

**CHAPTER 23A**

**FISCAL ACCOUNTABILITY, EFFICIENCY AND BUDGETING PROCEDURES**

**Authority**

N.J.S.A. 18A:1-1; 18A:4-14; 18A:4-15; 18A:7B-12; 18A:7G-1 et seq.; 18A:17-9, 10, 31 and 34 through 36; 18A:17-32; 18A:18A-1 et seq.; 18A:19-1 et seq.; 18A:20-1 et seq.; 18A:21-1 et seq.; 18A:23-1 et seq.; 18A:24-1 et seq.; 18A:29-3; 18A:36A-1 et seq.; 18A:38-1 et seq.; 18A:46-1 et seq.; 18A:54-1 et seq.; 18A:55-1 et seq.; and 18A:58-1 et seq.; and P.L. 2007, c. 53; P.L. 2007, c. 62; P.L. 2007, c. 63; P.L. 2007, c. 260; and P.L. 2008, c. 37.

**Source and Effective Date**

R.2009 d.394, effective November 25, 2009.  
See: 41 N.J.R. 2381(a), 41 N.J.R. 4721(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 23A, Fiscal Accountability, Efficiency and Budgeting Procedures, expires on November 25, 2016. See: 43 N.J.R. 1203(a).

**Chapter Historical Note**

Chapter 23A, Administrative Cost Limits, Transfers, and Budget Development, was adopted as Special New Rules by R.2005 d.17, effective December 7, 2004. See: 37 N.J.R. 136(a).

Chapter 23A, Administrative Cost Limits, Transfers, and Budget Development, was readopted as R.2005 d.411, effective October 27, 2005. See: 37 N.J.R. 2278(a), 37 N.J.R. 4403(a).

Chapter 23A, Administrative Cost Limits, Transfers, and Budget Development, was repealed by R.2006 d.361, effective October 2, 2006. See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Chapter 23A, Fiscal Accountability, Efficiency and Budgeting Procedures, was adopted as special new rules by R.2008 d.212, effective July 1, 2008. See: 40 N.J.R. 4610(a).

Subchapter 2, Executive County Superintendent of Schools, Subchapter 4, School District Fiscal Accountability, Subchapter 7, School District Travel Policies and Procedures, Subchapter 8, Annual Budget Development and Submission, Subchapter 10, Spending Growth Limitation, Subchapter 11, Tax Levy Growth Limitation, Subchapter 12, Commissioner Waivers of Tax Levy Growth Limitation; Separate Voter Approval, Subchapter 13, Budget Transfers, Underestimated Surplus and Deficits, Subchapter 14, Reserve Accounts and Subchapter 15, State Aid Calculations and Aid Adjustments for Charter Schools, were adopted as special new rules by R.2009 d.35, effective December 18, 2008. See: 41 N.J.R. 642(a).

Chapter 23A, Fiscal Accountability, Efficiency and Budgeting Procedures, was readopted as R.2009 d.394, effective November 25, 2009. See: Source and Effective Date. See, also, section annotations.

Subchapter 16, Double Entry Bookkeeping and GAAP Accounting, was recodified from N.J.A.C. 6A:23-2; Subchapter 17, Tuition Public Schools, was recodified from N.J.A.C. 6A:23-3; Subchapter 18, Tuition for Private Schools for Students with Disabilities, was recodified from N.J.A.C. 6A:23-4; Subchapter 19, State Aid, was recodified from N.J.A.C. 6A:23-5 and renamed Emergency State Aid and Residency Determination; Subchapter 20, Purchase and Loan of Textbooks, was recodified from N.J.A.C. 6A:23-6; Subchapter 21, Management of Public School Contracts, was recodified from N.J.A.C. 6A:23-7; and Subchapter 22, Financial Operations of Charter Schools, was recodified from N.J.A.C. 6A:23-9 by R.2009 d.395, effective December 21, 2009. See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

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## SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

**6A:23A-1.1 Purpose and scope**

(a) The purpose of these rules is to assure the financial accountability of boards of education through enhanced State monitoring, oversight and authority, and to ensure that 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. These rules set forth the roles of the Commissioner of Education and the Executive County Superintendent in overseeing board of education budgeting and expenditures. The rules also establish mechanisms to ensure the efficient expenditure of budgeted funds in a manner consistent with a district's approved annual budget.

(b) Pursuant to these rules, the Commissioner of Education delegates to the Executive County Superintendent those

powers, tasks and duties that further support efficiency of 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. 2007, c. 260, P.L. 2007, c. 63, and P.L. 2008, c. 37.

2. These rules supersede the rules at N.J.A.C. 6A:10, 6A:10A and 6A:23 where the provisions of those rules are inconsistent.

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".

### 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 district salary increment" means \$10,000 for each additional district served by a single superintendent pursuant to N.J.S.A. 18A:17-24.1.

"Adjusted for inflation" means indexed by the greater of the CPI or 2.5 percent.

"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 Comparative Spending Guide and defined in the Uniform Minimum Chart of Accounts for New Jersey Public Schools and by the National Center for Educational Statistics (NCES)), as referred to at N.J.A.C. 6A:23-2.2(f)1, and other reporting directives published and distributed by the Commissioner pursuant to N.J.S.A. 18A:4-14 and N.J.A.C. 6A:23-2.

"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:23-2.2(i).

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

"Authorized membership of the school board" 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.

"Bilingual education pupil" means a resident pupil enrolled in a program of bilingual education or in an English as a second language program approved by the State Board of Education.

"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:26A-1.3.

"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.

"Chart of accounts" means the Department's prescribed classification structure for the accounting system that permits the standardization of reported financial data whereby analyses may be performed within and between district boards of education and on a nationwide basis using common terminology and classifications established by the NCES.

“Charter school” means a public school that is established in accordance with N.J.S.A. 18A:36A-1 et seq.

“Chief school administrator” means the superintendent pursuant to N.J.S.A. 18A:17-15, or the administrative principal pursuant to N.J.S.A. 18A:17-20.5, or the State district superintendent pursuant to N.J.S.A. 18A:7A-35 or 18A:7A-49 in the case of a district under full or partial intervention, or the lead person of a charter school as defined at N.J.A.C. 6A:11-1.2.

“Combination pupil” means a resident pupil who is both an at-risk pupil and a bilingual education pupil as defined in N.J.S.A. 18A:7F-45.

“Commissioner” means the Commissioner of Education or his or her designee.

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

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

“Concentration of at-risk pupils” shall be based on pre-budget year pupil data and means, for a school district or a county vocational school district, the number of at-risk pupils among those counted in resident enrollment, divided by resident enrollment pursuant to N.J.S.A. 18A:7F-45.

“Core Curriculum Content Standards” means the student achievement standards adopted and revised every five years by the State Board of Education, pursuant to N.J.S.A. 18A:7F-46. The standards ensure that all children are provided the educational opportunity needed to equip them for the role of citizen and labor market competitor.

“County special services school district” or “CSSSD” means any entity established pursuant to N.J.S.A. 18A:46-29 et seq.

“County superintendent roundtable” means the regularly scheduled meetings in each county with the chief school administrators in that county and the executive county superintendent.

“County vocational school district” or “CVSD” means any entity established pursuant to N.J.S.A. 18A:54-1 et seq.

“CPI” means as defined at N.J.S.A. 18A:7F-45 and 18A:7F-5.

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

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

“Department” means the New Jersey Department of Education.

“Educational Service Commission” or “ESC” means Educational Service Commission established pursuant to N.J.S.A. 18A:6-52.

“Efficiency standards” means the standards established pursuant to N.J.S.A. 18A:7F-46 that are contained in Appendix E of the publication, A Formula for Success: All Children, All Communities dated December 18, 2007 and available on the Department’s website at: <http://www.state.nj.us/education/sff/reports/AllChildrenAllCommunities.pdf>. The standards shall be reestablished every three years in the Educational Adequacy Report pursuant to N.J.S.A. 18A:7F-46 beginning with the 2011-12 school year.

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

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

“Energy costs” mean the cost of electricity, natural gas, and fuel oil.

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

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

“Executive County Superintendent” means the Executive County Superintendent of Schools or Acting Executive County Superintendent of Schools pursuant to N.J.S.A. 18A:7-1 et seq.

“Extraordinary costs” mean particular expenditures beyond what is customary and usual in the operation of a public school district, that are beyond the control of the school district, that are necessary to achieve a “T&E” Education as determined by the Commissioner, and where said expenditures either were not included in the original budget of the prebudget year or increased by more than four percent of the amount included in the original budget of the prebudget year.

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

“Forensic audit” means an audit conducted in a scientific fashion and in greater depth and specificity than the annual independent audit required by N.J.S.A. 18A:23-1, which is sufficiently thorough and complete so that an accountant, in his or her independent professional judgment, can deliver a finding as to accounts, inventories, or the presentation thereof that is of such high quality that it would be sustainable in an adversarial legal proceeding, or judicial or administrative review.

“Fund” means a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions or limitations.

“GAAP” means the generally accepted accounting principles that are uniform minimum standards of and guidelines to financial accounting and reporting that are generally recognized as essential to effective management control and financial reporting, and are promulgated and published by the Governmental Accounting Standards Board as prescribed by the State Board pursuant to N.J.S.A. 18A:4-14.

“General fund” means a governmental fund that accounts for all financial resources of the district board of education or charter school board of trustees, except those required to be accounted for in another fund.

“Health care costs” mean the costs of medical and prescription drug insurance consistent with those benefits provided by the School Employees’ Health Benefits Program.

“High school” means a public school which is not a charter school that may grant a State endorsed diploma to students pursuant to N.J.S.A. 18A:7C-4.

“High school salary increment” means \$2,500 for a district served that includes a high school.

“Household income” means income as defined in 7 CFR 245.2 and 245.6 or any subsequent superseding Federal law or regulation pursuant to N.J.S.A. 18A:7F-45.

“Immediate family member” means the person’s spouse, partner in a civil union as defined in N.J.S.A. 37:1-33, domestic partner as defined in N.J.S.A. 26:8A-3, or dependent child, residing in the same household.

“Individualized education program” or “IEP” means as defined in N.J.A.C. 6A:14-13.

“Insurance” means coverage for general liability, automobile liability, school board liability, errors and omissions, property loss or damage, and workers compensation.

“Internal control” means a process, effected by an entity’s management, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

1. Effectiveness and efficiency of operations;
2. Reliability of financial reporting; and
3. Compliance with applicable laws and regulations.

“Job description” means a written specification of the function of a position, duties and responsibilities, the extent and limits of authority, and work relationships within and outside the school and district.

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

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

“Local public school district” or “school district” means any local or regional school district established pursuant to N.J.S.A. 18A:8 or 18A:13, or a school district under full State intervention pursuant to N.J.S.A. 18A:7A-34, but not including a charter school established pursuant to N.J.S.A. 18A:36A-1 et seq. unless specified otherwise.

“Local share” means as calculated pursuant to N.J.S.A. 18A:7F-52 for purposes of N.J.S.A. 18A:7F-43 et seq. and for purposes of a school facilities project as defined at N.J.A.C. 6A:26-1.2 and pursuant to N.J.S.A. 18A:7G-3.

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

“Maximum salary amount” for superintendents means \$125,000 for any district or districts with a total enrollment of 250 or less based on the enrollment figures in the Application for State School Aid (ASSA) filed by the district(s) on the prior October 15; \$135,000 for any district or districts with a total enrollment of 750 or less but greater than 250 based on the enrollment figures in the ASSA filed by the district(s) on the prior October 15; \$145,000 for any district or districts with a total enrollment of 1,500 or less but greater than 750 based on the enrollment figures in the ASSA filed by the district(s) on the prior October 15; \$155,000 for any district or districts with a total enrollment of 3,000 or less but greater than 1,500 based on the enrollment figures in the ASSA filed by the district(s) on the prior October 15; \$165,000 for any district or districts with a total enrollment of 6,500 or less but greater than 3,000 based on the enrollment figures in the ASSA filed by the district(s) on the prior October 15; and \$175,000 for any district or districts with a total enrollment

greater than 3,000 based on the enrollment figures in the ASSA filed by the district(s) on the prior October 15; and \$175,000 for any district or districts with a total enrollment greater than 6,500 based on the enrollment figures in the ASSA filed by the district(s) on the prior October 15. The Commissioner, upon written application by the board(s) of education and on a case-by-case basis, may approve a waiver of the maximum salary amount for any district or districts with a total enrollment of 10,000 or more based on the enrollment figures in the ASSA filed by the district(s) on the prior October 15.

“Member of immediate family” means the spouse, civil union partner pursuant to N.J.S.A. 37:1-33, domestic partner pursuant to N.J.S.A. 26:8A-1 et seq. or dependent child of the individual residing in the same household.

“National Center for Education Statistics” or “NCES” means the organization that publishes the Federal accounting manual, Financial Accounting for Local and State School Systems, that contains the financial accounting terminology and classifications required by N.J.S.A. 18A:4-14 for use in the chart of accounts prescribed by the Commissioner with the approval of the State Board of Education.

“Net budget” means the sum of the school district’s general fund tax levy, State aid payable pursuant to the provisions of N.J.S.A. 18A:7F-43 et seq. other than preschool education aid, miscellaneous revenue estimated pursuant to GAAP, and designated general fund balance.

“New Jersey Quality Single Accountability Continuum” or “NJQSAC” means the New Jersey Quality Single Accountability Continuum for evaluating local public school district performance established pursuant to N.J.S.A. 18A:7A-3 et seq.

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

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

“OFAC” means the Office of Fiscal Accountability and Compliance within the New Jersey Department of Education.

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

“Permanent fund” means a fund used to report resources that are legally restricted to the extent that only earnings, and

not principal, may be used for purposes that support the reporting district board of education’s programs.

“Prebudget year” as defined by N.J.S.A. 18A:7F-45, means the school fiscal year preceding the year in which the school budget is implemented.

“Prebudget year adjusted tax levy” means the adjusted tax levy of the prebudget year less approved waivers and/or separate question(s) unless explicitly approved to be permanent.

“Preliminary budget” means the budget approved by the district board of education as part of a waiver request submission to the Department prior to submission of the proposed budget required pursuant to N.J.S.A. 18A:7F-5(c).

“Presumptive efficient spending level” means the State median cost per pupil of the prebudget year as reflected in the Comparative Spending Guide by indicator for the applicable operating type and enrollment range adjusted by the increase in CPI, or the efficiency standards established pursuant to N.J.S.A. 18A:7F-46 and used in the calculation of the adequacy budget pursuant to the provisions of N.J.S.A. 18A:7F-51, whichever is more appropriate and comparable for the particular spending category under review as determined by the Commissioner.

“Proposed budget” means the budget required pursuant to N.J.S.A. 18A:7F-5(c).

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

“Regional school district” means a limited-purpose or all-purpose public school district established on a regional basis pursuant to N.J.S.A. 18A:13-1 et seq.

“Relative” means an individual’s spouse, civil union partner pursuant to N.J.S.A. 37:1-33, domestic partner as defined in N.J.S.A. 26:8A-3, or the parent, child, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother or half-sister of the individual or of the individual’s spouse, civil union partner or domestic partner, whether the relative is related to the individual or the individual’s spouse, civil union partner or domestic partner by blood, marriage or adoption.

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

“School business administrator” or “SBA” means the school business administrator appointed pursuant to N.J.S.A. 18A:17-14.1 or any other title used for the chief financial officer of the district, such as assistant superintendent for business or assistant superintendent for finance, and requiring

the school business administrator endorsement pursuant to the provisions of N.J.A.C. 6A:9B-11.3(d).

“School district” means any local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes or a school district under full State intervention pursuant to N.J.S.A. 18A:7A-34, but not including a charter school established pursuant to N.J.S.A. 18A:36A-1 et seq. unless specified otherwise.

“School district vehicle” means a vehicle purchased, leased, lease-purchased or acquired without cost by gift, donation or other method by the school district regardless of funding source.

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

“School Employees’ Health Benefit Program” or “SEHBP” means the School Employees’ Health Benefit Program pursuant to N.J.S.A. 52:14-17.46.1 et seq., which shall be the successor plan to the SHBP for school employees.

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

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

“Shared service” means any educational or administrative service required to be performed by a district board of education in which the district, with board approval, is able and willing to share in the costs and benefits of that service with another district board of education, municipality, or other governmental unit, as authorized by the Interlocal Services Act at N.J.S.A. 40:8A-1 et seq. and in compliance with existing school laws at N.J.S.A. 18A, but does not include sending/receiving relationships.

“Special revenue fund” means the governmental fund that accounts for the proceeds of specific revenue sources (other than trusts, or revenues for major capital projects) that are legally restricted to expenditures for specified purposes.

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

“Standard operating procedures” or “SOPs” mean procedures that cover all business functions and are detailed with specific steps and instructions; are realistic based on the employment structure and business system; tie with job descriptions; and are supported by management.

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

“Student Activity Fund” means a fund used to account for monies derived from athletic events or other activities of pupil organizations and to account for the accumulation of money to pay for student group activities.

“Subsistence” means lodging, meals and incidental expenses associated with traveling.

“Superintendent” means the superintendent of schools appointed pursuant to N.J.S.A. 18A:17-15, or where there is no superintendent the administrative principal appointed pursuant to N.J.S.A. 18A:17-20.5, or the State district superintendent appointed pursuant to N.J.S.A. 18A:7A-35 or 18A:7A-49 in the case of a school district under full or partial State intervention.

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

“T&E” means the thorough and efficient system of free public schools for the instruction of all children in the State between the ages of five and 18 years as required by the State Constitution and defined by the Core Curriculum Content Standards and efficiency standards established pursuant to N.J.S.A. 18A:7F-46.

“Thoroughness standards” means the Core Curriculum Content Standards as approved by the State Board pursuant to N.J.S.A. 18A:7F-46a.

“Travel expenditures” means those costs paid by the school district using local, State, or Federal funds, whether directly by the school district or by employee reimbursement, for travel by school district employees and district board of education members to the following five types of travel events:

1. “Training and seminars” means all regularly scheduled, formal residential or non-residential training functions, conducted at a hotel, motel, convention center, residential facility, or at any educational institution or facility;
2. “Conventions and conferences” means general programs, sponsored by professional associations on a regular basis, which address subjects of particular interest to a school district or are convened to conduct association business. The primary purpose of employee attendance at conferences and conventions is the development of new skills and knowledge or the reinforcement of those skills and knowledge in a particular field related to school district operations. These are distinct from formal staff training

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

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

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

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

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

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

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

"Weighted resident enrollment" means the differentials in costs based on the efficiency standards established pursuant to N.J.S.A. 18A:7F-46(a) of providing education at the kindergarten, elementary (grades one through five), middle school (grades six through eight) and high school levels (grades nine through 12) which are determined by dividing the elementary cost per pupil into each category. The weights are applied to resident enrollment in each category pursuant to N.J.S.A. 18A:7F-50.

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

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

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

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

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

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

Administrative change.

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

#### Case Notes

A county superintendent acted properly in denying an application by a borough board of education for leave to pay its chief school administrator \$10,000 above the regulatory salary cap for serving "an additional school district" as defined by N.J.A.C. 6A:23A-1.2 on account of the fact that the administrator was also responsible for a learning center that served disabled children. Though supervision of the learning center, which utilized over 125 teacher assistants, 40 special education teachers, eight speech therapists, four occupational therapists, three physical therapists, two behaviorists, three program supervisors, a transition program coordinator, six job coaches, a special education supervisor, and clerical personnel, represented a significant burden, the learning center was not a "district" within the intent of relevant statutes and regulations including N.J.A.C. 6A:23A-1.2. Since the additional increment was available only where a superintendent served two or more "districts" and the learning center was not a "district," approval of the request to make the additional payment was properly denied. Bd. of Educ. of the Borough of Ridgefield, Bergen Cnty. v. Rixford, OAL DKT. NO. EDU 03919-14, AGENCY DKT. NO. 23-1/14, 2014 N.J. AGEN LEXIS 369, Initial Decision (June 24, 2014).

Contract of the district superintendent of schools was not approved by the Executive County Superintendent (ECS), either expressly or impliedly. No clean copy of the contract with revisions or appropriate spreadsheet was ever submitted to the ECS, and ECS approval could not have been impliedly granted. That would have run counter to the protocol of the Department of Education, as expressed by the district superintendent's own witness who confirmed the requirement for written approval, notwithstanding the absence of written approval in N.J.A.C. 6A:23A-3.1. His initial contract did not, as a matter of law, roll over for the same term of years and at a salary commensurate with the salary of the final year of his initial contract pursuant to N.J.A.C. 6A:23A-1.2(e)2 without complying with the salary caps and without approval of the ECS. Seitz v. Bd. of Educ. of the Twp. of Parsippany-Troy Hills, Morris Cnty., and Kathleen C. Serafino, Exec. Cnty. Superintendent for Morris Cnty., OAL Dkt. No. EDU 12821-11, 2013 N.J. AGEN LEXIS 128, Initial Decision (May 30, 2013).

## SUBCHAPTER 2. EXECUTIVE COUNTY SUPERINTENDENT OF SCHOOLS

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

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

(b) Nothing in this section shall be construed or interpreted to contravene or modify the provisions of the New Jersey

Employer-Employee Relations Act, P.L. 1941, c. 100, (N.J.S.A. 34:13A-1 et seq.), or to limit or restrict the scope of negotiations as provided pursuant to law, or to require an employer to enter into a subcontracting agreement which affects the employment of any employee in a collective bargaining unit represented by a majority representative during the time that an existing collective bargaining agreement with the majority representative is in effect.

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

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

(b) The Executive County Superintendent, in his or her discretion, may create one or more advisory subcommittees that address issues by subject matter, by region or by some other method. Members of the subcommittees may be local taxpayers or residents, school board members, school district employees, school district parents, local government officials,

representatives of State or local education associations, or others, as deemed appropriate by the Executive County Superintendent. The membership shall reflect the diversity of the county to the extent possible.

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Contractual provisions regarding accumulation of unused vacation leave and supplemental compensation for accumulated unused vacation leave shall be consistent with

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

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

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

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

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

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

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

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

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

13. No contract shall include a provision for a monthly allowance except for a reasonable car allowance. A reasonable car allowance cannot exceed the monthly cost of the average monthly miles traveled for business purposes

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

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

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

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

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

In (e)2, inserted "and N.J.A.C. 6A:23A-7"; and added (e)13.  
Amended by R.2011 d.054, effective February 7, 2011.  
See: 42 N.J.R. 2524(a), 42 N.J.R. 2665(a), 43 N.J.R. 284(a).

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

#### Case Notes

Counterclaim filed by a Board of Education against a district superintendent to recoup salary it paid in excess of salary caps was within the jurisdiction of the Commissioner of Education and the administrative law judge because the counterclaim involved issues of significant public interest, in light of the limitations on superintendent salaries enumerated under N.J.A.C. 6A:23A-3.1(a)1 and (a)2. *Seitz v. Bd. of Educ. of the Twp. of Parsippany-Troy Hills, Morris Cnty., and Kathleen C. Serafino, Exec. Cnty. Superintendent for Morris Cnty., OAL Dkt. No. EDU 12821-11, 2013 N.J. AGEN LEXIS 128, Initial Decision (May 30, 2013).*

Contract of the district superintendent of schools was not approved by the Executive County Superintendent (ECS), either expressly or impliedly. No clean copy of the contract with revisions or appropriate spreadsheet was ever submitted to the ECS, and ECS approval could not have been impliedly granted. That would have run counter to the protocol of the Department of Education, as expressed by the district superintendent's own witness who confirmed the requirement for written approval, notwithstanding the absence of written approval in N.J.A.C. 6A:23A-3.1. His initial contract did not, as a matter of law, roll over for the same term of years and at a salary commensurate with the salary of the final year of his initial contract pursuant to N.J.A.C. 6A:23A-1.2(e)2 without complying with the salary caps and without approval of the ECS. *Seitz v. Bd. of Educ. of the Twp. of Parsippany-Troy Hills, Morris*

*Cnty., and Kathleen C. Serafino, Exec. Cnty. Superintendent for Morris Cnty., OAL Dkt. No. EDU 12821-11, 2013 N.J. AGEN LEXIS 128, Initial Decision (May 30, 2013).*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 4. SCHOOL DISTRICT FISCAL ACCOUNTABILITY

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

(a) The Commissioner may appoint an external entity to perform a compliance audit of a district's general fund spending upon identification that the district may be spending State education funds for purposes that are not in compliance with State education laws and regulations.

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

1. Specific findings of:
  - i. Spending that was not in compliance with Federal and State law and regulations;
  - ii. Procedural noncompliance with Federal and State law and regulations;
  - iii. Noncompliance with GAAP and/or generally accepted business practices;
  - iv. Weaknesses in the system of internal controls; and

- v. Questionable or inefficient spending practices;
2. The cause of each finding;
3. Specific corrective recommendations; and
4. The school district response to each finding and recommendation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

low, provide the school district or county vocational school district the opportunity to be heard as to why the amount of the ineffective or inefficient expenditure(s) shall not be withheld from State aid or refunded to the Department.

(b) The proceeding shall be instituted by an Order to Show Cause filed by the petitioner. The filing shall include a statement of factual findings along with a letter memorandum setting forth the basis for the position that the expenditure(s) were ineffective or inefficient.

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

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

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

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

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

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

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

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

1. A maximum dollar limit, established annually prior to budget preparation, for public relations, as defined in

9. A detailed list of efforts to improve administrative efficiency and realize other potential or real cost savings;

10. An accounting and analysis of actual salary breakage in the year prior to the prebudget year for replacement of staff that retired or otherwise left school district employment before or during the year, actual or estimated salary breakage, as available, for the prebudget year for replacement of staff that retired or otherwise left school district employment or are known to be retiring or otherwise leaving school district employment before the end of the prebudget year and estimated salary breakage for the budget year for replacement of staff known to be retiring or otherwise leaving school district employment at the end of the prebudget year;

11. A list of budgeted positions and salaries that have been vacant for more than one year;

12. A list of aides and salaries that are not mandated for preschool and kindergarten or required by IEP for special education; and

13. A list of appropriations to fund deficits in any of the school district's enterprise fund activities.

#### 6A:23A-8.2 Public notice and inspection

(a) Each district board of education, upon submission of its budget application to the Executive County Superintendent or by the statutory submission date, whichever is earlier, shall make available upon request for public inspection all budget and supporting documentation contained in the budget application and all other documents listed in N.J.A.C. 6A:23A-8.1 once the budget application has been submitted to the Executive County Superintendent for approval. Nothing in this section shall restrict access by the citizens of this State to documents which otherwise qualify as public records pursuant to N.J.S.A. 47:1A-1 et seq., or under the common law.

(b) Notwithstanding any provision of law to the contrary, if a district board of education proposes a budget with a general fund tax levy and equalization aid which exceed the school district's adequacy budget, the following statement shall be published, pursuant to N.J.S.A. 18A:7F-5d(10), in the legal notice of public hearing on the budget pursuant to N.J.S.A. 18A:22-28, posted at the public hearing held on the budget pursuant to N.J.S.A. 18A:22-29, and printed on the sample ballot required pursuant to N.J.S.A. 19:60-10:

"Your school district has proposed programs and services in addition to the core curriculum content standards adopted by the State Board of Education. Information on this budget and the programs and services it provides is available from your local school district."

(c) Additionally, the district board of education shall prepare a narrative statement based on the thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-46 which describes in specific detail the reasons why and to the extent that the school district's proposed budget contains

spending which exceeds the adequacy budget. That statement shall be included with the budget application and other materials for public inspection.

#### 6A:23A-8.3 Administrative cost limits

(a) Each district board of education shall budget and report administrative costs using the minimum chart of accounts and other reporting directives published and distributed by the Commissioner pursuant to N.J.S.A. 18A:4-14 and N.J.A.C. 6A:23-2, which includes, but is not limited to, recording the full salary of the business administrator, chief school administrator, and principal/vice principals as administrative costs, except as follows:

1. The salary of the chief school administrator may be prorated between general administration and school administration whenever the chief school administrator also acts as a building principal.

2. The salary of a chief school administrator, business administrator or principal/vice principal shall not be prorated between other functions, except as otherwise provided in (a)1 above or to instruction when providing direct classroom instruction as part of the school district's regular curriculum.

(b) Each district board of education, except for county vocational school districts and nonoperating school districts, shall prepare and submit to the executive county superintendent a proposed budget consistent with N.J.S.A. 18A:7F-5, N.J.S.A. 18A:22-1 et seq. and this chapter, in which the advertised per pupil administrative cost does not exceed the lower of the following:

1. The school district's adjusted, as of February 1, prebudget year per pupil administrative costs as reported in the proposed budget; or

2. The per pupil administrative cost limit for the school district's region. The per pupil administrative cost limits are calculated individually for each of the three regions, North, Central and South, using audited expenditure data from the 2003-04 school year inflated annually by the CPI or 2.5 percent, whichever is greater. Each district board of education will receive a statement of its regional administrative cost limit with the annual State aid notices.

(c) Each district board of education, pursuant to N.J.S.A. 18A:7F-5, may request approval of the Executive County Superintendent, as the Commissioner's designee, to exceed the school district's adjusted, as of February 1, prebudget year per pupil administrative costs up to 2.5 percent or the CPI, whichever is greater, as follows:

1. The district board of education shall submit such request to the executive county superintendent in writing no less than two weeks prior to budget submission;

2. The request cannot exceed the per pupil administrative cost limits for the school district's region in (b)2 above; and

3. The district board of education shall include with such request documentation that supports the request for factors including, but not limited to:

- i. Enrollment changes;
- ii. Administrative changes to fulfill mandated requirements;
- iii. Changes to nondiscretionary fixed costs as defined in N.J.A.C. 6A:23A-1.1; and
- iv. Opening a new school.

(d) Each district board of education subject to (b) above may submit to the Executive County Superintendent any shared services agreements and documented costs for the provision of administrative services to other school districts or governmental units. An Executive County Superintendent may take into consideration such contractual agreements and documented costs in the calculation of total administrative spending in the prebudget and budget year for purposes of determining the district board of education's adherence with the per pupil administrative cost limits.

(e) Each district board of education subject to (b) above shall submit to the Executive County Superintendent a proposed budget in which the advertised per pupil administrative cost is within the per pupil administrative cost limits in (b) above. A district board of education may include as a separate proposal for voter or board of school estimate approval any excess administrative spending above the cost limits only if such proposals are consistent with the requirements at N.J.A.C. 6A:23A-12.13.

(f) Each district board of education subject to (b) above that submits to the Executive County Superintendent a proposed budget in which the advertised per pupil administrative cost exceeds the per pupil administrative cost limits in (b) above, and has not received Executive County Superintendent approval to exceed this requirement as set forth in (c) above, or has not presented documentation to the Executive County Superintendent as set forth in (d) above, will not receive budget approval.

1. The district board of education shall resubmit to the Executive County Superintendent a budget that has met the administrative cost limits, through either a reduction in administrative costs and/or submission of a separate proposal for voter or board of school estimate approval of the excess administrative costs, no later than five working days prior to the school district's last day to advertise for the public hearing.

2. A district board of education that does not resubmit a budget in accordance with (f)1 above within this time-frame:

i. Shall lose the authority and decision-making capacity for development of the final administrative budget for advertisement to the voters or board of school estimate and this responsibility shall be shifted to the Executive County Superintendent, as the Commissioner's designee. The Executive County Superintendent will conduct all necessary budgetary reallocations and reductions to meet these requirements; and

ii. May be subject to withholding of State aid pursuant to N.J.S.A. 18A:7F-9.

(g) Each district board of education subject to (b) above that fails to submit to the Executive County Superintendent an approvable budget in a second consecutive year or any year thereafter shall be subject to:

1. A more restrictive fiscal and budgetary review and approval process as deemed appropriate by the Commissioner; and

2. Withholding of State aid pursuant to N.J.S.A. 18A:7F-9.

#### 6A:23A-8.4 Capital outlay budget

(a) Pursuant to N.J.A.C. 6A:26-3.7 and 3.12, a district board of education shall obtain approval of the local funding for a non-referendum capital project (school facility project or other capital project) through one of the following methods:

1. Necessary line items in capital outlay in the budget certified for taxes;

2. Separate voter approved question or board of school estimate approved resolution or capital projects review board approved resolution of the expenditure of local support; or

3. Withdrawals from capital reserve in accordance with N.J.A.C. 6A:23A-14.1.

(b) A district board of education seeking local approval through the necessary line-items in the budget pursuant to (a)1 above shall provide the necessary detail in the appropriate supporting documentation pursuant to N.J.S.A. 18A:22-8 and N.J.A.C. 6A:23A-8.1.

(c) A district board of education shall transfer the local share of school facilities projects budgeted in capital outlay to the capital projects fund pursuant to N.J.A.C. 6A:26-3.8(a)3.

#### 6A:23A-8.5 Designation of general fund balances

(a) Each district board of education shall, at a minimum, designate in the original budget certified for taxes an estimate of unreserved general fund balance at June 30 of the pre-budget year in excess of the limitations contained in N.J.S.A. 18A:7F-7, less any excess amounts approved by the Commissioner for deposit into a capital reserve account pursuant to N.J.A.C. 6A:23A-14.1, less any Federal impact aid anti-

pated to be received in the prebudget year, and any general fund balances reserved by law or regulation or designation.

(b) If a school district's audited undesignated general fund balance at June 30 of any school year exceeds the amounts permitted in (a) above, the district board of education shall reserve and designate the excess amount in the subsequent year's budget.

(c) A district board of education that fails to comply with (b) above shall be subject to a deduction in the State aid payable to the district board of education in the subsequent budget year in an amount equal to the audited excess undesignated general fund balance less any Federal impact aid received in the prebudget year.

#### **6A:23A-8.6 Appropriation of unreserved debt service fund balance; exception**

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

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

#### **6A:23A-8.7 Tuition rate adjustment by districts receiving preschool expansion aid or educational opportunity aid in the 2007-08 school year**

(a) Beginning in the 2008-09 school year, a receiving district board of education shall phase-out the reduction of the "actual cost per pupil" by the amount of Abbott Parity Remedy Aid, Educational Opportunity Aid and Discretionary Educational Opportunity Aid pursuant to section 61 of P.L. 2007, c. 260.

(b) The receiving school district shall reduce as appropriate the "actual cost per student" for all grade and program categories by the total amount of the above aid categories received in the 2007-08 school year as follows:

1. .80 in the 2008-09 school year;
2. .60 in the 2009-10 school year;
3. .40 in the 2010-11 school year; and
4. .20 in the 2011-12 school year.

(c) For the 2012-2013 school year and thereafter, no reduction shall be made to the "actual cost per pupil" for this purpose.

(d) The receiving district board of education shall make such reductions in accordance with the option selected in N.J.A.C. 6A:23-3.1(c) for certification of the "actual cost per student" for each tuition category.

### **SUBCHAPTER 9. EXECUTIVE COUNTY SUPERINTENDENT BUDGET REVIEW PROCEDURES**

#### **6A:23A-9.1 Executive County Superintendent budget review**

(a) A district board of education shall submit the budget application and all required supporting documentation as prescribed in this section to the Executive County Superintendent for review and approval.

(b) The Executive County Superintendent as designated by the Commissioner shall review and approve each district board of education's proposed budget prior to its advertisement, except when the Commissioner has granted authority to advertise prior to budget approval. The Executive County Superintendent shall only approve budgets when:

1. The base budget portion of the budget application and supporting documentation submitted by the district board of education includes measures to ensure that curriculum and instruction are designed and delivered in a way that all students will have the opportunity to achieve the knowledge and skills defined by the Core Curriculum Content Standards and that all proposed expenditures are suitable and appropriate for that purpose;

2. The base budget contains funds sufficient to meet all existing statutory and regulatory mandates; and

3. The base budget is within the applicable regional limit pursuant to N.J.S.A. 18A:7F-5.

(c) In reaching a determination, the Executive County Superintendent's review shall include, but not be limited to, the following information and records:

1. The thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-46 and defined in N.J.A.C. 6A:23A-1.2;

2. Any progress report or other annual report required by the Commissioner regarding compliance with the quality performance indicators pursuant to N.J.S.A. 18A:7A-3 et seq., and N.J.A.C. 6A:30;

3. Pupil achievement or progress in meeting existing State assessment standards;

4. Annual independent audits and other external reviews by a State or Federal agency or reviews required by statute and regulation;

5. The comparative spending guide;

6. The school report card;
7. Contractual obligations;
8. The Comprehensive Maintenance Plan pursuant to N.J.A.C. 6A:26A; and

9. The section of Long-Range Facilities Plan (LRFP), submitted pursuant to N.J.S.A. 18A:7G-4, that includes the capital projects proposed in the budget.

(d) The Executive County Superintendent shall order any changes in proposed expenditures that are found unsuitable, inappropriate or unreasonable, including administrative spending, pursuant to N.J.S.A. 18A:7F-5.

(e) The Executive County Superintendent shall not approve any base budget unless it includes the required annual maintenance amount pursuant to N.J.A.C. 6A:26A.

(f) The Executive County Superintendent shall annually review expenditures of each district board of education pursuant to N.J.S.A. 18A:7F-5, and shall not predicate budget determinations on past practices. The Executive County Superintendent shall direct in the proposed budget as appropriate an increase, decrease or the elimination of expenditures contained in the prior year's approved budget.

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

In (d), substituted a comma for "or" following "unsuitable", and inserted "or unreasonable".

### **6A:23A-9.2 Executive County Superintendent budget review and approval; administrative and non-instructional expenses**

(a) The Executive County Superintendent shall, prior to advertisement by the district board of education:

1. Review all budgets of the districts within the county, pursuant to N.J.S.A. 18A:7F-5, and may, pursuant to N.J.S.A. 18A:7-8(l) and (x), disapprove a portion of a district's proposed budget if the district has not implemented all potential efficiencies in its administrative operations or if the budget includes excessive non-instructional expenses. In making this determination, the Executive County Superintendent will consider, but need not be limited to, a district's failure to meet efficiency standards or failure to implement efficient business practices established for this purpose pursuant to N.J.A.C. 6A:23A-9.3. The district shall deduct the disapproved amounts from the budget prior to publication, and shall not transfer funds back into those accounts during the budget year.

- i. Budget reallocations may be calculated using the presumptive efficient spending levels as defined in 6A:23A-1.2; and

2. Review and approve separate proposals to be submitted to the voters for additional funds pursuant to N.J.S.A. 18A:7F-5 or 18A:7F-39, as applicable, provided that:

- i. The district provides written documentation that it has made efforts to enter into shared arrangements with other districts, municipalities, counties, and other units of local government for the provision of administrative, business, purchasing, public and nonpublic transportation, and other required district services;

- ii. The district certifies and provides written documentation that the district participates in on-going shared arrangements; or

- iii. The district certifies and provides written documentation that entering such shared arrangements would not result in cost savings or would result in additional expenses for the district.

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

In (a)l, inserted "(l) and (x)".

### **6A:23A-9.3 Efficiency standards for review of administrative and non-instructional expenditures and efficient business practices**

(a) For purposes of Executive County Superintendent budget reviews pursuant to N.J.A.C. 6A:23A-9.1 through 9.5 and tax levy cap waivers pursuant to N.J.S.A. 18A:7F-39, the standards and requirements set forth in this section shall apply.

(b) In making a determination as to whether a district has implemented all potential administrative efficiencies and/or eliminated all excessive non-instructional costs, the Executive County Superintendent shall consider the efficiency standards and Comparative Spending Guide indicators in (c) below as guidelines and applied based on district specific circumstances, including, but not limited to, the district's spending relative to its adequacy budget, the district's results on NJQSAC and other measures of efficiency and effectiveness. The Executive County Superintendent shall also consider the impact on the stability of district operations given the need for long-term planning and budgeting to meet the standards and indicators, district specific cost factors beyond the control of the district and any phase-in period needed to implement any efficiencies the Executive County Superintendent deems feasible based on the standards and indicators in (c) below.

(c) Efficient administrative and non-instructional costs include, but are not limited to, the following:

1. Resources and costs that are equal to or less than the "efficiency standards" established pursuant to N.J.S.A. 18A:7F-46 and defined in N.J.A.C. 6A:23A-1.2;

2. Indicators from the Comparative Spending Guide for districts' operating type and enrollment range indexed to the budget year by the applicable growth in the Consumer Price Index (CPI) as follows:

- i. Administrative cost per pupil equal to or less than the State median;

- ii. Support Services cost per pupil equal to or less than the State median;
  - iii. Operation and Maintenance of Plant cost per pupil equal to or less than the State median;
  - iv. A ratio of Students to Administrative Personnel equal to or more than the State average;
  - v. A ratio of Faculty to Administrative Personal equal to or more than the State average; and
  - vi. A ratio of Students to Educational Support Personnel equal to or more than the State average;
3. Custodians and janitors on a ratio of one for every 17,500 square feet of building space calculated on a district-wide basis;
4. A transportation efficiency rating equal to or more than 120 percent;
5. Overtime pay for any given function of 10 percent or less of regular wages for that function;
6. District participation in the SHBP or SEHBP that permits employees with other health care coverage to waive health care coverage and may pay consideration therefore not to exceed 50 percent of the savings resulting from such waiver of health care coverage;
7. Districts with two or more buildings or buildings configured by two or more grade spans (for example, kindergarten through five, six through eight or nine through 12) that established a tiered system of pupil transportation or demonstrate that doing so would not result in savings or would be more costly. Any district that does not have a tiered system of pupil transportation and cannot demonstrate that such a system would not result in savings or would be more costly shall submit to the Executive County Superintendent on or before December 31, 2009 a plan to establish a tiered system of pupil transportation no later than the opening of schools for the 2011-2012 school year;
8. Vacant positions budgeted at no more than step one of the salary guide unless justification for the additional amount has been approved by the Department;
9. Aides that are not mandated by law or required by an IEP employed only when supported by independent research-based evidence that demonstrates the use of aides is an effective and efficient way of addressing the needs of the particular student population served;
10. The food service fund is self-sufficient and does not require a contribution from the general fund budget;
11. The district solicits competitive proposals with fee quotes or uses a comparable process to ensure the district receives the highest quality services at a fair and competitive price prior to the award of contracts for professional services;
12. Textbook purchases meet one of the following conditions:
- i. The purchase is in accordance with a textbook replacement plan;
  - ii. Textbooks have been identified as stolen or destroyed;
  - iii. A change in curriculum or new edition requires a new textbook; or
  - iv. The current supply of a textbook edition or editions is not adequate due to enrollment increases;
13. Library books, magazine subscriptions, video tapes and DVDs are for educational purposes; and
14. Public relations services that are incorporated into the duties of the superintendent, business administrator and/or other staff position or positions and not provided by a dedicated public relations staff position or contracted service provider. Public relations functions as defined in (c)14i and ii below should not comprise more than 50 percent of the duties of any one staff position.
- i. For the purpose of this paragraph, public relations services include activities directly relating to promotional efforts that advance a particular position and/or communicate information to the news media and district community at large through such means as press releases, press conferences, newsletters, flyers, mass community mailings and emails, television and radio broadcasting, and school-related community events.
  - ii. Public relations activities do not include activities such as crisis communications, website maintenance, data collection and dissemination, school operations and development of the district calendar or handbook.
- (d) The district shall either document that it has taken steps to improve administrative efficiency and reduce non-instructional costs through shared service arrangements or demonstrate that doing so would not result in savings or would be more costly.
- Special amendment, R.2009 d.35, effective December 18, 2008.  
See: 41 N.J.R. 642(a).
- In (b), inserted "as guidelines and applied based on district specific circumstances, including, but not limited to, the district's spending relative to its adequacy budget, the district's results on NJQSAC and other measures of efficiency and effectiveness. The Executive County Superintendent shall also consider", and deleted "efficiency" preceding the second occurrence of "standards".

**6A:23A-9.4 Commissioner's authority to direct expenditures to achieve T&E**

- (a) In those instances in which a district board of education submits a budget with a general fund tax levy and equalization aid set at less than its adequacy budget, the Commissioner may, when deemed necessary to ensure implementation of the thoroughness and efficiency standards, direct

additional expenditures, in specific accounts and for specific purposes, up to the district's adequacy budget.

(b) In those instances in which a district board of education submits a budget with a general fund tax levy and equalization aid set at less than its adequacy budget and which fails to meet the Core Curriculum Content Standards in any school year, the Commissioner shall direct the district board of education to increase expenditures to meet at least the adequacy budget within the next two budget years in a manner that addresses the cause or causes of the failure.

(c) In all cases, including those instances in which a district submits a budget with a general fund tax levy and equalization aid above its adequacy budget, the Commissioner may direct such budgetary reallocations and programmatic adjustments, or take such other measures, as deemed necessary to ensure implementation of the required thoroughness and efficiency standards.

(d) The Commissioner may approve a budget with an increase in its adjusted tax levy by more than the allowable amount authorized pursuant to N.J.S.A. 18A:7F-38, up to the amount required to support the directed increases in expenditure accounts in (a) and (b) above.

**6A:23A-9.5 Commissioner to ensure achievement of the Core Curriculum Content Standards; corrective actions**

(a) A district board of education shall be subject to action by the Commissioner, as part of the budget approval process, upon the failure of one or more schools within the district to achieve the Core Curriculum Content Standards as evidenced by existing Statewide assessment methods or other statutory or regulatory methods of evaluation.

(b) In a situation where the Commissioner deems progressive actions would not be sufficient due to the magnitude of the failure and/or other factors, the Commissioner shall, pursuant to the summary authority granted the Commissioner by N.J.S.A. 18A:7F-6(b), take immediate corrective actions as deemed appropriate including, but not limited to:

1. Restructuring of curriculum or programs consistent with the thoroughness standards established pursuant to N.J.S.A. 18A:7F-46;
2. Retraining or reassignment of staff and the development and implementation of a formal plan for professional development at the amount provided for in the efficiency standards established pursuant to N.J.S.A. 18A:7F-46;
3. Conducting a comprehensive budget evaluation;
4. Redirecting expenditures consistent with the thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-46;

5. Enforcing spending at the full adequacy budget consistent with the thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-46;

6. Reviewing of the terms of future collective bargaining agreements prior to final approval by the district board of education and an assessment of the impact of such terms on the district's budget, education program and the local property tax levy; and

7. Requiring a district board of education to implement enhanced budget procedures, as deemed appropriate, as follows:

i. Consider revenue payable pursuant to N.J.S.A. 18A:7F-43 et al., School Funding Reform Act of 2008, and all other State, local and Federal revenue as revenue of the general fund unless expressly restricted by Federal law or written contract, for the purpose of implementing the directives of the Commissioner;

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

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

iv. Obtain written Commissioner approval prior to appropriating for new purposes school level appropriation balances occurring during the year from salary breakage, unanticipated circumstances, overestimated costs, or other events.

(1) Upon such approval, a district board of education may, in accordance with the provisions of N.J.S.A. 18A:22-8.1, transfer such appropriation balances between schools or for district-wide purposes, except where prohibited by any Federal law that may restrict such transfers.

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

(c) The Commissioner will report any action taken under N.J.S.A. 18A:7F-6b to the State Board within 30 days.

(d) A district board of education may appeal any actions taken by the Commissioner under N.J.S.A. 18A:7F-6b to the Appellate Division of the Superior Court pursuant to P.L. 2008, c. 36.

(e) Nothing in this section shall be construed to limit such general or specific powers as are elsewhere conferred upon the Commissioner pursuant to law.

#### **6A:23A-9.6 Appeal of Executive County Superintendent budget reductions**

(a) Any formal budgetary action of the Executive County Superintendent may be appealed directly to the Commissioner, who shall render a decision within 15 days of the receipt of the appeal. If the Commissioner fails to issue a decision within 15 days of the filing of an appeal, the budgetary action of the Executive County Superintendent shall be deemed approved.

(b) The procedure for appealing a budget reduction(s) made by the Executive County Superintendent for administrative inefficiency or excess non-instructional costs shall be as follows:

1. A district board of education in which the general fund tax levy proposed in the base budget has been reduced or a separate proposal(s) has been reduced or rejected shall, within five business days of the written notice of said action, submit to the Commissioner the following information:

i. The complete line-item budget as originally submitted to the Executive County Superintendent and all supporting documentation and narrative explanations including any copies of additional spending proposals;

ii. A disk in Microsoft Excel with a list of the line-items reduced by the Executive County Superintendent showing in separate columns:

- (1) Budget line number;
- (2) Account description;
- (3) Account number;
- (4) Actual audited expenditure of prior year budget;
- (5) Expenditure as of February 1 of the prebudget year (current year);
- (6) Originally proposed expenditure for the budget year;
- (7) Amount of Executive County Superintendent reduction; and
- (8) Proposed expenditure after Executive County Superintendent reduction;

iii. A copy of the Executive County Superintendent's written explanation for each line-item reduction;

iv. The district's written itemized argument(s) for the restoration of all or part of each line-item reduction accompanied by any available supporting documentation;

v. The numbers of professional administrative and professional non-instructional staff by line-item account during the current school year and projected staff for the ensuing school year, together with reasons for any increase or decrease;

vi. The numbers of nonprofessional administrative and nonprofessional non-instructional staff by line-item account during the current school year and projected staff for the ensuing school year, together with reasons for any increase or decrease;

vii. Pupil enrollment by grade for the district as of the preceding June 30, the last school day prior to the preceding October 16 and as projected for October of the ensuing school year;

viii. Salaries or salary schedules for all administrative and non-instructional staff by job title; and

ix. The number of schools and classrooms in each school.

#### **6A:23A-9.7 Procedures following voter defeat of proposed budget; municipal governing body or board of school estimate action**

(a) Procedures following voter defeat of the proposed budget with a general fund tax levy above the district's required local share pursuant to N.J.S.A. 18A:7F-5b are as follows:

1. A district board of education in which the general fund tax levy proposed in the base budget has been rejected by the voters at the annual school election shall, within two days of the certification of election results, submit to the Executive County Superintendent and the governing body or bodies comprising the district, the following information:

i. A complete line-item budget listing each item by code and line description, including actual expenditures for the previous school year, actual budgeted amount for the current school year, proposed budgeted amount for the ensuing school year as proposed to the voters, the advertised budget for the ensuing school year, and all supporting documentation and narrative explanations including copies of approved spending proposals, indicating which were approved;

ii. A copy of the annual progress report, if any, submitted to the Commissioner pursuant to N.J.S.A. 18A:7A-11 and N.J.A.C. 6A:30;

iii. A copy of the district's most recent annual audit;

iv. An explanation of any action(s) to reallocate, direct additional expenditures, and so forth, taken by the Commissioner, or the Executive County Superintendent on behalf of the Commissioner, pursuant to N.J.S.A. 18A:7F-5 through 7, 18A:7F-39, or 18A:7-8 or a statement to the effect that no such actions were taken;

v. The numbers of professional and nonprofessional staff during the current school year and projected staff for the ensuing school year, together with reasons for any increase or decrease;

vi. Pupil enrollment by grade for the district as of the preceding June 30, the last school day prior to the preceding October 16 and as projected for October of the ensuing school year;

vii. Salary schedules for all employees;

viii. The number of schools and classrooms in each school;

ix. Tuition received or paid during the previous school year, anticipated for the current school year and projected for the ensuing school year;

x. Substantiation of need for any proposed capital projects and/or deposits into the capital reserve, including documentation of the projects' inclusion in the long-range facilities plan (LRFP);

xi. Any information required for budget submission to the Executive County Superintendent and not specifically enumerated in (a)1i through x above;

xii. The applicable portions of the comparative spending guide;

xiii. The applicable portions of the school report card;

xiv. Pursuant to N.J.S.A. 18A:7F-5(d)9, beginning in 2012-2013, separate questions that were rejected by the voters; and

xv. Any other documentary materials or records the Commissioner deems appropriate for a specific district board of education.

2. The governing body or bodies shall transmit to the district board of education a letter of receipt acknowledging the receipt of the information in (a)1 above.

3. The governing body or bodies comprising the district, or a formally approved committee thereof, shall, as soon as immediately practicable, consult with the district board of education, or a formally approved committee thereof, for purposes of determining the amount of general fund tax levy sufficient to ensure provision of a T&E education or to maintain the stability of a district's programs.

4. If either the board of education or municipal governing body, or both, will have a majority present at the meeting, then the meeting must be publicly announced and

advertised according to the Open Public Meetings Act by the body(ies) with the majority present.

5. On or before May 19, the governing body or bodies shall certify to the county board of taxation an amount to be appropriated for this purpose pursuant to N.J.S.A. 18A:22-37. Copies of such certification shall be forwarded to the district board of education and Executive County Superintendent. The governing body or bodies shall not certify an amount less than the minimum tax levy required to meet the required local share established pursuant to N.J.S.A. 18A:7F-5. The governing body does not have the authority to recommend a reduction in the debt service levy, only the general fund tax levy.

i. The general fund tax levy certification, in the form of a resolution, shall be for the sum of the base budget amount and additional amounts approved by the voters through separate questions.

ii. If the amount so certified for the base budget is less than proposed to the voters by the board of education, the governing body or bodies in the form of a resolution shall present to the district board of education and the Executive County Superintendent a statement of the specific line-item expenditure reductions or increases in budgeted revenues or designated general fund balance recommended by the governing body or bodies. The governing body or bodies shall also submit with the statement, a certification attesting that the governing body or bodies has reviewed the budget proposed by the district board of education and that it deems the revised budget sufficient for provision of a thorough and efficient system of education.

iii. If the sum of the equalization aid and general fund tax levy resulting from such review is at or below the district's adequacy budget as calculated pursuant to N.J.S.A. 18A:7F-51, the governing body or bodies shall concurrently present to the district board of education, and to the Executive County Superintendent, a specific written explanation and document by clear and convincing evidence for each line item reduced that it either will not adversely affect the ability of the district board of education to meet the thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-46, or will not adversely affect the stability of a district board of education's overall operations given the need for long term planning and budgeting as required by N.J.S.A. 18A:7F-5e(2).

(b) Procedures following voter defeat of the proposed budget with a general fund tax levy at the district's required local share pursuant to N.J.S.A. 18A:7F-5b are as follows:

1. A district board of education in which the general fund tax levy proposed in the base budget has been rejected by the voters at the annual school election shall, within two days of the certification of election results, submit to the

governing body or bodies comprising the district the following information:

- i. A complete line-item budget listing each item by code and line description, including actual expenditures for the previous school year, actual budgeted amount for the current school year, proposed budgeted amount for the ensuing school year as proposed to the voters, the advertised budget for the ensuing school year, and all supporting documentation and narrative explanations including copies of approved spending proposals, indicating which were approved;
  - ii. A copy of the district's most recent annual audit;
  - iii. An explanation of any action(s) to reallocate, direct additional expenditures, and so forth, taken by the Commissioner, or the Executive County Superintendent on behalf of the Commissioner, pursuant to N.J.S.A. 18A:7F-5 through 7, 18A:7F-39, or 18A:7-8, or a statement to the effect that no such actions were taken;
  - iv. Pursuant to N.J.S.A. 18A:7F-5(d)9, beginning in 2012-2013, separate questions that were rejected by the voters; and
  - v. Any other documentary materials or records the Commissioner deems appropriate for a specific district board of education.
2. The governing body or bodies shall transmit to the district board of education a letter of receipt acknowledging the receipt of the information in (a)1 above.
3. If either the board of education or municipal governing body, or both, will have a majority present at the meeting, then the meeting must be publicly announced and advertised according to the Open Public Meetings Act by the body(ies) with the majority present.
4. On or before May 19, the governing body or bodies shall certify to the county board of taxation an amount not less than the required local share established pursuant to N.J.S.A. 18A:7F-5b for this purpose pursuant to N.J.S.A. 18A:22-37. Copies of such certification shall be forwarded to the district board of education and Executive County Superintendent. The governing body does not have the authority to certify a reduction in the general fund levy or debt service levy.
- i. The general fund tax levy certification, in the form of a resolution, shall be for the base budget amount and plus, beginning in 2012-13, any additional amounts approved by the voters through separate questions.
  - ii. The governing body or bodies may include in the resolution a list of recommended line-item reallocations for the district board of education consideration.
  - iii. If the amount so certified for the base budget is less than the required local share, the certification will be

considered a failure to certify in accordance with N.J.A.C. 6A:23A-9.8.

(c) Procedures following review of the budget by the board of school estimate are as follows:

1. A district board of education, when submitting its proposed budget to the board of school estimate, shall also submit to the board of school estimate, the governing body or bodies and the Executive County Superintendent, the documents enumerated in (a)1 above.

- i. If the amount of money appropriated by the board of school estimate for general fund purposes for the ensuing year, which amount may not be less than the required local share established pursuant to N.J.S.A. 18A:7F-5b, is less than the amount proposed by the district board of education, the board of school estimate shall present to the board of education, the governing body or bodies and the Executive County Superintendent, a statement of the specific line-item reductions made by the board of school estimate. The board of school estimate shall submit with the statement a certification that the board of school estimate has reviewed the budget proposed by the board of education and that it deems the revised budget sufficient for provision of a thorough and efficient system of education.

2. The governing body of each municipality comprising the district shall appropriate the amount certified by the board of school estimate.

- i. If the amount of money appropriated by the governing body or bodies for general fund purposes for the ensuing year pursuant to N.J.S.A. 18A:22-17, which amount may not be less than the required local share established pursuant to N.J.S.A. 18A:7F-5b, is less than the amount certified by the board of school estimate, the governing body or bodies shall present to the board of school estimate, the board of education and the Executive County Superintendent, a statement of the specific line-item reductions made by the governing body or bodies. The board of school estimate shall submit with the statement a certification that the amount appropriated for school purposes is sufficient for provision of a thorough and efficient system of education.

- ii. If the sum of the equalization aid and general fund tax levy resulting from board of school estimate review or subsequent governing body certification is at or below the district's adequacy budget as calculated pursuant to N.J.S.A. 18A:7F-51, the board of school estimate and/or governing body or bodies, as the case may be, shall concurrently present a specific written demonstration as to why such reductions will not adversely affect the ability of the district to provide a thorough and efficient education or the stability of the district given the need for long term planning and budgeting as required by N.J.S.A. 18A:7F-5e(2).

3. If the money appropriated by the governing body or bodies for general fund purposes for the ensuing year pursuant to N.J.S.A. 18A:22-17, is less than the required local share established pursuant to N.J.S.A. 18A:7F-5b, the certification will be considered a failure to certify in accordance with N.J.A.C. 6A:23A-9.8.

(d) In those instances where the governing body or bodies or the board of school estimate has certified an amount of tax levy less than that proposed by the district board of education as a result of reductions eligible for restoration through application to the Commissioner as set forth in N.J.A.C. 6A:23A-9.9, the Executive County Superintendent shall schedule a conference between the district board of education, or a formally approved committee thereof, and the governing body or bodies or the board of school estimate, as the case may be, or a formally approved committee thereof, for the purpose of assisting the respective bodies in reaching agreement on the amount of tax levy sufficient to ensure provision of a T&E education consistent with the requirements of N.J.S.A. 18A:7F-5 through 63.

1. If an agreement is reached, any resultant adjustment in tax levy shall be certified forthwith to the county board of taxation.

2. If an agreement is not reached, where tax levy has already been certified pursuant to N.J.S.A. 18A:22-37, the levy will stand as originally certified and application to the Commissioner for restoration of reductions may be made in accordance with the provisions of this section.

3. Paragraphs (d)1 and 2 above shall not apply to any instance where governing body or bodies or board of school estimate reductions are not eligible for restoration through application to the Commissioner as set forth in N.J.A.C. 6A:23A-9.9, in which case the amount certified by the governing body or bodies or the board of school estimate shall remain final without further review or consultation.

Amended by R.2009 d.394, effective December 21, 2009.  
See: 41 N.J.R. 2381(a), 41 N.J.R. 4721(a).

In the introductory paragraph of (a), inserted "with a general fund tax levy above the district's required local share pursuant to N.J.S.A. 18A:7F-5b"; added new (b); recodified former (b) and (c) as (c) and (d); in (c)1i and (c)2i, deleted "minimum tax levy required to meet the" preceding "required local"; added (c)3; and in (d)3, substituted "(d)1" for "(c)1".

#### **6A:23A-9.8 Municipal governing body failure to certify or agree; Commissioner sets tax levy**

Pursuant to N.J.S.A. 18A:22-38, in those instances where the governing body or bodies fail to certify by May 19 an amount of tax levy for any item rejected at the annual school election, or certify different amounts, to the county board of taxation, a district board of education shall submit the budget and any reductions recommended pursuant to N.J.S.A. 18A:7F-5e(1) or (2) by the governing bodies following voter defeat for review and determination by the Commissioner of

the tax levy amount to be certified to the county board of taxation.

#### **6A:23A-9.9 Application for Commissioner restoration of budget reductions**

(a) The requirements for application to the Commissioner for restoration of reductions are as follows:

1. A district board of education which has proposed to the voters or the board of school estimate, as the case may be, a general fund budget pursuant to N.J.S.A. 18A:7F-5 with a sum of general fund tax levy and equalization aid in excess of the district's adequacy budget as calculated pursuant to N.J.S.A. 18A:7F-51 may apply for restoration of reductions made pursuant to N.J.S.A. 18A:7F-5e(1) by the governing body or bodies following voter defeat, or by the board of school estimate, only on grounds that such reductions will negatively impact on the stability of the district given the need for long term planning and budgeting ("stability grounds"), and shall document by clear and convincing evidence its need for restoration of each item reduced. In such cases, a district board of education shall not argue that any of the reductions will adversely affect the district board of education's ability to meet the thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-46.

i. "Stability grounds" as used in the School Funding Reform Act of 2008, N.J.S.A. 18A:7F-43 et al., means reductions which would require long term planning or budgeting and cannot be accomplished within the budget year; which would adversely affect the district board of education's ability to operate a school system; and which are not a program, service or other expenditure contained within the efficiency standards established pursuant to N.J.S.A. 18A:7F-46 or that are expenditures for items which are in excess of those contained in the efficiency standards established pursuant to N.J.S.A. 18A:7F-46.

2. A district board of education which has proposed to the voters or the board of school estimate, as the case may be, a general fund budget pursuant to N.J.S.A. 18A:7F-5 with a sum of general fund tax levy and equalization aid at or below the district's adequacy budget as calculated pursuant to N.J.S.A. 18A:7F-51 may apply for restoration of reductions made pursuant to N.J.S.A. 18A:7F-5e(2) by the governing body or bodies following voter defeat, or by the board of school estimate, on grounds that such reductions either will adversely affect the district board of education's ability to meet the thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-46 ("T&E grounds"), or will adversely affect the stability of a district board of education's overall operations given the need for long term planning and budgeting ("stability grounds").

i. "T&E grounds" means that the reduction or reductions would adversely affect the district board of

education's ability to implement programs and services at the level contained in the efficiency standards in order to ensure that its students achieve the Core Curriculum Content Standards. For the 2008-09 school year through the 2010-2011 school year, the efficiency standards are those contained in the report, A Formula for Success: All Children, All Communities dated December 18, 2007 and available on the DOE Website. Beginning in the 2011-2012 school year and thereafter, the efficiency standards shall be established every three years in the Educational Adequacy Report prepared pursuant to N.J.S.A. 18A:7F-46.

3. Within 10 business days after certification of the general fund tax levy by the governing body or bodies, or the board of school estimate, a district board of education eligible for restoration pursuant to (a)1 or 2 above may submit to the Commissioner an application for restoration on a form deemed appropriate by the district, but shall:

- i. Address each line-item reduction made by the governing body or bodies or the board of estimate; and
- ii. Provide a specific written explanation supported by attached documentation, or specific reference to information contained in materials submitted pursuant to N.J.A.C. 6A:23A-9.7(a)1, as to why each reduction will adversely affect the ability of the district to provide a thorough and efficient education or the stability of the district given the need for long term planning and budgeting, whichever criterion or criteria will apply under (a)1 or 2 above.

4. A district board of education shall submit an application for restoration to the appropriate Executive County Superintendent, and a copy of the complete application shall concurrently be submitted to the governing body or bodies, or the board of school estimate, as the case may be.

5. Within 10 business days of receipt of the district board of education's application, the governing body or bodies, or the board of school estimate, may submit to the Executive County Superintendent any comments it may wish to make on the district board of education's appli-

cation. A copy of such comments shall concurrently be submitted to the district board of education.

6. For the purposes of determining the grounds on which a district board of education can submit an application to the Commissioner pursuant to (a)1 and 2 above, the calculation of the district's adequacy budget does not include a sending district's required tuition payment or number of students sent.

(b) Commissioner review and certification of tax levy, and determination of application for restoration shall be as follows:

1. Upon receipt of a district board of education's application and the governing body or board of school estimate's comments thereon or upon expiration of the time for their submission, the Commissioner will review the materials submitted and issue an order directing such restorations or reallocations as he or she deems warranted pursuant to the appropriate standard as set forth in N.J.S.A. 18A:7F-5 consistent with the overall intent of the Act. For purposes of assessing budgets for certification of tax levy, and assessing applications, the Commissioner may engage the assistance of such Department of Education staff as he or she deems appropriate.

2. In addition to application materials and responsive comments, and those materials submitted to the Executive County Superintendent in accordance with the requirements of (a)1 above, the Commissioner, assessing budgets for certification of tax levy, and assessing applications for restoration, may consider such additional information as may be available to him or her through established reporting requirements and Department of Education data collection processes, for example, the Fall Report. Additionally, should the Commissioner or a designee determine during the course of review that further information or explanation is required from a district board of education, or a governing body or board of school estimate, such information may be requested at any time during the review process.

3. In the case of budgets subject to Commissioner tax levy certification pursuant to N.J.A.C. 6A:23A-9.8 or ap-

plications submitted pursuant to (a) above, the Commissioner may consider enrollment increases or decreases within the district, the history of voter or board of estimate approval or rejection of district budgets, the impact on the local tax levy, whether reductions made will impact on the ability of the district to fulfill its contractual obligations, and the other factors listed in (b)4 below.

4. In determining the impact of reductions on the stability of a district, the Commissioner may consider the following information:

- i. Increases or decreases in enrollment;
- ii. The history of voter approval or rejection of district budgets;
- iii. The impact on the local tax levy;
- iv. The ability of the district to fulfill its existing contractual obligations on the effective date of N.J.S.A. 18A:7F-43 et seq. and the relationship of contractual obligations since the effective date of N.J.S.A. 18A:7F-43 et seq. to Statewide trends in bargaining practices;
- v. The impact on class sizes relative to instructional space;
- vi. The impact on class sizes relative to teaching staff reductions under existing teacher contracts;
- vii. The link between the proposed reduction and classroom instruction or health and safety;
- viii. The nature of the reduction as to whether it is a continuation expenditure or a new or increased expenditure;
- ix. The district's relative standing in the Comparative Spending Guide on the indicators for Total Administration, Administrative Salaries and Benefits, Total Operations and Maintenance of Plant, Board Contributions to the Food Service Program and Extracurricular Costs;
- x. The district's original budget to actual spending and undesignated general fund balance usage and projections trend histories;
- xi. Nonrecurring costs;
- xii. The degree to which a district exceeds the adequacy budget; and
- xiii. Any facts or data which would provide evidence of the reduction's impact.

5. In directing adjustments to budgets which are subject to Commissioner certification, application for restoration or required review, the Commissioner may reallocate or sustain reductions to surplus where such reallocations or reductions do not decrease surplus below \$250,000 or the

minimum amount necessary based on the district's specific circumstances and needs, whichever is greater, notwithstanding that budgeted amounts are within the level permitted by N.J.S.A. 18A:7F-7.

6. Any reallocations directed as a result of review under this subsection shall be made consistent with the provisions of N.J.S.A. 18A:7F-6e.

7. Decisions of the Commissioner issued pursuant to this subchapter are final decisions that may be appealed to the Appellate Division of the Superior Court pursuant to P.L. 2008, c. 36.

#### **6A:23A-9.10 Executive County Superintendent ongoing budget review**

(a) The Executive County Superintendent shall, subsequent to voter or board of school estimate approval, as applicable, but prior to submission of the subsequent school budget:

1. Reexamine and monitor all district budgets of the districts within the county to identify any potential efficiencies in administrative operations or any excessive non-instructional expenses that were not identified during the initial budget review or are the result of subsequent events or new information. During the reexamination, the Executive County Superintendent shall consider the following:

- i. The efficiency standards and efficient business practices established pursuant to N.J.A.C. 6A:23A-9.3;
- ii. The district's year-end board secretary's report;
- iii. The district's independent annual audits and Comprehensive Annual Financial Reports;
- iv. Recent evaluations and progress reports of the five key components of district effectiveness under NJQSAC;
- v. The results of year-end financial procedures conducted pursuant to N.J.A.C. 6A:23A-9.11;
- vi. Routine district inspections made pursuant to N.J.S.A. 18A:7-8(a); and
- vii. Other information or documentation obtained during the performance of the duties of the Executive County Superintendent pursuant to N.J.S.A. 18A:7-8; and

2. Notify in writing any district where administrative efficiencies and/or excessive non-instructional costs are identified of the findings and amounts by account that shall not be included in the district's subsequent budget and that transfers shall not be made during the budget year from those accounts.

**6A:23A-9.11 Year-end financial procedures for Executive County Superintendent and fiscal monitor**

(a) Within 30 days of receipt of a district's audited CAFR, the office of the Executive County Superintendent or State monitor, where one has been appointed in the district pursuant to N.J.S.A. 18A:7A-55, shall review each school district's and county vocational school district's I-1, Schedule of Serial Bonds, for compliance with N.J.S.A. 18A:55-3(e).

1. The Executive County Superintendent or State monitor, as applicable, shall notify each school district and county vocational school district of any debt that might result in a three percent net present value savings if refinanced and shall document whether the district board of education has passed a resolution to refinance or taken any other action to study the refinancing of such debt; and

2. The Executive County Superintendent or State monitor, as applicable, shall recommend to the Commissioner that he institute an action pursuant to this subchapter to seek the withholding of state aid in an amount equal to the projected savings to be achieved through refinancing in those cases where no action has been commenced to study refinancing or refinance such debt.

(b) The office of the Executive County Superintendent or State monitor, as applicable, shall annually review each school district's and county vocational school district's audited account payables and encumbrances that are part of the reserve for encumbrances as of June 30 that are in excess of \$5,000.

1. No earlier than October 15 but no later than December 1 of each year, each school district and county vocational school district shall submit to the Executive County Superintendent or State monitor, as applicable, a detailed list for encumbrances and a detailed list for accounts payable that comprise the aggregate amount of the respective balance sheet accounts reflected in the annual independent audit of the most recently completed fiscal year-end. Each list shall indicate for each item:

- i. The purchase order number;
- ii. The date of purchase order issuance;
- iii. The vendor name;
- iv. The purchase order amount;
- v. A brief description of goods or service, and when available;
- vi. The invoice number;
- vii. The invoice date;
- viii. The invoice amount;
- ix. The check number; and

x. The check date.

(c) The Executive County Superintendent or State monitor, as applicable, may request back-up documentation for some or all of the items, when deemed warranted, to be reviewed at district offices, or in the case of the Executive County Superintendent, may be delivered to the office of the Executive County Superintendent.

(d) The Executive County Superintendent or State monitor, as applicable, may lower the dollar amount of transactions to be reviewed, if, after reviewing those over \$5,000, it is deemed warranted.

(e) Except for construction projects and other long-term contracts, the reserve for encumbrances or undesignated general fund balance created by cancelled encumbrances, as applicable, shall be reclassified to "designated general fund balance for tax relief in the subsequent school year" in the aggregate amount of the following:

1. Encumbrances reflected in the independent audit report's reserve for encumbrances that are cancelled on or after July 1; or

2. Encumbrances for goods or services that have not been liquidated by September 30 of the fiscal year subsequent to the recently audited fiscal year.

(f) Account payables at year-end shall include only amounts for goods or services that have been received or rendered as evidenced by the invoice date on or before June 30 of the audited fiscal year.

(g) Account payables that do not meet the criteria in (f) above shall be treated as encumbrances in accordance with (e) above. Prior year accounts payables that were actually encumbrances or undesignated general fund balance created by cancelled accounts payables/encumbrances, as applicable, shall be reclassified to "designated general fund balance for tax relief in the subsequent school year" in the aggregate amount of accounts payable at June 30 of the audited fiscal year.

SUBCHAPTER 10. SPENDING GROWTH LIMITATION

**6A:23A-10.1 Moratorium on spending growth limitation and municipal governing body authority to determine amount to be raised upon voter rejection of separate proposal**

(a) For the 2008-09 school year through the 2011-12 school year, the tax levy growth limitation established pursuant to N.J.S.A. 18A:7F-37 through 40 and N.J.A.C. 6A:23A-11, shall be applied to the annual school budgets for those years in lieu of the spending growth limitation established pursuant to N.J.S.A. 18A:7F-5, and N.J.A.C. 6A:23A-10.2 and 10.3 (banked cap).

culated pursuant to N.J.A.C. 6A:23A-11.4, and Commissioner approved waivers granted pursuant to N.J.S.A. 18A:7F-39.

(b) The tax levy growth limitation calculated in (a) shall be reduced by the amount of the State aid increase, if any, that exceeds two percent or the CPI, whichever is greater, for a school district which is spending above adequacy as determined pursuant to N.J.S.A. 18A:7F-47d and has a prebudget year general fund tax levy greater than its local share as calculated pursuant to N.J.S.A. 18A:7F-52.

- i. The CPI shall not exceed four percent;
- ii. If the reduction would bring the school district's spending below adequacy, the amount of the reduction made to the school district's tax levy growth limitation shall not be greater than the amount that brings the school district's spending to adequacy; and
- iii. Any reduction pursuant to this provision shall be a one-time adjustment and shall be restored in the prebudget year adjusted tax levy used to calculate the adjusted tax levy growth limitation for the subsequent budget year.

(c) The school district must prove by clear and convincing evidence that the anticipated dollar amount of the expenditure for each tax levy adjustment sought is reasonable.

(d) The adjusted tax levy shall be adjusted, accordingly, when the responsibility and associated cost of an activity is transferred to another school district or governmental entity.

#### **6A:23A-11.2 Adjustment for increases in enrollments**

(a) For purposes of this calculation, the school district shall use the enrollment projection calculated by the Commissioner for the purpose of State aid calculations for the budget year.

(b) The allowable adjustment for increases in enrollment shall equal the per pupil prebudget year adjusted tax levy multiplied by EP, where EP equals the sum of:

1. 0.50 for each unit of weighted resident enrollment that constitutes an increase from the prebudget year over one percent, but not more than 2.5 percent;
2. 0.75 for each unit of weighted resident enrollment that constitutes an increase from the prebudget year over 2.5 percent, but not more than four percent; and
3. 1.0 for each unit of weighted resident enrollment that constitutes an increase from the prebudget year over four percent.

(c) A school district may request approval for each unit of weighted resident enrollment to equal one if it can demonstrate that:

1. The calculation in N.J.S.A. 18A:7F-38 would result in an average class size that exceeds the facilities efficiency standards established pursuant to N.J.S.A. 18A:7G-1 et al., by 10 percent; and

2. New resources were added to the budget to achieve actual average class size reduction. For this purpose, adding another teacher to an existing classroom shall not constitute class size reduction.

#### **6A:23A-11.3 Adjustment for a reduction in total unrestricted State aid**

(a) The amount of the adjustment for a reduction in total unrestricted State aid, if any, shall be the decrease in unrestricted State aid between the budget year and prebudget year. The adjustment shall be calculated by the Department and provided to the school districts.

(b) The adjustment shall be for a reduction in total unrestricted State aid, and shall not be by individual State aid category amounts.

#### **6A:23A-11.4 Adjustment for an increase in health care costs**

(a) For the purposes of calculating the adjustment for health care costs, health care costs shall include medical insurance and prescription drug insurance consistent with the coverage provided under the SEHBP.

(b) The adjustment for an increase in health care costs shall be the amount of the increase between the prebudget and budget years in excess of four percent, except that the sum of four percent and any amount in excess of four percent expressed as a percentage shall not exceed the average percentage increase of the SEHBP for purposes of determining the amount of the adjustment.

1. For the purpose of this calculation, the health care cost for the budget year shall equal the projected cost or actual cost, when available, of medical and prescription drug insurance as of February 1 of the prebudget year.

2. The average percentage increase of the SEHBP shall be the amount determined annually by the State of New Jersey Division of Pensions and Benefits.

(c) Supporting documentation for this adjustment shall be submitted to the Department as follows:

1. A written verification or estimate, as applicable, of the rate increases for medical and prescription drug insurance from the insurance broker or insurer;

2. A summary schedule of invoices for the 12 months or four quarters, as applicable, prior to the waiver request for medical and prescription drug insurance;

3. The actual cost, if available, or estimated cost of medical and prescription drug insurance for the budget year;

4. A summary schedule of medical and prescription drug insurance for the prebudget year and budget year including:

- i. Plan type (for example, traditional, HMO or PPO);
- ii. Cost by coverage category (single, parent and child(ren) or family); and
- iii. The number of employees in each plan by category;

5. Reimbursement required by employees, if any;

6. A written assurance that health benefit invoices are reviewed at least quarterly or that personnel and payroll systems contain controls to ensure that coverage and payments are made only for current eligible employees; and

7. For school districts that do not participate in the SEHBP:

- i. A detailed analysis documenting the cost savings achieved from the current provider(s) as compared to participation in the SEHBP; and
- ii. Documentation that the cost of health care insurance and alternative insurers, including group plans and consortiums, were examined at least once in the last three years and the school district participates in the most cost effective plan available pursuant to N.J.S.A. 18A:55-3a given the requirements of the existing collective bargaining agreement(s).

## SUBCHAPTER 12. COMMISSIONER WAIVERS OF TAX LEVY GROWTH LIMITATION; SEPARATE VOTER APPROVAL

### 6A:23A-12.1 Waivers subject to Commissioner authorization

(a) A district board of education may submit waiver requests of the tax levy growth limitation to the Commissioner for review and decision pursuant to N.J.S.A. 18A:7F-39.

(b) Waiver requests shall only address extraordinary costs which may include, but not be limited to:

1. Failure to meet the CCCS as determined through the NJQSAC or, prior to full implementation of NJQSAC, the No Child Left Behind Act, P.L. 107-110;
2. Energy cost increases over the prebudget year in excess of four percent;
3. Capital outlay increases, less withdrawals from the capital reserve account, over the prebudget year in excess of four percent;

4. Use of non-recurring general fund revenues in the prebudget year original budget, including the appropriation of surplus;

5. Increases in insurance costs over the prebudget year in excess of four percent;

6. Increases in transportation costs required to service hazardous routes over the prebudget year in excess of four percent;

7. Increases in special education costs that exceed \$40,000 per each special education pupil over the prebudget year in excess of four percent;

8. Increases in tuition costs charged to a sending school district by the receiving school district or charged by a county vocational school district over the prebudget year in excess of four percent; and

9. Incremental increases in costs associated with opening a new school facility in the budget year.

(c) Extraordinary costs shall not include the following:

1. Annual salary increases in excess of four percent whether the result of collective bargaining or individual agreement; and

2. Costs to maintain class sizes which are already addressed through the adjustment to the tax levy limitation for enrollment increases pursuant to N.J.S.A. 18A:7F-38.

(d) The Commissioner shall establish on an annual basis the date by which waiver requests, preliminary budgets and supporting documentation shall be submitted to the Department and shall include such date on the Annual School Election/Budget Calendar that is distributed to school districts. In no case shall such submission date be less than five working days prior to the budget submission date pursuant to N.J.S.A. 18A:7F-5(c).

(e) Waiver requests and the associated preliminary budget shall either be approved by the board prior to submission to the Department, when practical, or ratified at the first regular meeting of the board after submission, but no later than the meeting to approve the school district's proposed budget submission. A copy of the minutes at which the preliminary budget and waiver request were approved shall be submitted to the Department before an approval of the waiver request will be issued.

(f) A school district applying for a Commissioner waiver shall not budget a deposit into a capital reserve, maintenance reserve, or the current expense emergency reserve accounts.

(g) The Commissioner shall specify for each approved waiver whether the associated adjustment to the tax levy is a one-time or permanent increase as those terms are defined in N.J.A.C. 6A:23A-1.2.

**6A:23A-12.2 Waivers to address failure to meet the Core Curriculum Content Standards**

(a) A district board of education that fails to meet the CCCS (as determined through the NJQSAC or, prior to full implementation of NJQSAC, the No Child Left Behind Act, P.L. 107-110) may submit a waiver request for the costs of programs and services necessary to address such failure. Commissioner approval shall require:

1. A written plan, including goals, objectives and progress benchmarks for each program and/or service to be implemented or expanded that demonstrates that each program and/or service will effectively address the specific cause or causes of failure identified;
2. A budget for each new or expanded program or service consistent with the line-item account numbers and definitions contained in the State-prescribed chart of accounts; and
3. A copy of the independent research-based evidence that demonstrates the programs and/or services to be implemented or expanded have been proven effective in addressing the cause or causes of the failure.

**6A:23A-12.3 Waiver for energy cost increase**

(a) A district board of education may submit a waiver request for energy cost increases over the prebudget year in excess of four percent.

(b) Supporting documentation for this adjustment shall be submitted to the Department as follows:

1. A three year trend analysis including actual costs for the year prior to the prebudget year, actual costs to date and projected costs to the end of the prebudget year, and projected costs of the budget year;
2. Evidence of participation in the Alliance for Competitive Energy Services (ACES) or an analysis of savings by not participating; and
3. An analysis supporting the school district budget projection, including any information relied upon from vendors, Board of Public Utility notices, ACES, or other industry sources.

**6A:23A-12.4 Waiver for capital outlay cost increases**

(a) A district board of education may submit a waiver request for capital outlay increases, less withdrawals from the capital reserve account, over the prebudget year in excess of four percent.

(b) All capital reserve funds shall be appropriated in the budget year in order to be eligible for this waiver.

(c) Supporting documentation for this adjustment shall be submitted to the Department as follows:

1. A narrative description of the capital project and project number as included in the school district's Long Range Facilities Plan;
2. The full amount to be included in the base budget;
3. The need for and amount of the adjustment;
4. Evidence that the proposed capital project is one of the following:
  - i. Directly related to classroom instruction;
  - ii. Part of an established periodic schedule of equipment replacement;
  - iii. Essential to the administration of necessary school level activities;
  - iv. Required to ensure the health and safety of persons using school facilities or sites; or
  - v. Capital outlay portion of the prebudget year was an aberration in that it was the lowest of the previous three budget years; and
5. A true copy of the minutes of the board meeting at which the proposal was formally introduced and discussed in public, if the proposed capital outlay portion of the budget includes funds to purchase, expand, renovate or construct school facilities or sites.

(d) The entire capital outlay budget including equipment shall be restricted and funds shall not be transferred between capital outlay and current expense.

(e) All capital outlay appropriations shall be spent on their original intended purposes.

1. A district board of education may apply to the Commissioner for an exemption due to unforeseeable conditions which result in other urgent capital outlay needs.
2. Any balance from capital outlay appropriations that were not or will not be expended or encumbered by the end of the budget year shall be designated in the subsequent budget year, or the second subsequent budget year when determined after adoption of the budget.

**6A:23A-12.5 Waiver for use of non-recurring general fund revenues**

(a) A district board of education may submit a waiver request for use of non-recurring general fund revenues in the prebudget year original budget, including the appropriation of surplus. The school district shall submit to the Department a list with each source of non-recurring general fund revenue, if any, including:

1. A three-year trend analysis including the actual revenue by source for the second year prior to the prebudget year, actual revenue by source for the year prior to the prebudget year, and the revenue anticipated in the original budget certified for taxes by source for the prebudget year;

2. A schedule showing the liquidation of encumbrances for the year prior to the prebudget year;
3. The account number;
4. The original prebudget year amount;
5. The amount projected to be realized in the prebudget year;
6. An explanation of the circumstances for the non-recurrence of the source; and
7. Whether it is anticipated to be a one-time or permanent event.

#### **6A:23A-12.6 Waiver for increases in insurance costs**

(a) A district board of education may submit a waiver request for increases in insurance costs over the prebudget year in excess of four percent.

(b) Supporting documentation for this adjustment shall be submitted to the Department as follows:

1. A three-year trend analysis including actual insurance costs for the year prior to the prebudget year, actual insurance costs for the prebudget year, and projected insurance costs or actual costs, if available, of the budget year;
2. A written verification or estimate, as applicable, of the rate increases for each category of insurance coverage from the insurance broker or insurer, or an analysis of claims experience for the prior 18 months for each self insured category;
3. A list of insurance policies or coverages including for each category of coverage the insurance limit, deductible and premium for the prebudget year and budget year;
4. A copy of the board policy on insurance;
5. Documentation that the school district examined at least once in the last three years all available group options for every insurance policy held by the school district, including the self-insurance plan administered by the NJSBA Insurance Group on behalf of school districts, and that the school district participates in the most cost effective plans pursuant to N.J.S.A. 18A:55-3(a); and
6. If not a group plan, a copy of the request for proposals from the last solicitation of competitive quotes for insurance coverage.

#### **6A:23A-12.7 Waiver for increases in transportation costs to service hazardous routes**

(a) A district board of education may submit a waiver request for increases in transportation costs required to service hazardous routes over the prebudget year in excess of four percent.

1. Supporting documentation for this adjustment shall be submitted to the Department as follows:

- i. A copy of the board policy regarding transportation of students who walk along hazardous routes in accordance with N.J.S.A. 18A:39-1.5; and
- ii. A list of the routes the district board of education designated as hazardous, either in-whole or in-part, for the prebudget year and budget year including for each route:
  - (1) The number of buses serving the route, by tier if a tiered schedule is used, and their seating capacity per bus;
  - (2) The number of students transported along the route that are not eligible for required remote transportation pursuant to N.J.S.A. 18A:39-1 that are transported due to the designated hazardous conditions;
  - (3) If only a portion of the route is designated as hazardous, the number of students transported along the route that are not eligible for required remote transportation pursuant to N.J.S.A. 18A:39-1 but who are transported as a courtesy;
  - (4) The number of students transported along the route that are eligible for required remote transportation pursuant to N.J.S.A. 18A:39-1; and
  - (5) A description of the conditions resulting in the hazardous route designation.

#### **6A:23A-12.8 Waiver for increases in special education costs**

(a) A district board of education may submit a waiver request for increases in special education costs that exceed \$40,000 per each special education pupil over the prebudget year in excess of four percent.

(b) The total per pupil cost for a student serviced in-house shall be the self-contained class cost for that pupil (total costs divided by the number of pupils in the class), plus any related and extraordinary costs, less any costs for new placements absorbed by restricted funds, such as Individuals with Disabilities Education Act, 20 U.S.C. §§1400 et seq., (IDEA) funds.

(c) The total per pupil cost of a student serviced out-of-district shall be the sum of the tuition, related services, extraordinary services, and residential costs, less any costs for new placements absorbed by restricted funds, such as IDEA funds.

(d) Transportation costs for the pupil shall not be included in the per pupil amount calculated pursuant to (c) above.

(e) The adjustment shall be for specific students and no contingency placements shall be allowed in the amount of the adjustment.

#### **6A:23A-12.9 Waiver for increases in tuition costs**

(a) A district board of education may submit a waiver request for increases for tuition costs charged to it by a receiving school district pursuant to a formal sending-receiving relationship or charged by a county vocational school district over the prebudget year in excess of four percent.

(b) The adjustment shall be for specific students and no contingencies shall be allowed in the calculation.

(c) A copy of the estimated tuition rate to be charged and the projected number of tuition students shall be submitted on the receiving school district's letterhead or invoice.

#### **6A:23A-12.10 Waiver for costs associated with opening a new school facility**

(a) A district board of education may submit a waiver request for the incremental increases in costs associated with opening a new school facility in the budget year.

(b) To be eligible, the school facility shall be a new facility, or new addition to an existing facility characterized by an increase in the gross square footage of the school facility, used wholly or in part for educational purposes by the school district.

(c) Eligible expenditures shall include incremental costs related to salaries and benefits of new teaching staff members and support staff, material and supplies, equipment, energy, utilities, insurance and remote transportation.

1. All requests that include costs of new staff shall be accompanied by a listing of staff by location for the prebudget year and budget year.

2. All requests for new furniture, equipment and supplies for a building replacement shall include the school district's plan for use/disposal of existing furniture, equipment and supplies.

(d) Expenditures for transportation, insurance and/or energy for a new school facility shall not duplicate costs already included in a separate waiver request to the Commissioner for an adjustment to the tax levy growth limitation.

(e) Capital outlay expenditures for the new buildings adjustment shall be deducted from capital outlay expenditures for purposes of calculating the capital outlay adjustment.

(f) The opening a new school facility adjustment shall be available for the initial opening of the new school facility and shall not be available for subsequent years of a phased-in use of the new facility.

(g) The percentage of the incremental cost to the district-wide appropriation shall be reasonable given the percentage increase in gross square footage of the new facility to the aggregate gross square footage of all school district facilities.

(h) Each school district that is eligible and expects to open a new school facility before March 31 of the budget year shall submit to the Department a request for incremental new school facility costs.

(i) The request shall be submitted on a form provided by the Department which shall include, but not be limited to, the following:

1. The anticipated opening date, and if managed by the Schools Development Authority supported by a letter from the authority identifying the projected date for receiving a temporary certificate of occupancy;

2. The square footage of the existing building;

3. The square footage of the addition or new building;

4. The aggregate square footage of all school district facilities including the new facility or addition;

5. The number of classrooms and teachers in the existing building;

6. The number of classrooms and teachers in the addition or new building;

7. The number of non-classroom instructional spaces in the existing building;

8. The number of non-classroom instructional spaces in the addition or new building;

9. The number of students enrolled in the existing building detailed by grade level and classification;

10. The number of students enrolled in the addition or new building detailed by grade level and classification; and

11. An explanation with detailed support for all requested costs for the new facility requests.

(j) Other supporting documentation for this adjustment shall be as follows:

1. A district board of education resolution including the following:

i. A narrative description of the new school facility, including square footage, number of classrooms, and enrollment;

ii. The full amount to be included in the base budget;

iii. The need for and amount of the adjustment; and

iv. The capital project number assigned by the Department upon approval of final eligible costs, if

applicable, or as identified in the school district's Long Range Facilities Plan; and

2. Evidence that the new school facility is to be completed and opened in the budget year. Evidence can include a schedule of completion or a certificate of occupancy.

**6A:23A-12.11 Waiver for service essential to health, safety and welfare of children**

The Commissioner shall grant additional waivers, net of any identified budget reallocations and effective only for the school budget year, upon a finding of extraordinary circumstances that result in an unanticipated increase in expenditures for a service essential to the health, safety and welfare of the school children.

**6A:23A-12.12 Commissioner may direct reallocations up to the total amount of the waiver request**

(a) As part of the Commissioner's review of the waiver request, the Commissioner shall determine any budget reallocations up to the total amount of the waiver request based on:

1. A failure to meet efficiency standards and failure to implement efficient business practices established in (c) through (l) below for the purpose of approving waiver requests;

2. Expenditures of public education funds that are not mandated by law nor necessary to achieve the CCCS and provide T&E. This includes, but is not limited to, expenditures that were not expressly authorized by the voters or board of school estimate, as appropriate, pursuant to a separate question for courtesy busing for routes that are not designated as hazardous by the district board of education, adult education programs, summer enrichment programs, and community programs; and

3. Calculations of presumptive efficient spending levels as defined in N.J.A.C. 6A:23A-1.2.

(b) Compliance with the efficiency standards and efficient business practices established in (c) through (l) below is predicated on the school district's ability to achieve the CCCS and provide T&E.

(c) The Commissioner shall either increase or decrease a tax levy limitation, as applicable, for the cost of services when responsibility for the service is transferred to another school district or government entity.

(d) The Department shall develop a questionnaire and workpapers for school districts to use for the purpose of demonstrating efficient spending and business practices and the accuracy of projected current spending and surplus balances.

(e) The school district shall demonstrate compliance with efficiency standards and efficient business practices including, but not limited to, the following:

1. Average class sizes for regular instruction equal to or greater than 15 pupils as measured for third grade, and for language arts classes in seventh and 10th grades;

2. Efficient administrative and non-instructional costs including, but not limited to, those set forth in N.J.A.C. 6A:23A-9.3; and

3. The conditions for receipt of State aid set forth in N.J.A.C. 6A:23A-6.

(f) The Commissioner may use information collected and compiled by the Department or obtained from professional and trade publications, research organizations, other Federal or State government agencies, and other expert or research-based reference materials in rendering a decision.

(g) The school district shall prove by clear and convincing evidence that it qualifies for each waiver sought.

(h) The school district shall prove by clear and convincing evidence that the anticipated dollar amount of the expenditure for each waiver sought is reasonable.

(i) A district board of education shall submit to the Commissioner the most recently approved board secretary's report and a copy of the minutes of the board meeting in which said report was approved.

1. The Commissioner may deny waiver requests for inadequate fiscal management as evidenced by the board secretary report when the report:

i. Is more than two months prior to the most recent month-end date prior to submission;

ii. Was not prepared consistent with the generally accepted accounting principles (GAAP) and other State law and regulation;

iii. Reflects several line-item account(s) with deficit balances or a fund deficit;

iv. Reflects unapproved or inappropriate line-item account transfers; and

v. Indicates, upon analysis, undesignated general fund balance at the fiscal year-end of the prebudget year that exceeds the estimated amount reflected in the school district's budget submission by more than the amount of the waiver request. Where such excess balance is less than the waiver request, said request will be reduced by the excess amount plus any reallocations made by the Commissioner.

(j) The Commissioner may review and consider for re-allocation balances contained in reserve accounts on a case-by-case basis.

(k) The Commissioner shall not reduce or reallocate any line item accounts that will impact the school district's ability to meet the CCCS and provide T&E.

(l) Any Commissioner decision on a school district's request to increase its adjusted tax levy shall be final.

**6A:23A-12.13 Voter authorization to exceed tax levy limitation; separate proposal(s)**

(a) Notwithstanding N.J.A.C. 6A:23A-12.12(l), a district board of education may put the matter of exceeding the tax levy limitation to the local voters.

1. The proposal or proposals to increase the tax levy shall be approved if 60 percent of the people voting at the school elections vote in the affirmative, or when applicable, approved by a majority of a quorum of the board of school estimate.

2. A proposal or proposals submitted to the voters shall not include any programs or services necessary for students to achieve the CCCS.

3. A proposal or proposals submitted to the voters shall not include any capital outlays necessary for health and safety reasons or which constitute eligible costs of a T&E construction project.

4. A proposal or proposals submitted to the voters shall not include any existing programs or services included in the prebudget year except when documented to the satisfaction of the Executive County Superintendent that reallocation is required to maintain or achieve T&E or that such programs and services are not necessary for T&E.

5. A district board of education shall frame each question to request sufficient funds to carry out the specific purpose or purposes contained therein. A district board of education shall include in the base budget only those funds for purposes that can be implemented without the approval of a separate question.

6. All proposals to increase the tax levy shall include interpretive statements specifically identifying the program purposes for which the proposed funds shall be used and a clear statement on whether approval will affect only the current year or result in a permanent increase in the levy.

7. The Executive County Superintendent may prohibit the submission of a separate proposal or proposals to the voters or board of school estimate if he or she determines that the school district has not implemented all potential efficiencies in the administrative operations of the school district, which efficiencies would eliminate the need for the raising of additional general fund tax levy.

8. Any rejection by the voters of a school district's separate proposal or proposals shall be final and conclusive with no appeal. The local municipal governing body or bodies or the board of school estimate shall not authorize

the raising of additional tax levy upon rejection by the voters of a school district's separate proposal or proposals.

9. A district board of education shall not modify the base budget to execute such purposes pursuant to (a)8 above, except as allowed in (a)13 below.

10. A district board of education shall use amounts approved by the local voters or board of school estimate exclusively for the purpose or purposes contained in the associated question.

i. If multiple purposes are approved, a board of education may approve a transfer of amounts among purposes, if necessary, as long as all purposes in the statement originally approved by the local voters or board of school estimate can be completed.

11. A district board of education shall maintain a separate accounting of expenditures for each purpose, and shall expend or encumber approved amounts by the end of the school year. For any unexpended or unencumbered balances, the district board of education shall either anticipate such funds as a part of the designated general fund balance of the subsequent school year budget, or reserve and designate such funds in the second subsequent school year budget.

12. A district board of education shall submit to the Commissioner amounts approved by the local voters or board of school estimate as part of the final overall budget certified for taxes.

13. Purposes that were rejected by the local voters may be implemented in the budget year only through a donation or contribution from an external source, other than the district board of education, and only if such implementation will not require any funding by the school district in the budget year and/or subsequent budget years.

SUBCHAPTER 13. BUDGET TRANSFERS,  
UNDERESTIMATED SURPLUS AND DEFICITS

**6A:23A-13.1 Commissioner adjusted tax levies; Commissioner budget reallocations and directives; transfers and underestimated year-end surplus**

(a) Transfers from line accounts that include waiver amounts approved by the Commissioner and expenditures and/or reallocations directed by the Commissioner are prohibited unless approved in writing by the Executive County Superintendent and in accordance with the provisions of N.J.S.A. 18A:22-8.1. Boards shall submit written requests for transfers including the amount to be transferred, the account(s) to be reduced, the account(s) to be increased, the purpose and justification. Said transfers shall not be requested or made prior to December 1 of the applicable budget year and shall only be approved for an emergent circumstance(s).

(b) Where actual audited undesignated general fund balance at the fiscal year-end exceeds the estimated amount reflected in a school district's originally approved budget that contained an adjustment to the tax levy limitation approved by the Commissioner, any excess amount shall be reserved for the offset of Commissioner waiver requests, if any, in the second subsequent year budget and reflected as such in the CAFR for the budget year.

**6A:23A-13.2 Executive County Superintendent reduction of administrative and non-instructional expenses; transfers prohibited**

Whenever the Executive County Superintendent shall, pursuant to N.J.S.A. 18A:7-8, disapprove a portion of a school district's proposed budget because the school district has not implemented all potential efficiencies in its administrative operations or because the budget includes excessive non-instructional expenses, the school district shall not transfer funds back into those accounts during the budget year.

**6A:23A-13.3 Transfers during the budget year**

(a) All transfers shall be executed only by district board of education resolution approved in accordance with law and regulation applicable to the particular circumstances and each resolution shall indicate the exact amount of the transfers to and from the applicable accounts or fund balance.

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

1. Documentation of approval of the transfer by a two-thirds affirmative vote of the authorized membership of the school board;
2. Certification by that same membership that the transfer is necessary to achieve the thoroughness standards for the current year. The certification shall include the purpose, need of transfer and include, at a minimum, a list of specific line items to be transferred into and corresponding amounts. Requests to appropriate surplus for textbooks, computers, equipment or other needs for use and operation for the subsequent school year is not considered a need for the current year and shall not be approved; and
3. The latest board secretary's report as documentation that no other line item balances are available and all appropriation balances are or will be expended or encumbered.

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

1. Certification that the transfer is necessary for an emergent circumstance, that no other line item balances are or will be available, and that the remaining surplus will enable the district board of education to operate in a fiscally solvent position for the remainder of the budget year;
2. Documentation that the emergent circumstance, if not addressed through an appropriation of additional revenue, would render peril to the health and safety of students or staff, and/or force the school district into an operating deficit as a result of the required implementation of the thoroughness standards;
3. The latest board secretary's report as documentation that no other line item balances are or will be available as set forth in (c)3i below:
  - i. Any unexpended, unencumbered balances are for non-discretionary fixed costs and supported by historical expenditures or other documentation ensuring that the balances will be expended by June 30; and
4. Evidence of approval of the petition and supporting documentation by a two-thirds affirmative vote of the authorized membership of the school board.

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

1. Appropriate unbudgeted or underbudgeted State aid for which the approval was granted by the Department in the written notification to the district board of education of the additional aid;
2. Appropriate unbudgeted and underbudgeted tuition revenue generated from a school district specific program, which is not part of a formal sending-receiving relationship pursuant to N.J.S.A. 18A:38-19 and 18A:46-21;
3. Appropriate unbudgeted or underbudgeted school transportation revenue generated from a school district's or Coordinated Transportation Services Agency's role as the host provider of school transportation services pursuant to N.J.S.A. 18A:39-11 and 18A:39-11.1;
4. Appropriate unbudgeted or underbudgeted restricted miscellaneous local revenue;

5. Appropriate unbudgeted or underbudgeted Federal revenue; and

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

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

1. Basic skills, bilingual and special education instruction, including other related and extraordinary services;
2. Student activities, student athletics, and other student instructional services;
3. Student support services, including, attendance, health, guidance, child study team, and media;
4. Improvement of instruction and staff training; and
5. Special programs (fund 13).

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

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

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

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

2. Prior to any transfers from capital outlay accounts to current expense, except for equipment, a district board of education shall submit a written request for approval to the

Executive County Superintendent, with documentation that such transfer is required due to demonstrated hardship.

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

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

- i. The school district's budget currently exceeds the administrative cost limits; or
- ii. The transfer would result in a budget in excess of the administrative cost limits in the applicable budget year, as prescribed in N.J.S.A. 18A:7F-5(c).

2. Transfers may be approved to support a contractual obligation or one-time increase in spending as justified by district board of education documentation. Transfers may not be approved if the district did not budget sufficient funds upon review of actual expenditures and historical trends in those accounts. A district board of education that is granted such approval remains subject to the requirements set forth in N.J.S.A. 18A:7F-5(c).

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

(i) Each district board of education shall maintain a report of current month and year-to-date transfers between general fund appropriation accounts as defined in (e) above, in a format prescribed by the Commissioner, or in a format developed locally and approved by the Executive County Superintendent, and submit such report to the Executive County Superintendent with any transfer requests and in accordance with the submission requirements of the board

secretary's and treasurer's financial reports under N.J.A.C. 6A:23-2.12.

## SUBCHAPTER 14. RESERVE ACCOUNTS

### 6A:23A-14.1 Capital reserve

(a) A district board of education or board of school estimate may, at any time, establish by board resolution a capital reserve account, pursuant to N.J.S.A. 18A:21-2 and 3, and 18A:7G-31.

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

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

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

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

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

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

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

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

i. Formally established a capital reserve account; and

ii. Obtained an approved long-range facilities plan (LRFP) in accordance with N.J.A.C. 6A:26-2.

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

1. The amount of the deposit;

2. A description of the future capital project and purpose; and

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

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

(f) A district board of education shall not deposit into a capital reserve account audited excess undesignated, unreserved general fund balance. The district board of education shall reserve and designate such funds in the subsequent year's budget pursuant to N.J.A.C. 6A:23A-8.5(b).

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

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

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

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

1. By board resolution for the transfer of funds to the line items in the capital outlay major account/fund to fund pre-development or other pre-application costs associated

with architects, lawyers and construction managers for school facilities projects included in the approved LRFP;

- i. Pursuant to N.J.A.C. 6A:26-4.2(a), a district board of education that used capital reserve for such costs in a capital project funded in part or in whole by bond proceeds has the option to reimburse the general fund from the capital projects fund after approval of the referendum or resolution;
- 2. By board resolution for the transfer of funds to the line items in the capital outlay major account/fund to fund the local share less any excess costs of a school facilities project as determined in accordance with N.J.A.C. 6A:26-3;
- 3. By board resolution for the transfer of funds to the line items in the capital outlay major account/fund to fund the total costs, less any excess costs, of an other capital project, which would otherwise be eligible for State support, as determined in accordance with N.J.A.C. 6A:26-3;
- 4. By board resolution for the transfer of funds to the capital projects fund pursuant to N.J.A.C. 6A:26-4, after receiving voter, board of school estimate or capital project review board approval, as applicable, of the capital reserve use and specific amount in an approved referendum or resolutions pursuant to N.J.A.C. 6A:26-3.7;
- 5. By board resolution after receiving voter, board of school estimate or capital project review board approval, as applicable, except as authorized in N.J.A.C. 6A:26-3.12(c), for the transfer of funds to the line items in the capital outlay major account/fund to fund excess costs of a school facilities project and to fund the total costs for other capital projects that would not otherwise be eligible for State support as determined in accordance with N.J.A.C. 6A:26, Educational Facilities;
  - i. Voter, board of school estimate, or capital project review board approval may be obtained through the original budget certified for taxes, in which the district board of education shall include a statement of purpose in the advertised budget, or through a board of school estimate's special appropriation process.
  - ii. The district board of education or board of school estimate shall include in the statement of purpose or special question for the capital project:
    - (1) The total costs;
    - (2) The final eligible costs;
    - (3) The amount requested for withdrawal for excess costs;
    - (4) A description/purpose of the capital project, or portion thereof, which the excess costs will fund; and
    - (5) A statement that "The amount represents expenditures for construction elements or projects that exceed the facilities efficiency standards determined

by the Commissioner as necessary to achieve the Core Curriculum Content Standards."

- iii. If requesting a withdrawal for multiple capital projects, the district board of education or board of school estimate shall include in the statement of purpose or special question the required information identified in (h)4i and ii above separately for each individual capital project.
- iv. The district board of education or board of school estimate shall ensure that the amount(s) approved by the voters, board of school estimate or capital project review board are used exclusively for the purpose or purposes contained in the associated statement or question.
- v. For any approved amounts that remain unexpended or unencumbered at the end of the school year, the district board of education or board of school estimate shall:
  - (1) Return such funds to the capital reserve account;
  - (2) Anticipate such funds as part of the designated general fund balance of the subsequent school year budget; or
  - (3) Reserve and designate such funds in the second subsequent school year budget;
- 6. By board resolution and after receiving Commissioner approval in accordance with N.J.A.C. 6A:26-3.13, and voter, board of school estimate or capital project review board approval pursuant to (c)2 above and this subsection, for the transfer of funds to the line items in the capital outlay major account/fund for the purchase of land; or
- 7. By board resolution for the transfer of funds to the debt service account for the purpose of offsetting locally funded principal and interest payments for bonded projects that are included in the school district's LRFP.
  - (i) Notwithstanding (h) above, a district board of education or board of school estimate may, at any time, apply to the Commissioner for approval to withdraw funds from its capital reserve account for uses authorized in (b) above. A district board of education or board of school estimate may make a withdrawal pursuant to this subsection only upon receipt of written approval of the Commissioner. To obtain the Commissioner's approval, the district board of education shall establish to the satisfaction of the Commissioner that an emergent condition exists necessitating an immediate withdrawal of capital reserve account funds.
  - (j) A district board of education shall administer and account for the capital reserve account as follows:
    - 1. The district board of education shall establish and maintain the capital reserve account in accordance with Generally Accepted Accounting Principles, and shall be

subject to annual audit pursuant to N.J.S.A. 18A:23-1 et seq;

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

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

- i. Return such funds to the capital reserve account;
- ii. Anticipate such funds as part of the designated general fund balance of the subsequent school year's budget; or
- iii. Reserve and designate any unexpended transferred capital reserve funds in the second subsequent year's budget for tax relief;

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

- i. Anticipate as miscellaneous income any investment income included in the original annual general fund budget certified for taxes; and
- ii. Include any investment earnings in the maximum amount of capital reserve permitted in (g) above; and

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

- i. Dr: Capital Reserve Account; and
- ii. Cr: Reserved Fund Balance—Capital Reserve Account.

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

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

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

#### 6A:23A-14.2 Maintenance reserve

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

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

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

(d) A district board of education or board of school estimate, as appropriate, may by resolution withdraw such funds from the maintenance reserve account and appropriate into the required maintenance account lines at budget time or any time during the year for use on required maintenance activities for a school facility as reported in the comprehensive maintenance plan pursuant to N.J.A.C. 6A:26A-4.

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

(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

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-

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 al-

lowable 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, a detailed accounting of how the emergency aid will be expended; and

iv. A statement included in the board's minutes that no other funds can be reallocated within the existing budget for the emergency condition without adversely impacting the district board of education's ability to meet the core curriculum content standards.

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

(c) The 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 Division of Finance to determine whether to recommend to the Commissioner that a request be sent to the State Board of Education for approval.

1. In determining whether a recommendation for emergency aid will be sent to the State Board of Education, the

Department will consider the extent the district board of education budgeted an adequate level of surplus for unexpected expenditures.

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

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

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

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

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

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

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

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".

### 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-12b means the New Jersey district of residence of the child's parent(s) or guardian(s) as of the last school day prior to October 16.

2. The "present district of residence" of a child placed by a State agency in a group home, skill development home, approved private school for students with disabilities or out-of-State facility also referred to in the first paragraph of N.J.S.A. 18A:7B-12b means the New Jersey district of residence of the child's parent(s) or guardian(s) as of the date of the child's 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-12b shall be determined by the Commissioner or his or her designee based upon the address submitted by the Department of Corrections, the Department of Human Services or the Juvenile Justice Commission on forms prepared by the Department of Education.

(c) The district board of education shall be notified by the Department of the determination of the district of residence. In order to prevent a lapse in the child's education and/or child study services, the district board of education shall be bound by such determination unless and until it is reversed on redetermination or appeal pursuant to the provisions of (e) and (f) below.

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

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

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

(f) A district board of education may initiate a formal proceeding before the Commissioner to resolve such a dispute if the Division of Finance is unable to resolve a dispute within the 90-day time limit, by filing a Petition of Appeal with the Commissioner pursuant to the provisions of N.J.A.C. 6A:3, Controversies and Disputes.

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

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

In (a), rewrote the last sentence in 2 and added 3; in (c), rewrote the second sentence.

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

In (a)2, inserted "approved" and "for students with disabilities"; in (d), substituted "notification of a dispute to the Division" for "notification that a dispute exists to the Assistant Commissioner, Division"; and in (f), inserted ", Controversies and Disputes".

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

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

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

#### Case Notes

A petition filed by School District 1 with the Commissioner of Education on November 26, 2013, with a copy sent overnight delivery to the Division of Finance (DOF) of the Department of Education on November 25, 2013, met the minimal requirements in N.J.A.C. 6A:23A-19.2 regarding filing of such a petition because the DOF received "written notification of a dispute" within thirty days from School District 1's receipt of a final decision dated October 31, 2013 that related to the residency status of an allegedly homeless family and the allocation of financial responsibility for the education of the family's children. All that was required of School District 1 was to submit "written notification" to the DOF within thirty days, which it did. The mere fact that the petition was addressed to the Commissioner of Education and only was copied to the DOF (all within thirty days) did not provide a basis for granting the motion to dismiss filed by School District 2 particularly when the allocation of residential property (school) taxes are at issue. Administrative practice and procedure called for informality or corrections of technical deficiencies in the interest of justice and fairness per N.J.A.C. 1:1-1.3 and N.J.A.C. 6A:3-1.16. *Bd. of Educ. of the Town of Hammonton, Atlantic Cnty. v. Bd. of Educ. of the City of Gloucester, Camden Cnty.*, OAL DKT. NO. EDU 18575-13, AGENCY DKT. NO. 292-11/13, 2014 N.J. AGEN LEXIS 411, Initial Decision (June 17, 2014).

Commissioner approved and adopted a recommendation of an administrative law judge that concluded that a city board of education was not entitled to discontinue the funding for educational services for a minor who had been placed in a group home by the Division of Developmental Disabilities in 2010, which was the same year that the Department of Education determined that the city was the minor's district of residence for school funding purposes. Any change in that designation could not be accomplished by the city refusing to honor its financial obligations to the minor based on its internal determination that the child's parent was no longer domiciled in the district. The appropriate course of action for the city, if it believed that the minor's parent was no longer domiciled in the district was to file an appeal or a request for re-determination of the minor's district of residence pursuant to N.J.A.C. 6A:23A-19.2 (c), (e), and (f). *R.L. ex rel K.O.L. v. Bd. of Ed. of the Twp. of Hillside, Union Cnty.*, OAL Dkt. No. EDU 11863-12, AGENCY Dkt. No. 214-7/12, 2013 N.J. AGEN LEXIS 440, Final Decision (March 4, 2013).

When the Township of Hillside failed to file an appeal or a request for re-determination of a child's district of residence, it would remain that child's district of residence. Any change in such designation could not be accomplished by Hillside refusing to honor its financial obligation to the child based on its internal determination that the child's parent was no longer domiciled in the district and treatment of this matter as a residency issue including the filing of a cross-petition for tuition reimbursement against the parent, who bore no financial responsibility whatsoever in this matter. *R.L. ex rel K.O.L. v. Bd. of Educ. of the Twp. of Hillside, Union Cnty.*, OAL DKT. NO. EDU 11863-12, 2013 N.J. AGEN LEXIS 440, Final Decision (March 4, 2013).

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

Petitioning Board was responsible for payment of a student's educational program at a residential facility where the ALJ's conclusion that the petitioning Board was the district of residence was not arbitrary, capricious, or unreasonable; the case hinged on the conflicting testimony of witnesses as to the mother's residency and the ALJ decided, as was her prerogative, that the Department's witnesses were more credible than the Board's (decided under former N.J.A.C. 6A:23-5.2) (adopting 2008

N.J. AGEN LEXIS 944). Bd. of Educ. of Bound Brook v. R.B. ex rel. D.B., OAL Dkt. No. EDU 2990-07, 2008 N.J. AGEN LEXIS 1420, Final Decision (December 29, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 32) adopted, which concluded that a residency appeal by a school district, challenging the County Superintendent's determination that it was the district of residence of certain children for school funding purposes, was time-barred under the 30-day filing requirement of N.J.A.C. 6A:23-5.2(d) [now N.J.A.C. 6A:23A-19.2(d)]; petitioner did not file its appeal with the Division of Finance until 142 days after the Superintendent's decision. North Brunswick Bd. of Educ. v. Bd. of Educ. of Somerville, OAL Dkt. No. EDU 10499-07, 2008 N.J. AGEN LEXIS 249, Commissioner's Decision (March 3, 2008).

Where a student had been assigned to the KidsPeace program in Pennsylvania, and about the same time, the student's father was evicted and moved in with his parents, the Department of Education correctly assigned costs to the school district where the student lived when he was placed in KidsPeace, and from which the father was evicted, because the costs are to be assigned to the last district where the student resided before placement, and there was no clear evidence in the record of the date of eviction, nor did the record indicate any intent on the part of the student's father to remain with his parents; a school district challenging a residency determination bears the burden of proving the Department of Education's determination was arbitrary, capricious, or without merit. Bd. of Educ. of Twp. of Delaware v. N.J. Dep't of Educ., OAL Dkt. No. EDU 08011-05S, 2006 N.J. AGEN LEXIS 644, Commissioner's Decision (May 10, 2006).

### 6A:23A-19.3 Address submission for determining the district of residence

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

1. If the State has custody of the child or if a court or the State has appointed a third party as the custodian of the child, the present address of the parent(s) or guardian(s) with whom the child resided immediately prior to his or her most recent admission to a State facility or placement by a State agency shall be submitted. If the child resides in a resource family home, the present address of the resource family parent(s) shall be submitted pursuant to N.J.S.A. 18A:7B-12.

2. If the child's parents are divorced with joint guardianship, the present address of the individual parent with whom the child resided as of the date required by N.J.A.C. 6A:23A-19.2(a)1 or 2 shall be submitted.

3. If the child's parents are divorced with joint guardianship and the child resides with each parent equally, the present address of both the child's father and mother as of the date required by N.J.A.C. 6A:23A-19.2(a)1 or 2 shall be submitted.

4. If the child's sole parent or legal guardian resides in a State facility, the State will assume financial responsibility for the child's educational costs until such time as the parent or guardian no longer resides in the State facility.

5. If the child resides in a non-resource family home with a relative for less than one year immediately prior to the child's most recent admission to a State facility or most recent placement by a State agency, the present address of the child's parent(s) or guardian(s) at the time this placement is submitted.

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

7. If the child is age 18 or older, or has been legally emancipated and has lived on his or her own before the initial placement, the present address of the child as of the date required by N.J.A.C. 6A:23A-19.2(a)1 or 2 is submitted.

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

In (a), substituted "child resides in a foster home or with relatives" for "child is in a foster home" in the second sentence in 1, rewrote 3 and 4, and added 5 through 7.

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

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

Rewrote (a)1 through (a)7.

## SUBCHAPTER 20. PURCHASE AND LOAN OF TEXTBOOKS

### 6A:23A-20.1 Eligibility

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

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

(c) Children who are enrolled in a nonpublic school whose parents or legal guardians do not maintain a residence in this State are not eligible to receive such textbooks. Children who are enrolled in a nonpublic school whose tuition is paid by a district board of education are not eligible to receive such textbooks.

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

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

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

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

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