted to the voters or board of school estimate.

"Board of trustees" means the public agents authorized by the State Board of Education to supervise and control a charter school pursuant to the provisions of N.J.S.A. 18A:36A-1 et seq.

"Business" means any corporation, partnership, firm, enterprise, franchise, trust, association, sole proprietorship, union, political organization, or other legal entity, but shall not include a local public school district or any other public entity.

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

"Capital outlay" means capital outlay as defined in GAAP.

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

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

"Capital projects fund deficit" means the amount of the sum of expenditures and encumbrances for a capital project that exceeds the total amount of funds authorized for the capital project by the State, district's voters by referendum, the board of school estimate, or the capital projects control board, as applicable.

"Capital reserve account" means the account established by a district board of education pursuant to N.J.S.A. 18A:7G-31 and 18A:7F-41 into which monies are deposited to help finance a school district's local share of its long-range facilities plan.

and "program by learning disability category" for "class by handicap classification"; in (b)1, substituted "school district's" for "school's"; in (b)2, inserted "district" and substituted a period for "; and"; deleted former (b)3 through (f); added new (c) through (f); in (g), substituted "6A:23A-17.1(e)" for "6A:23-3.1(e)" and "through (f)" for "; (d) and (e)"; and in (i), substituted "6A:23A-17.2" for "6A:23-3.2".

Amended by R.2017 d.088, effective May 1, 2017.

See: 48 N.J.R. 2719(a), 49 N.J.R. 1079(a).

In (d)4, substituted "prior-year" for "prior year"; in (e)3, deleted a comma following "programs"; and inserted commas throughout the section.

#### Case Notes

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

### SUBCHAPTER 18. TUITION FOR PRIVATE SCHOOLS FOR STUDENTS WITH DISABILITIES

#### 6A:23A-18.1 Definitions

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

"Administrative costs" means those costs defined as administrative costs as prescribed by the Commissioner in the chart of accounts required in accordance with N.J.A.C. 6A:23A-18.4(a)7.

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

"Assistant Director" means an individual whose job function includes a majority of the following: the formulation of school goals, plans, policies, and budgets and the recommendation of their approval to the school's board of directors; the recommendations for all staff appointments and other personnel actions, such as terminations, suspensions and compensation, including the appointment of the business manager to the school's board of directors; responsibility for school operations and programs including administration, supervision and evaluation of administrators, supervisors, and all other school staff. The holder of this job title shall hold a



bachelor's degree from an accredited institution but is not required to hold a school certification.

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

"Bonus" means any payment to an employee which:

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

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

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

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

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

"Contingent pay increase" means a staff salary increase of either a certain dollar amount or percentage of contracted salary that is paid to all staff in the event that the approved private school for students with disabilities attains the predetermined average daily enrollment for the school year that was filed with and approved by the Commissioner.

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

"Entertainment expenses" means the cost of providing any type of food/beverage to school officers, school directors/

trustees, consultants and/or individuals providing services to the school at any time or to school employees after school hours.

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

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

"Final tuition rate" means an amount equal to or less than the certified actual cost per student calculated in accordance with N.J.A.C. 6A:23A-18.2(a).

"Instructional costs" means those costs defined as instructional costs as prescribed by the Commissioner in the chart of accounts required in accordance with N.J.A.C. 6A:23A-18.4(a)7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rewrote the section.

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

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

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

Recodified from N.J.A.C. 6A:23-4.1 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 definitions "Administrative costs" and "Instructional costs", substituted "6A:23A-18.4(a)7" for "6A:23-4.4(a)7"; and in definition "Final tuition rate", substituted "6A:23A-18.2(a)" for "6A:23-4.2(a)".

#### Case Notes

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

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

#### 6A:23A-18.2 Tuition rate procedures

(a) The board of directors of an approved private school for students with disabilities located in New Jersey shall determine the final tuition rate charged to be an amount less than or equal to the certified actual cost per student. The board of directors shall identify the certified actual cost per student and final tuition rate charged in the audited financial statements submitted to the Department pursuant to N.J.A.C. 6A:23A-18.9.

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

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

2. If the approved private school for students with disabilities proposes to charge a final tuition rate in excess of 10 percent above the tentative tuition rate charged, the private school shall notify each sending district board of education and the Assistant Commissioner, Division of Finance that such an increase will be charged and the reason for the increase on or before the following dates: December 15th for the first quarter, March 15th for the second quarter, June 15th for the third quarter and September 15th for the fourth quarter, or the next business day when applicable. The determination of a final tuition rate in excess of 10 percent above the tentative tuition rate charged shall be based on the completion of the required quarterly financial report in accordance with N.J.A.C. 6A:23A-18.4(a)11.

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

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



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

4. Unless otherwise determined pursuant to (b) below, the approved private school for students with disabilities shall charge one tentative tuition rate, charge one final tuition rate, and calculate one certified actual cost per student for the school year.

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

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

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

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

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

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

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

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

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

3. Prepare in the Department-prescribed format the audited costs by class type for the first two years that tuition

is charged by class type in order for the Commissioner to determine the tentative tuition rates in accordance with (i) below; and

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

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

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

iii. Direct costs.

(c) An approved private school for students with disabilities shall record direct costs that can be specifically attributed to a program and/or revenue source, in the prescribed bookkeeping and accounting system pursuant to N.J.A.C. 6A:23A-18.4(a)8.

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

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

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

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

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

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

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

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

2. Indirect cost centers established as follows:

i. A cost center, which shall include indirect costs that are allowable costs in accordance with N.J.A.C. 6A:23A-18; and

ii. A cost center, which shall include indirect non-allowable costs in accordance with N.J.A.C. 6A:23A-18.

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

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

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

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

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

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

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

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

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

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

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

ii. Option 2: A sending district board of education shall pay the approved private school for students with disabilities no later than 60 days after the last day of each month in which services were rendered. A sending district board of education that fails to pay tuition by the 60th day after the last day of a month in which services were rendered may be charged interest by the private school calculated at the rate of one percent per month on the unpaid balance.

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

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

2. The maximum tentative tuition rate includes:

i. For profit-making schools, the annual surcharge permitted in accordance with N.J.A.C. 6A:23A-18.6; and

ii. For non-profit schools, a public school placement restricted working capital fund in accordance with N.J.A.C. 6A:23A-18.7.



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

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

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

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

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

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

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

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

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

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

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

Expenses associated with certain "spring trips" taken by students and staff of an approved private school for students with disabilities were properly included in the calculation of the tuition rate charged to sending public school districts by the Office of Fiscal Accountability and Compliance (OFAC). Not only were those trips consistent with each student's IEP, but the school also had fully complied with all other requirements. Moreover, the costs at issue were ordinary and necessary and not in excess of the cost which would be incurred by an ordinarily prudent person in the administration of public funds. Bd. of Trustees of the Passaic Cnty. Elks Cerebral Palsy Ctr., Comm'r of Educ. v. New Jersey Dep't of Educ., Office of Fiscal Accountability & Compliance, OAL DKT. NO. EDU 16074-12, 2014 N.J. AGEN LEXIS 1152, Final Administrative Determination (August 14, 2014).

Determination of New Jersey Department of Education, Office of Fiscal Accountability and Compliance, was reversed and an administrative law judge ordered that tuition rates be recalculated to reflect that the costs of two field trips for students of the Passaic County Elks Cerebral Palsy Center were allowable costs pursuant to N.J.A.C. 6A:23A-18.2(a)1. The trips abounded with relevant and necessary educational and transitional opportunities to generalize from classroom exercises consistent with the various Individualized Education Plans at a carefully calculated cost, which was far less than that of the ideal format suggested by an education program development specialist. It was of no moment that the trips were overnight rather than day trips because that format gave opportunities to practice skills not reasonably available in a day trip. They were reasonable in that they were ordinary and necessary and not in excess of the cost which would be incurred by an ordinarily prudent person in the administration of public funds. Bd. of Tr. of the Passaic Cnty. Elks Cerebral Palsy Ctr. v. New Jersey State Dep't. of Educ., Office Fiscal Accountability and Compliance, OAL Dkt. No. EDU 16074-12, 2014 N.J. AGEN LEXIS 382, Initial Decision (July 1, 2014).

Administrative Law Judge concluded that the N.J. Department of Education, Division of Administration and Finance (NJDOE) had acted improperly when it determined that a private for-profit learning center

(PLC) providing educational services to disabled students sent to it by public school districts was not entitled to reimbursement of salary and fringe benefits billed by the PLC to the sending school districts due to problems connected with the issuance of a standard teaching certificate for a teacher employed by the PLC. NJDOE was not properly permitted to rely on N.J.A.C. 6A:23A-18.2, N.J.A.C. 6A:23A-18.5 and N.J.A.C. 6A:9 as authority for its refusal to permit the challenged items to be reimbursed because the undisputed facts showed that the teacher, who was certified in New York State and was seeking certification by reciprocity by the NJDOE, had made all lawfully required submissions in a timely manner but that the application was not acted upon for almost two years due to internal bureaucratic problems at NJDOE, none of which could be resolved by the teacher or the PLC and none of which related to the merits of the teacher's eligibility for N.J. certification. Thus, even though, per N.J.A.C. 6A:9-5.1(b), the PLC remained technically responsible for assuring that its teachers held all required certifications, the doctrine of substantial compliance was properly applied to justify relief to the PLC. *Pinelands Learning Ctr., Inc., d/b/a Pinelands Learning Ctr. H.S. v. State of New Jersey, Dep't of Educ., Div. of Admin. & Fin.*, OAL Dkt. No. EDU 12541-12, AGENCY Dkt. No. 220-8/12, 2013 N.J. AGEN LEXIS 331, Initial Decision (December 23, 2013).

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-





missioner for use in the accounting systems of all approved private schools for students with disabilities shall be used for financial reporting to the Department. For entities that operate other programs and the total private school tuition expenses are less than 51 percent of the entity's total expenses, the Commissioner may approve the use of an alternative chart of accounts, but the private school shall provide evidence that such chart of accounts may be cross-walked to the prescribed chart of accounts.

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

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

9. An approved private school for students with disabilities shall maintain documentation to verify all amounts recorded in the general ledger. Purchase orders shall be prepared in detail to document all payments for goods and services. Invoices or cash register receipts shall be attached to their related purchase orders to support all purchases of goods and services. Detailed vouchers signed by the payee shall be attached to their related purchase orders to support all payments for personal services, employee mileage reimbursements or any payment for which invoices or cash register receipts are not used.

10. An approved private school for students with disabilities shall prepare a payroll that is supported by an accurate employee time record in a format prescribed or approved by the Commissioner, signed by the employee and supervisor, prepared in the time period in which the work was done and completed at minimum semi-monthly. An employee time record shall be prepared for all employees of the private school for students with disabilities including all administrative employees.

11. An approved private school for students with disabilities shall prepare a financial report in a format prescribed or approved by the Commissioner each quarter at a minimum for the school year program. This report shall be submitted to the school's governing body and its acceptance shall be documented in the minutes of the meetings.

12. An approved private school for students with disabilities shall maintain acceptable internal control practices, which include the separation of duties such as the

recording and authorizing of checks and purchase approvals.

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

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

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

15. An approved private school for students with disabilities that incurs merit pay increases shall have adopted a formal board policy that outlines the criteria of the merit pay plan(s). The plan(s) shall be submitted for approval to the Commissioner prior to implementation. The private school shall make payment of such merit pay increase upon achievement of the criteria set forth in the approved plan, but no later than the following January 31st. Such payment shall not be at the discretion of management. The plan(s) shall include the following:

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

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

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

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

19. Upon request from the Commissioner:

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

ii. A non-profit approved private school for students with disabilities shall submit a copy of IRS form 990.

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

21. A non-profit entity that has chosen to cease operations as a non-profit private school for students with disabilities shall distribute its accumulated public school placement restricted working capital fund to each sending district board of education that had enrolled students during the private school's last five years of operation.

i. The distribution shall be based on each district board of education's total ADE in the private school for the last five years of operation to the private school's total ADE for the same period.

ii. Within 90 days of filing the required year-end audited financial statements with the Department in accordance with N.J.A.C. 6A:23A-18.9, the private school shall submit to the Commissioner a listing of the total distribution of the public school placement restricted working capital fund, by sending district board of education.

22. An approved private school for students with disabilities shall ensure that school staff, outside consultants and subcontractors including members of a management company hold the proper school certification, license or bachelor's degree required pursuant to N.J.A.C. 6A:23A-18.1 to provide the services being rendered.

(b) An approved private school for students with disabilities that receives a refund(s) from a current or prior year

expenditure or cancels an accounts payable shall apply such refund or accounts payable as a reduction to the general expenditure account charged to reduce the current year expenditure account. If the original expenditure account charged is not charged in the current school year, such amount(s) shall be used to reduce total expenditures in the current year.

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

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

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

1. The County Office of Education shall conduct an on-site facility review to determine if there is sufficient space at the school for these operations; and/or

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

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

1. The instructional program to the students for which they are compensated during the hours the school is in session; and

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

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

with disabilities shall include in the employee handbook an outline of all employee fringe benefits. All employee fringe benefits shall be adopted in a board of directors meeting and documented in the board minutes prior to implementing the fringe benefit. Employee fringe benefits that are consistent with N.J.A.C. 6A:23A-18.5(a)23 for which costs are deemed allowable are as follows:

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

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

(g) An approved private school for students with disabilities that loans funds to any party shall charge interest at a rate equal to the prime rate. The independent auditor shall compute imputed interest on those funds that are loaned at less than the prime interest rate or interest free. Such imputed interest revenue shall be netted against any short-term interest costs first, and then long term interest costs incurred by the private school. If the approved private school for students with disabilities has not incurred any interest costs, the imputed interest revenue shall be netted against costs incurred in account numbers classified as undistributed expenditures—business and other support services.

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

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

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

(k) An approved private school for students with disabilities shall issue compensation increases after the start of the fiscal year only in accordance with N.J.A.C. 6A:23A-18.2(q), and when the increase:

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

(l) An approved private school for students with disabilities shall ensure that employees which are new to the positions listed below on or after July 1, 2006 possess the appropriate bachelor's degree as defined in N.J.A.C. 6A:23A-18.1. In addition, approved private schools for students with disabilities shall ensure that employees functioning in the following positions on or before June 30, 2006 either currently possess the appropriate bachelor's degree as defined in N.J.A.C. 6A:23A-18.1 or, will obtain the proper bachelor's degree no later than June 30, 2006, or will be removed from the position:

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

(m) An approved private school for students with disabilities that incurs costs for a retirement plan(s) in accordance with N.J.A.C. 6A:23A-18.5(a)31 and/or medical benefits for retired employees in accordance with N.J.A.C. 6A:23A-18.5(a)56 shall include these costs in the certified actual cost per student on the cash basis of accounting.

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

(o) An approved private school for students with disabilities shall comply with the maximum salaries determined in accordance with N.J.A.C. 6A:23A-18.2(o) and (p) and restricted in accordance with N.J.A.C. 6A:23A-18.5(a)6, 8 and 9 regardless of the job titles used and whether these job titles comply with the list of job titles published by the Commissioner.

(p) An approved private school for students with disabilities shall under no circumstances other than in accordance with N.J.A.C. 6A:23A-18.4(k), provide compensation increases after the start of the fiscal year.

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

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

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

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

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

Rewrote the section.

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

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

Rewrote the section.

Recodified from N.J.A.C. 6A:23-4.4 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

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

#### 6A:23A-18.5 Non-allowable costs

(a) Costs that are not allowable in the calculation of the certified actual cost per student include the following:

1. An administrative cost in excess of and/or instructional cost less than the percentages indicated in N.J.A.C. 6A:23A-18.2(a)3;

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

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

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

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

i. The outcome(s) of any Federal, State, or local referendum, initiative or similar activity; or

ii. The introduction of Federal legislation, State legislation or State rulemaking, or the enactment or modification of any Federal legislation, State legislation or State rulemaking.

6. The salary of a professional staff member, consultant or subcontractor including a member of a management company who is not certified but is functioning in a position requiring certification in accordance with N.J.A.C. 6A:9B or bachelor's degree required in accordance with this subchapter;

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

8. A salary in excess of the associated maximum allowable salary determined in N.J.A.C. 6A:23A-18.2(o), (p) and (q) for a staff member or consultant whose position requires certification, license or a bachelor's degree including a director, assistant director, executive director, and business manager.

i. An approved private school for students with disabilities shall prorate salaries for such part-time or split-time positions including salaries in entities described in N.J.A.C. 6A:23A-18.2(e) and (f);

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

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

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

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

9. A salary of an employee not covered by (a)6 above in excess of the lowest maximum allowable salary in the same county according to the list of maximum allowable salaries determined in N.J.A.C. 6A:23A-18.2(o), (p) and (q) whose position does not require certification, license or bachelor's degree, including an individual with the director, assistant director, executive director, or business manager job title whose job function(s) are not consistent with those functions described in N.J.A.C. 6A:23A-18.1.

i. An approved private school for students with disabilities shall prorate salaries for such part-time or

split-time positions including salaries in entities described in N.J.A.C. 6A:23A-18.2(e) and (f).

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

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

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

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

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

11. A legal, accounting or consultant fees resulting from a frivolous challenge to a State audit or financial review or the prosecution of a claim against the State. The Commissioner shall determine whether the challenge is frivolous by considering factors that include, but may not be limited to, the following:

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

12. A consultant fee for services:

i. That are not detailed in an executed written contract that includes a list of the nature of the services provided, the approximate number of days to complete the work, the charge per day and the product or outcome of the consultation; and

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

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

14. Depreciation that is unacceptable under N.J.A.C. 6A:23A-18.4(a)3 and (a)4, and depreciation:

- i. On donated goods and assets;
- ii. That is not based on estimated straight-line method;
- iii. On autos in excess of the dollar or percentage limitation contained under Internal Revenue Service Code Section 280F including any passenger vehicle not used in transporting students or supplies without regard to weight class exceptions defined in Section 280F(d)(5)(A);

iv. On a stepped up basis resulting from the sale to a related party as defined in Internal Revenue Service Code Section 318 for Constructive Ownership of Stock. For a not-for-profit organization, Section 318 will apply to the members of the Board of Directors or related parties as defined in Section 267(b) or 267(c) of the Internal Revenue Code unless the gain from such a sale was used to offset tuition for a prior year; and

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

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

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

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

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

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

20. The cost of meals:

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

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



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

iv. For staff except as allowable in accordance with N.J.A.C. 6A:23A-18.5(a)18;

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

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

23. Fringe benefits:

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

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

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

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

25. Goodwill;

26. Interest costs on loans when:

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

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

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

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

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

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

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

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

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

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

31. Retirement plan costs that are:

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

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

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

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

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

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

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

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

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



33. The costs of a contingent pay increase or merit pay award when such amount(s) were not in accordance with N.J.A.C. 6A:23A-18.4(a)14 or 15 or the contingent pay increase or merit pay award(s) are not consistent with the plan(s) submitted to and approved by the Commissioner prior to implementation;

34. The cost of travel involving the difference between first-class air accommodations and less than first-class air accommodations, except when less than first-class accommodations are not reasonably available, in which case, the approved private school for students with disabilities shall obtain documentation from the airline or travel agent;

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

36. A payment of a bonus;

37. A loss on an investment;

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

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

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

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

42. Personal use of a school-owned or leased vehicle, which includes to/from work commutation as determined in accordance with N.J.A.C. 6A:23A-18.4(a)18;

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

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

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

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

47. Costs related to transactions between related parties in which one party to the transaction is able to control or substantially influence the actions of the other. Such transactions are defined by the relationship of the parties and include, but are not limited to, those between divisions of an institution; institutions or organizations under common control through common officers, directors, or members; and an institution and a director, trustee, officer, or key

employee of the institution or his or her immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. Such costs shall include, but are not limited to:

i. Rental costs for buildings and equipment in excess of the actual allocated costs of ownership (for example, straight line depreciation in accordance with N.J.A.C. 6A:23A-18.4(a)3, mortgage interest, real estate taxes, property insurance and maintenance costs) incurred by the related property owner including a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The approved private school for students with disabilities shall include in the lease agreement a list of anticipated costs to be incurred by the property owner, prepared in the format supplied by the Commissioner, signed by the property owner and notarized;

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

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

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

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

48. Cost of a less-than-arm's length/related party transaction when the related party does not provide documentation to support the actual costs of ownership to the Commissioner when requested, or does not allow the Com-

missioner access to such information for review and audit during normal business hours. Documentation shall include, but is not limited to:

- i. The related parties' tax returns; and
  - ii. The related parties' paid bills and canceled checks concerning the transaction;
49. Rental costs under sale and leaseback arrangements in excess of the amount that would be incurred had the organization continued to own the property;
50. Indirect and direct costs associated with unrelated activities or enterprises as defined in N.J.A.C. 6A:23A-18.2(g);
51. Cost of the year-end audited financial statements prepared by an individual who does not meet the requirements contained in N.J.A.C. 6A:23A-18.9(a);
52. Costs for membership in civic, business, technical and professional organizations when the cost is:
- i. Not reasonably related to the value of the services or benefits received;
  - ii. For membership in an organization that devotes any activities to influencing legislation or state regulation(s) not directly related to the educational instruction program of disabled students and such activities are not subsidized by sources other than membership fees from approved private schools for students with disabilities;
  - iii. Not an established annual rate charged to all members, but one which is periodically adjusted during the year; or
  - iv. Not supported by an annual affidavit signed by the organization's board of directors indicating that all legal and lobbying costs not directly associated with the educational instruction programs for disabled students were funded by sources other than dues from approved private schools for students with disabilities;
53. Salary of a staff member that is not properly supported by the employee's time record in a format prescribed or approved by the Commissioner in accordance with N.J.A.C. 6A:23A-18.4(a)10;
54. A salary or payment made to a member(s) of the board of directors/trustees for services performed in their capacity as a member of the board of director/trustees;
55. Cost of a pension plan and/or medical benefits for current or retired members of the board of directors/trustees;
56. Cost of medical benefits for retired employees who have not reached the age of 55 and who were employed a combination of less than 25 years in a New Jersey public school, a New Jersey public agency or a New Jersey approved private school for students with disabilities and

have less than 10 years of service in an approved private school for students with disabilities;

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

58. Cost of employee severance pay:

- i. In excess of four weeks' salary; and
- ii. If, in addition, the cost of a buyout of the employee's contract;

59. Cost of a buyout of an employee contract:

- i. In excess of 90 days' salary; and
- ii. If, in addition, the cost of the employee's severance pay;

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

61. Cost to purchase or rent in a related party transaction an administrative office or business office at a location other than at the approved private school for students with disabilities location that was not approved in accordance with N.J.A.C. 6A:23A-18.4(d);

62. Cost of compensation increases paid after the start of the fiscal year not in accordance with N.J.A.C. 6A:23A-18.4(k); and

63. Start-up costs in excess of those allowed in N.J.A.C. 6A:23A-18.3(d);

64. Costs including salaries and fringe benefits of employees providing services not in compliance with N.J.A.C. 6A:23A-18.4(e)2;

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

- i. A criminal history clearance prior to starting employment or;
- ii. An application for employment on an emergent basis in accordance with N.J.S.A. 18A:6-7.1c;

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

67. The salary in excess of the associated maximum salary identified in N.J.A.C. 6A:23A-18.2(r) and determined in accordance with N.J.A.C. 6A:23A-18.4(o) and (p); and

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

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

Rewrote the section.

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

Rewrote the section.

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

Administrative Law Judge concluded that the N.J. Department of Education, Division of Administration and Finance (NJDOE) had acted improperly when it determined that a private for-profit learning center (PLC) providing educational services to disabled students sent to it by public school districts was not entitled to reimbursement of salary and fringe benefits billed by the PLC to the sending school districts due to problems connected with the issuance of a standard teaching certificate for a teacher employed by the PLC. NJDOE was not properly permitted to rely on N.J.A.C. 6A:23A-18.2, N.J.A.C. 6A:23A-18.5 and N.J.A.C. 6A:9 as authority for its refusal to permit the challenged items to be reimbursed because the undisputed facts showed that the teacher, who was certified in New York State and was seeking certification by reciprocity by the NJDOE, had made all lawfully required submissions in a timely manner but that the application was not acted upon for almost two years due to internal bureaucratic problems at NJDOE, none of which could be resolved by the teacher or the PLC and none of which related to the merits of the teacher's eligibility for N.J. certification. Thus, even though, per N.J.A.C. 6A:9-5.1(b), the PLC remained technically responsible for assuring that its teachers held all required certifications, the doctrine of substantial compliance was properly applied to justify relief to the PLC. *Pinelands Learning Ctr., Inc., d/b/a Pinelands Learning Ctr. H.S. v. State of New Jersey, Dep't of Educ., Div. of Admin. & Fin.*, OAL Dkt. No. EDU 12541-12, AGENCY Dkt. No. 220-8/12, 2013 N.J. AGEN LEXIS 331, Initial Decision (December 23, 2013).

Department of Education correctly disallowed moneys paid for a school nurse's health insurance premiums by a private school for the disabled when she was on an unpaid leave of absence due to illness. Although the school's board of directors and administrators were within their rights to assist the nurse by paying her health premiums, they were not permitted under N.J.A.C. 6A:23A-18.5(a)7 to pass that expense on to the taxpayers of New Jersey. *Chancellor Academy v. N.J. State Dep't. of Educ., Division of Finance*, OAL Dkt. No. EDU 00340-13, 2013 N.J. AGEN LEXIS 350, Initial Decision (December 9, 2013).

Private school for children with disabilities failed to show that the New Jersey's Department of Education disallowance of food service fees as a component of tuition costs was arbitrary, capricious, or unreasonable. Because the school did not have the required resolutions from a majority of the five sending school districts with which it had contracted by June 30, 2007, it was consequently not arbitrary, capricious or unreasonable for the Department to disallow lunch costs as an element of the per-child tuition rate which the school was entitled to charge. *Delaware Valley Sch. For Exceptional Children v. New Jersey Dep't. of Educ., Div. of Fin.*, OAL DKT. NO. EDU 9326-10, 2012 N.J. AGEN LEXIS 613, Final Decision (February 17, 2012).

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

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

Adopting Initial Decision's conclusion that in establishing the tuition rate payable to certain private schools for students with disabilities, a

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

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

Initial Decision (2007 N.J. AGEN LEXIS 24) adopted, which concluded that \$8,778 in Social Security Integration Pension Benefits paid by a state-approved private school for learning disabled and handicapped children to its employees during the 2002-03 school year was a non-allowable fringe benefit which had to be excluded from the calculation of the school's certified actual cost per pupil for that period. Due to the social security integration, the pension contributions calculation of four of the school's directors exceeded the same benefit made available to all other full-time employees by 5.7% of their earnings, and did not conform to the requirements of the regulation requiring that an equitable standard of distribution be attainable for all full-time employees in order for a fringe benefit to be considered an allowable cost in the calculation of the actual cost per pupil. *Deron School of New Jersey v. N.J. State Dep't of Educ.*, OAL Dkt. No. EDU 3367-05, 2007 N.J. AGEN LEXIS 304, Commissioner's Decision (March 7, 2007), *aff'd*, 2007 N.J. AGEN LEXIS 897, SB No. 9-07 (N.J. State Bd. of Educ. August 1, 2007).

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

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

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

Initial Decision (2006 N.J. AGEN LEXIS 244) adopted, which determined that the Department of Education appropriately disallowed certain legal fees from the final approved tuition rates of six private schools for the disabled, where the legal fees were incurred for defense against

criminal charges and two former directors and the schools were ultimately convicted of theft by deception. In addition, even assuming, *arguendo*, that the Commissioner had the authority to extend the 30-day timeline prescribed by N.J.A.C. 6A:23-4.2 [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 postmarked on or before November 1 or the following business day if November 1 falls on a weekend or holiday.

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



audit and tax return functions for the approved private school for students with disabilities.

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

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

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

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

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

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

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

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

(g) Any adjustments that result from the certified audit or a tuition audit performed by the Commissioner that are in excess of \$10.00 per sending district board of education will be paid in accordance with N.J.A.C. 6A:23A-18.2(l) and (m).

(h) An approved private school for students with disabilities that files an audit postmarked after November 1 shall cause the tentative tuition rate per student for the ensuing

school year to be calculated based upon the audited actual cost per student for the school year two years prior to the current school year, and N.J.A.C. 6A:23A-18.2(j) will not apply.

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

(j) Upon request, the approved private school for students with disabilities shall submit to the Department a copy of the corporation's agency wide audited financial statements.

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

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

Rewrote the section.

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

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

Rewrote the section.

Recodified from N.J.A.C. 6A:23-4.9 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 (g) and (h), updated the N.J.A.C. references.

### 6A:23A-18.10 Appeals

(a) The decision of the Assistant Commissioner, Division of Finance regarding the calculation of the tentative tuition rate pursuant to N.J.A.C. 6A:23A-18.2(j), regarding the approval of a tentative tuition rate pursuant to N.J.A.C. 6A:23A-18.3 and regarding conditional approval status pursuant to N.J.A.C. 6A:23A-18.9(i), may be appealed in accordance with N.J.A.C. 6A:3.

(b) The decision of the Assistant Commissioner, Division of Finance in regard to certification may be appealed in accordance with N.J.A.C. 6A:3.

(c) The decision of the Commissioner in regard to N.J.A.C. 6A:23A-18.3, New private schools for students with disabilities, may be appealed to the State Board of Education in accordance with N.J.S.A. 18A:6-27 and N.J.A.C. 6A:4.

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

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

Rewrote the section.

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

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

In (c), substituted "students with disabilities" for "the disabled".

Recodified from N.J.A.C. 6A:23-4.10 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) and (c), updated the N.J.A.C. references.

### 6A:23A-18.11 Out-of-State approved private schools for students with disabilities

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



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

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

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

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

3. If a tuition rate cannot be mutually agreed upon in accordance with (c)1 or 2 above, the approved private school for students with disabilities shall file a budget in a format prescribed by the Commissioner to determine a tentative tuition rate and shall comply with the provisions of this subchapter in order to collect tuition from a New Jersey district board of education or agency. The cost of the audit contained in N.J.A.C. 6A:23A-18.9 may be charged to the sending district board of education or agency that did not mutually agree to the tuition rate.

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In (a), substituted "(f)" for "(e)".

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

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

Section was "Out-of-State approved private schools for the disabled". Substituted "students with disabilities" for "the disabled" throughout.

Recodified from N.J.A.C. 6A:23-4.11 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)3, updated the N.J.A.C. reference.

#### 6A:23A-18.12 Inspection of records

(a) All financial and accounting records maintained by the approved private school for students with disabilities, as required by this subchapter, shall be open during normal business hours for review and audit by the Commissioner or his

or her representative(s) for the period indicated in N.J.A.C. 6A:23A-18.4(a)20.

(b) All financial and accounting records maintained by a related party which pertain to a transaction between a related party and the approved private school for students with disabilities shall be open during normal business hours for review and audit by the Commissioner or his or her representative(s) for the period indicated in N.J.A.C. 6A:23A-18.4(a)20.

(c) All auditor's workpapers used in the preparation of the year-end audited financial statements shall be open during normal business hours for review by the Commissioner or his or her representative(s) for the period indicated in N.J.A.C. 6A:23A-18.4(a)20.

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

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

In (a) and (b), substituted "students with disabilities" for "the disabled".

Recodified from N.J.A.C. 6A:23-4.12 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.

#### 6A:23A-18.13 Fiscal monitoring of approved private schools for students with disabilities and corrective action plans

(a) The Commissioner or his or her representative(s) shall monitor approved private schools for students with disabilities in accordance with this subchapter. On site monitoring shall be conducted at least every six years.

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

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

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

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

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

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

1. Issue a conditional approval status when noncompliance with State rules and/or implementation of the corrective action plan is demonstrated; or

2. Immediately remove program approval when it is documented that the health, safety or welfare of the students is in danger.

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

(h) Annually, the Department shall publish the results of the on-site fiscal monitoring of private schools for students with disabilities.

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

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

In (a), inserted "or his or her representative(s)" following "The Commissioner".

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

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

Section was "Fiscal monitoring of private schools and corrective action plans". In (a), (f) and (h), substituted "students with disabilities" for "the disabled"; and in (c), inserted "approved" and "for students with disabilities".

Recodified from N.J.A.C. 6A:23-4.13 by R.2009 d.395, effective December 21, 2009.

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

#### 6A:23A-18.14 Fiscal information

(a) Annually, each approved private school for students with disabilities shall submit information to the Assistant Commissioner, Division of Finance including, but not limited to:

1. Fiscal and program information, including:

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

2. Staffing information, including:

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

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

4. An affidavit that the owners/operators of the program are aware of the non-allowable costs contained in N.J.A.C. 6A:23A-18.5 and that such costs charged as allowable costs in the private school for students with disabilities tuition rate are consistent with the individualized education program of a disabled student and shall be reasonable, that is, ordinary and necessary and not in excess of the cost which would be incurred by an ordinarily prudent person in the administration of public funds.

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

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

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

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

In (a), inserted "Assistant Commissioner" following "submit information to the", in the introductory paragraph.

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

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

In the introductory paragraph of (a), in (a)4 and (c), substituted "students with disabilities" for "the disabled" throughout; and in (b), substituted "Students with Disabilities" for "the Disabled".

Recodified from N.J.A.C. 6A:23-4.14 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)4, updated the N.J.A.C. reference.

#### 6A:23A-18.15 Failure to comply with Department directives

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

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

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

Substituted "students with disabilities" for "the disabled".

Recodified from N.J.A.C. 6A:23-4.15 by R.2009 d.395, effective December 21, 2009.

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

#### 6A:23A-18.16 Sale of assets of an approved private school for students with disabilities

In the event of the sale of the assets from one approved private school for students with disabilities to either a new approved private school for students with disabilities or an existing approved private school for students with disabilities, the selling school must provide the Department with a copy of the sale agreement, copy of the allocation of purchase price as defined in Section 1060 of the Internal Revenue Code (Internal Revenue Service Form 8594) and the selling school must provide a final financial report within 90 days of the sale showing the disposition of its assets and any corresponding refunds to the sending districts based on the sale of assets (books, supplies, desks, computers, equipment under \$2,000, depreciable equipment, etc) other than Class VI or VII as defined in the IRC cited above (goodwill, going concern, etc).

New Rule, R.2004 d.322, effective August 16, 2004.

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

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

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

Section was "Sale of assets of a private school". Inserted "approved" and "for students with disabilities" throughout.

Recodified from N.J.A.C. 6A:23-4.16 by R.2009 d.395, effective December 21, 2009.

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

## SUBCHAPTER 19. EMERGENCY STATE AID AND RESIDENCY DETERMINATION

### 6A:23A-19.1 Emergency aid

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

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

1. The district board of education shall submit to the executive county superintendent as follows:

i. A resolution that indicates the specific requested amount of emergency aid and identifies the emergency condition that exists within the school district;

ii. A detailed statement about the emergency condition, which indicates the reason why the condition was unforeseeable and/or why the costs associated with the condition were unforeseeable;

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

iv. A statement included in the board's minutes that no other funds can be reallocated within the existing budget for the emergency condition without adversely impacting the district board of education's ability to meet the New Jersey Student Learning Standards.

2. The district board of education shall separately account for disbursements against emergency aid funds in its general fund accounting records.

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

(d) The executive county superintendent shall submit a recommendation regarding a request for emergency aid and all of the information submitted by the district board of education making the request to the Office of School Facilities and Finance to determine whether to recommend to the Commissioner that a request be sent to the State Board of Education for approval.

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

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

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

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

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

Rewrote (b); in (d), substituted "will" for "shall" following "the Department" in 1 and 2; rewrote (e).

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

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

In (b)1i, inserted "school"; and rewrote (d).

Recodified from N.J.A.C. 6A:23-5.1 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)1, in (c) and the introductory paragraph of (d), inserted "executive".

Administrative change.

See: 48 N.J.R. 1802(a).

Amended by R.2017 d.088, effective May 1, 2017.

See: 48 N.J.R. 2719(a), 49 N.J.R. 1079(a).

In (b)1iii, substituted "end-of-the-year" for "end of the year", and "and" for a comma following "balance"; in (d), substituted "Office of School Facilities and" for "Division of"; and in (e), inserted a comma following the third occurrence of "approve".

### 6A:23A-19.2 Method of determining the district of residence

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

1. The "present district of residence" of a child in a residential State facility, defined in N.J.S.A. 18A:7F-45 and referred to in the first paragraph of N.J.S.A. 18A:7B-12.b, means the New Jersey district of residence of the child's parent(s) or guardian(s) as of the last school day prior to October 16.

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

3. If the State becomes the child's legal guardian after the date of the child's initial placement by a State agency, the State will assume financial responsibility for the child's educational costs in subsequent school years.

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