

Preliminary eligible costs = AUxC

where

AU is the approved area for unhoused students; and
C is the area cost allowance.

(m) Preliminary eligible costs shall be calculated as follows for reconstruction, remodeling, alteration, modernization, renovation or repair of school facilities that were originally constructed by the district or that the district purchased more than five years prior to the date of approval by the Commissioner and that have not been previously approved by the Commissioner within the prior 15 years; provided that the 15-year requirement may be waived by the Commissioner if the district satisfactorily demonstrates that extraordinary circumstances apply.

Preliminary eligible costs = R x A

where

R = the replacement costs of the facility = GA x C

and where

GA is the gross area (square footage) of the existing school facility or portion thereof being reconstructed, remodeled, altered, modernized, renovated or repaired;

C is the area cost allowance; and

A is a factor determined by the age of the school facility, the measure of which commences with occupancy of the school facility, according to the following table:

Age of the School Facility	A
15 years or less	zero
16 years or more and less than 26 years	50%
26 years or more and less than 41 years	60%
41 years or more	85%

For the purposes of this subchapter, the age of the school facility shall be a composite measure of the age of individual sections of the building determined in accordance with a method approved by the Commissioner. The Commissioner may adjust "A" for a district that demonstrates that additional renovation expenditures are necessary to address health and safety, including electrical systems, and preschool conditions or obsolescence. Notwithstanding the provisions of this subchapter, all school facilities shall be deemed suitable for rehabilitation unless a pre-construction evaluation undertaken by the district demonstrates to the satisfaction of the Commissioner that the structure might pose a risk to the safety of the occupants even after rehabilitation, or that rehabilitation is not cost-effective.

(n) Preliminary eligible costs for new construction done in lieu of renovations shall be determined in accordance with the methodology for new construction, with preliminary eligible costs determined pursuant to (l) above, only when the decision to replace a school facility is supported by a feasibility study conducted by the district, and either the age

of the building being replaced is 41 years or greater or the Commissioner determines that extraordinary circumstances apply. When new construction done in lieu of renovations qualifies as new construction, the approved area for unhoused students shall be determined by the Commissioner, with consideration of the existing school facilities in the district.

(o) The number of unhoused students shall be calculated as the number of FTE students who are projected to be enrolled in preschool handicapped, preschool, kindergarten, grades one through 12, and special education services pupil educational programs provided in a district within five years, which are in excess of the functional capacity of the district's current school facilities or the functional capacity of the school facilities which will be available within five years other than the school facilities for which the preliminary eligible costs are determined, based upon the district's long-range facilities plan. This calculation shall be adjusted to coincide with any statute passed after adoption of this chapter. The determination of unhoused capacity shall separately consider projected enrollments and functional capacities at the early childhood and elementary (preschool through grade five), middle (grades six through eight), and high school (grades nine through 12) levels. For the purpose of calculating the district's unhoused students, special education services students shall be considered part of the grade level to which the students' chronological age corresponds. In the event that the Commissioner approves a school facilities project which involves the construction of a new school facility to replace an existing school facility, which shall accommodate both the unhoused students and the students in the existing school facility, the calculation of the number of unhoused students shall include the number of students currently attending the existing facility which is to be replaced.

(p) Approved area for unhoused students (AU) shall be determined according to the following formula and shall be adjusted to coincide with any statute passed after adoption of this chapter:

$$AU = (UEC \times SEC) + (UE \times SE) + (UM \times SM) + (UH \times SH) \text{ where}$$

UEC, UE, UM, UH are the numbers of unhoused students in the early childhood, elementary, middle, and high school enrollment categories, respectively; and

SEC, SE, SM, SH are the area allowances per FTE student in the early childhood, elementary, middle, and high school enrollment categories, respectively.

The minimum area allowance per FTE student shall be as follows:

Elementary School (including early childhood)	125 square feet
Middle School	131 square feet
High School	151 square feet

(q) The facilities efficiency standards for determining spaces requiring a demonstration of particularized need established pursuant to N.J.A.C. 6:19A-5.1 and excess cost

areas shall be the school building space assumptions used to calculate the area allowances per FTE student in (p) above. The Commissioner shall provide each district with a copy of the facilities efficiency standards and shall publish them in the New Jersey Register.

Public Notice: Facilities Efficiency Standards.
See: 31 N.J.R. 2984(a).

SUBCHAPTER 9. APPEALS

6:19A-9.1 Applicability of subchapter

An aggrieved applicant for Department authorization to improve or amend an existing program, adopt a supplemental program or service, implement a required secondary program, build or renovate a school facility or seek additional *Abbott v. Burke* State aid may appeal to the Commissioner in accordance with the provisions of this subchapter.

6:19A-9.2 Filing, service and documentation of petition

(a) Any appeal filed pursuant to this subchapter shall, except as noted in (a)1 below, meet the filing, service and format requirements for petitions of appeal as set forth in N.J.A.C. 6:24 and shall generally proceed as a contested case except as noted in this subchapter. Service of the petition is required on the Attorney General of the State of New Jersey, and should be directed to Department of Law and Public Safety, Division of Law, PO Box 112, Trenton, New Jersey 08625-0112; Attention: Education Section.

1. Any appeal filed pursuant to this subchapter shall be filed within 45 days of the date of the decision which is the subject of the requested contested case hearing.

(b) Any appeal filed pursuant to this subchapter shall include, in addition to the petition required under (a) above, a copy of the complete application submitted to the Department and a copy of the determination from which the appeal is taken.

(c) Appeals may be filed by the entity which submitted the application under dispute, or by the board in the case of applications filed by entities other than the board. In any appeal in which the board is not the petitioner, the board shall be named as an indispensable party to the appeal.

6:19A-9.3 Filing, service and documentation of answer

Answers to petitions of appeal filed pursuant to this subchapter shall meet the filing, service and format requirements for answers as set forth in N.J.A.C. 6:24. Nothing herein shall preclude the filing of a motion to dismiss in lieu of an answer.

6:19A-9.4 Review of pleadings

Upon review of the petition, answer and supporting documentation, the Commissioner may use the procedure set forth in N.J.A.C. 6:19A-9.5 to decide the matter. If so, he or she shall notify the parties and they shall be provided the opportunity to submit any additional documents submitted to the Department or considered by the Department in rendering the decision.

6:19A-9.5 Submission of position statements and replies

If the Commissioner requires the submission of position statements and replies, within 20 days after receipt of the notice from the Commissioner pursuant to N.J.A.C. 6:19A-9.4, the petitioner shall file a letter memorandum setting forth with particularity the basis for its position, referencing the criteria established for the application process and the materials submitted in conjunction with it. Within 10 days of receipt of petitioner's memorandum, each respondent shall file such reply as it may wish to make. Within five days of receipt of any reply, petitioner may file a final response thereto. All submissions shall be filed in triplicate (original and two copies) and served upon all other parties to the appeal at the same time they are filed with the Commissioner.

6:19A-9.6 Commissioner review and decision

(a) If the Commissioner retains the matter pursuant to N.J.A.C. 6:19A-9.5, upon receipt of the filings set forth above, or expiration of the time for their submission, the Commissioner shall review the total record before him or her and render a written decision.

(b) The Commissioner's decision shall include an appropriate order. Where the relief ordered includes additional funding, the Commissioner shall make the necessary request to the Governor and the Legislature.

(c) In rendering decisions pursuant to this subchapter, the Commissioner shall apply the same standards as are set forth for Department review in the operative rules for the type of application in dispute. The burden of proof shall be on the petitioning party to demonstrate that these standards were met by the applicant notwithstanding the Department's determination to the contrary. The record on appeal shall consist of those documents and information submitted to the Department in support of its application and any additional information relied upon by the Department in making the determination at issue.

(d) Commissioner decisions rendered pursuant to this subchapter shall be final agency decisions and shall be appealable to the Appellate Division of the Superior Court.