

iii. Cost of 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 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;

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

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

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

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

48. Costs of a salary increase or merit pay award when such amount(s) were not in accordance with N.J.A.C. 6:20-4.3(a)13 or 14 or the merit pay award(s) are not consistent with the plan(s) on file with the Commissioner;

49. Indirect and direct costs associated with unrelated activities or enterprises as defined in N.J.A.C. 6:20-4.1(d);

50. Cost of the year-end certified audit prepared by an individual who does not meet the requirements contained in N.J.A.C. 6:20-4.8(a);

51. Costs charged to account categories other than those reflected in the chart of accounts issued by the Commissioner in accordance with N.J.A.C. 6:20-4.3(a)6;

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

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

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

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 handicapped pupils were funded by sources other than dues from private schools for the handicapped.

53. Salary of a staff member which is not properly supported by the employee time record in a format prescribed or approved by the Commissioner in accordance with N.J.A.C. 6:20-4.3(a)9; and

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

Correction: 16 N.J.R. 2530(a).

Deleted in (a): " , but is not limited to." and added "the following:"; (a)1.: deleted "location separate. . . . handicapped" and added "private home or other residence;"

Amended by R.1986 d.360, effective September 6, 1986.

See: 18 N.J.R. 1237(a).

Added new (a)36-37; renumbered old (a)36 to (a)38.

Amended by R.1990 d.610, effective December 17, 1990.

See: 22 N.J.R. 2633(a), 22 N.J.R. 3736(a).

Added more detailed listings of non-allowable costs.

Administrative Correction to (a)41.

See: 23 N.J.R. 1410(c).

Case Notes

Authority was vested in Department of Education to request ordinary and essential business records from private school during full scope tuition audit. *Pineland Learning Center v. State Board of Education*, 95 N.J.A.R.2d (EDU) 199.

Private school educating handicapped students from public school districts; determination of allowable costs. *Y.A.L.E. School, Inc. v. State of New Jersey*, 92 N.J.A.R.2d (EDU) 571.

6:20-4.5 Surcharge

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

6:20-4.6 Working capital fund

For non-profit schools, the school's tuition rate may include an amount which will permit the school to establish a working capital fund which is not in excess of 15 percent of the private school's allowable actual costs.

6:20-4.7 Calculation of pupil attendance

(a) Each approved private school for the handicapped shall maintain a public school register for recording pupil attendance in accordance with N.J.A.C. 6:20-1.3.

(b) Each approved private school for the handicapped shall submit the school summary register annually to the Commissioner by September 1 to verify the average daily enrollment for the previous school year.

Amended by R.1990 d.610, effective December 17, 1990.

See: 22 N.J.R. 2633(a), 22 N.J.R. 3736(a).

Editorial changes only.

6:20-4.8 Audit requirements

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

(b) The audit shall follow audit standards and a format established and published by the Commissioner.

(c) The certified audit shall determine the certified actual cost(s) per pupil and actual tuition rate(s) charged at the end of the school year.

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

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

(f) The approved private school for the handicapped is precluded from amending the actual tuition rate charged upon certification by the Commissioner.

(g) Any adjustments necessary as a result of the certified audit or a tuition audit performed by the Commissioner which are in excess of \$10.00 per sending school district shall be made in accordance with N.J.A.C. 6:20-4.1(i) and (j).

(h) Audits filed after the November 1 due date shall cause the estimated actual cost per pupil for the ensuing school year to be calculated based upon the audited actual cost per pupil for the school year two years prior to the current school year, and N.J.A.C. 6:20-4.1(g)1 shall not apply.

(i) Failure to comply with this section may result in the Commissioner placing the approved private school for the handicapped on conditional approval status which precludes the school from accepting new pupils.

Amended by R.1990 d.610, effective December 17, 1990.

See: 22 N.J.R. 2633(a), 22 N.J.R. 3736(a).

Provisions added to define auditor independence, require documentation that the results of the year-end audit were discussed with school management, and to provide a sanction for a private school failing to comply with the audit requirements.

6:20-4.9 Appeals

(a) The decision of the Commissioner, regarding the calculation of the tentative tuition rate pursuant to N.J.A.C. 6:20-4.1(g), regarding the approval of a tentative tuition rate pursuant to N.J.A.C. 6:20-4.2(b) and regarding conditional approval status pursuant to N.J.A.C. 6:20-4.8(i), may be appealed in accordance with N.J.S.A. 18A:6-9 and N.J.A.C. 6:24.

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

Amended by R.1990 d.610, effective December 17, 1990.

See: 22 N.J.R. 2633(a), 22 N.J.R. 3736(a).

Minor technical changes were made and an additional appealable item was added.

6:20-4.10 Out-of-State approved private schools for the handicapped

(a) Out-of-State private schools for the handicapped 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 Division of Special Education, the New Jersey Department of Education in accordance with N.J.A.C. 6:28-7.1(f).

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

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

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

2. An approved private school for the handicapped 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, the sending school district and the Department of Human Services, Office of Education. The tuition rate must 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 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 school or agency. The cost of the audit contained in N.J.A.C. 6:20-4.8 may be charged to the sending school district(s) or agency which did not mutually agree to the tuition rate.

(d) An approved private school for the handicapped located in another state shall have bookkeeping and accounting records available for inspection upon request by the Commissioner.

Amended by R.1990 d.610, effective December 17, 1990.
See: 22 N.J.R. 2633(a), 22 N.J.R. 3736(a).

Provisions added to indicate that the Department will abide by tuition rates for private schools for the handicapped adopted by the state in which an out-of-State school is located and the Department acceptance of out-of-State tuition rates in states which do not regulate tuition rates as long as there is a mutual agreement of the tuition rate between the private school and sending school district.

Case Notes

Authority was vested in Department of Education to request ordinary and essential business records from private school during full scope tuition audit. *Pineland Learning Center v. State Board of Education*, 95 N.J.A.R.2d (EDU) 199.

6:20-4.11 Inspection of records

(a) All financial and accounting records maintained by the approved private school for the handicapped as required by this subchapter shall be open for review and audit during normal business hours by the Commissioner or his or her representative(s).

(b) All financial and accounting records maintained by a related party which pertain to a transaction between a related party and the approved private school for the handicapped shall be open for review and audit during normal business hours by the Commissioner or his or her representative(s).

(c) All auditor's workpapers used in the preparation of the year-end audit shall be open for review during normal business hours by the Commissioner or his or her representative(s).

New Rule, R.1990 d.610, effective December 17, 1990.
See: 22 N.J.R. 2633(a), 22 N.J.R. 3736(a).

Case Notes

Authority was vested in Department of Education to request ordinary and essential business records from private school during full scope tuition audit. *Pineland Learning Center v. State Board of Education*, 95 N.J.A.R.2d (EDU) 199.

SUBCHAPTER 5. STATE AID

6:20-5.1 (Reserved)

As amended, R.1980 d.426, effective October 2, 1980.
See: 12 N.J.R. 504(b), 12 N.J.R. 638(b).

Repeal special State aid for children resident in institutions.
As amended, R.1984 d.546, effective December 17, 1984.
See: 16 N.J.R. 2392(a), 16 N.J.R. 3429(a).

Recodified with substantive changes from 5.1.
Amended by R.1990 d.393, effective August 6, 1990.
See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

Terms and sentence structure changes.
Repealed by R.1999 d.2, effective January 4, 1999.
See: 30 N.J.R. 3613(a), 31 N.J.R. 36(a).

Section was "Law enforcement officer".

6:20-5.2 (Reserved)

As amended, R.1984 d.546, effective December 17, 1984.
See: 16 N.J.R. 2392(a), 16 N.J.R. 3429(a).

Recodified with substantive changes from 5.4.
Repealed by R.1999 d.2, effective January 4, 1999.
See: 30 N.J.R. 3613(a), 31 N.J.R. 36(a).

Section was "Additional State school building aid".

Case Notes

State grant of discretionary funds rescinded; settlement providing repayment with funds from grant by town rejected; use of state grant monies; knowing false representations. In *Matter of Rescinding of Supplemental State Aid Awarded to Lyndhurst School District*. 93 N.J.A.R.2d (EDU) 621.

6:20-5.3 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:7D-3 and referred to in paragraph one of N.J.S.A. 18A:7B-12(b) shall mean 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, private school or out-of-State facility also referred to in paragraph one of N.J.S.A. 18A:7B-12(b) shall mean the New Jersey district of residence of the child's parent(s) or guardian(s) as of the date of the child's initial placement by the State agency. In subsequent school years spent in the educational placement made by a State agency, the child's "present district of residence" shall be determined in the same manner as for a child in a residential State facility as set forth in (a)1.

3. The "district of residence" referred to in paragraph two of N.J.S.A. 18A:7B-12(b) shall mean the New Jersey district of residence in which the child resided with his or her legal guardian immediately prior to his or her initial admission to a State facility or placement by a State agency.

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

(c) The Commissioner shall notify district boards of education of the determination of the district of residence.

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

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

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

(f) A district board of education may initiate a formal proceeding before the Commissioner to resolve such a dispute if the Division of Finance is unable to resolve a dispute within the 90 day time limit, by filing a Petition of Appeal with the Commissioner pursuant to the provisions of N.J.A.C. 6:24.

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

As amended, R.1980 d.425, eff. October 2, 1980.

See: 12 N.J.R. 504(c), 12 N.J.R. 638(a).

Repeal emergency State building aid.

New Rule, R.1985 d.208, effective May 6, 1985.

See: 17 N.J.R. 344(a), 17 N.J.R. 1076(a).

Amended by R.1990 d.393, effective August 6, 1990.

See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

New (g) added defining "district of residence" for a homeless child pursuant to P.L.1989, c.290.

Amended by R.1991 d.459, effective September 3, 1991.

See: 23 N.J.R. 1733(a), 23 N.J.R. 2634(a).

Determination date of district of residence changed.

Amended by R.1999 d.2, effective January 4, 1999.

See: 30 N.J.R. 3613(a), 31 N.J.R. 36(a).

Case Notes

Failure to prove domiciliary precludes free public education. *Spruill v. School District of South Orange and Maplewood*, 97 N.J.A.R.2d (EDU) 303.

Parent ordered to pay tuition for child's education. *A.H. v. Township of Egg Harbor*, 97 N.J.A.R.2d (EDU) 281.

Parent's prior residence in school district triggers school district's financial responsibility for student's tuition. *City of Wildwood v. Department of Education*, 97 N.J.A.R.2d (EDU) 273.

Domicile within school district's community established by nonparent's legal and physical custody of child. *L.A. v. Town of West Orange*, 97 N.J.A.R.2d (EDU) 267.

Department of Education was justified in its reduction of state aid to board of education which had received large municipal donation. *Township of Lacey v. Office of Finance*, 96 N.J.A.R.2d (EDU) 868.

6:20-5.4 Address submission for determining the district of residence

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

1. If the State has custody of the child or if a court or the State has appointed a third party as the custodian of the child, the present address of the parent(s) or guardian(s) with whom the child resided immediately prior to his or her initial admission to a State facility or placement by a State agency shall be submitted.

2. If the child's parents are divorced with joint guardianship, the present address of the individual parent with whom the child resided as of the date required by N.J.A.C. 6:20-5.3(a)1 or 2 shall be submitted.

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

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

R.1979 d.479, eff. December 7, 1979.

See: 12 N.J.R. 6(b).

R.1984 d.546, eff. December 17, 1984.

See: 16 N.J.R. 2392(a), 16 N.J.R. 3429(a).

Recodified to 6:20-5.2.

New Rule, R.1985 d.208, effective May 6, 1985.

See: 17 N.J.R. 344(a), 17 N.J.R. 1076(a).

6:20-5.5 (Reserved)

New Rule, R.1985 d.340, effective July 1, 1985.

See: 17 N.J.R. 863(a), 17 N.J.R. 1648(a).

Amended by R.1986 d.204, effective June 2, 1986.

See: 18 N.J.R. 392(b), 18 N.J.R. 1198(a).

Old (b)-(d) deleted; old (e)-(j) recodified to (b)-(g); new (h) added.

Amended by R.1990 d.393, effective August 6, 1990.

See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

New (i) added establishing two year limit on completion of projects.

Repealed by R.1999 d.2, effective January 4, 1999.

See: 30 N.J.R. 3613(a), 31 N.J.R. 36(a).

Section was "Public school asbestos removal and encapsulation State aid".

6:20-5.6 (Reserved)

New Rule R.1986 d.205, effective June 2, 1986.

See: 18 N.J.R. 393(a), 18 N.J.R. 1199(a).

Amended by R.1990 d.393, effective August 6, 1990.

See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

Deleted reference to 1984-85 and 1985-86 school years and renumbered subsections and subparts.

Amended by R.1991 d.459, effective September 3, 1991.

See: 23 N.J.R. 1733(a), 23 N.J.R. 2634(a).

Citations corrected.

Repealed by R.1999 d.2, effective January 4, 1999.

See: 30 N.J.R. 3613(a), 31 N.J.R. 36(a).

Section was "Teaching staff member minimum salary State aid".

6:20-5.7 (Reserved)

New Rule, R.1989 d.93, effective March 6, 1989.

See: 20 N.J.R. 2505(a), 21 N.J.R. 635(b).

Amended by R.1990 d.393, effective August 6, 1990.

See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

Deleted references to activities prior to July 1, 1987 and added new (m) establishing two-year completion limit.

Repealed by R.1999 d.2, effective January 4, 1999.

See: 30 N.J.R. 3613(a), 31 N.J.R. 36(a).

Section was "Nonpublic school asbestos removal and encapsulation State aid".

6:20-5.8 (Reserved)

New Rule, R.1991 d.590, effective December 16, 1991.

See: 23 N.J.R. 2818(a), 23 N.J.R. 3746(a).

Repealed by R.1997 d.372, effective September 2, 1997.

See: 29 N.J.R. 2591(a), 29 N.J.R. 3806(a).

Section was "Excess surplus calculation".

SUBCHAPTER 6. PURCHASE AND LOAN OF TEXTBOOKS

6:20-6.1 Eligibility

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