

the weighted average daily enrollments for special education classes; and

ii. State aid for programs for bilingual students received pursuant to N.J.S.A. 18A:7F-20 for both resident and nonresident students shall be deducted in proportion to the average daily enrollment for each category; and

9. In addition to the tuition charged for each grade category, a receiving district board of education may charge for students receiving services in a resource room an additional amount up to the actual direct instructional cost per student for such services calculated on an hourly basis (an example of the calculation is contained in Policy Bulletin: 100-1 issued by and available from the Division of Finance, State Department of Education, PO Box 500, Trenton, New Jersey 08625-0500).

(f) The receiving district board of education and the sending district board of education shall establish by written contractual agreement a tentative tuition charge for budgetary purposes. Such tentative charge shall equal an amount not in excess of the receiving district board of education's "estimated cost per student" for the ensuing school year for the purpose or purposes for which tuition is being charged, multiplied by the "estimated average daily enrollment of students" expected to be received during the ensuing school year. Such written contract shall be on a form prepared by the Commissioner.

1. "Estimated cost per student" shall be determined by the receiving district board of education using the appropriate supporting schedule in their annual budget for the ensuing year. In lieu of completing the form specified in (c)1 above, a receiving district board of education that has elected to use (c)1 above to certify actual cost per student shall have the option of setting an estimated cost per student up to an amount which shall be determined by multiplying the most recent year's certified cost per student by one plus the Consumer Price Index (CPI) as defined in N.J.S.A. 18A:7F-3 for the budget year or 2.5 percent, whichever is greater. If this option is selected and more than one fiscal year has elapsed since the most recent cost per student certification, the receiving district board of education shall further increase the estimated cost per student by multiplying the above by the sum of one plus the CPI for each additional year.

2. "Estimated average daily enrollment" for the purpose of calculating a tentative tuition charge shall be determined as follows:

i. A receiving district board of education shall project the number of students in each tuition category expected to be received consistent with the growth in average daily enrollment (ADE) taken from the three most recent school register summary reports prior to the year for which the budget is being prepared.

ii. Estimated average daily enrollment (EADE) equals  $Y1x(1+G)^2$  where the growth rate  $G = 0.5x(Y1-$

$Y3)/Y3$ , where  $G$  shall not exceed  $\pm 10$  percent,  $Y1$  is the ADE two years prior to the year for which the tuition is being estimated, and  $Y3$  is the ADE four years prior to the year for which the tuition is being estimated. For the purposes of the tentative tuition contract, a receiving district board of education shall apply the same growth rate calculation (as noted above) to project the number of students to be received from each sending district board of education.

3. The sending district board of education and the receiving district board of education shall enter into a written contractual agreement for tuition for the ensuing school year, except for a contractual agreement for a student enrolled in a special education class, no later than seven days prior to the date on which the proposed budget for the ensuing school year is required to be submitted to the county superintendent. The sending district board of education shall be required in the contractual agreement to pay 10 percent of the tentative tuition charge no later than the first of each month from September through June of the contract year. The contractual agreement, except for a contractual agreement for a student enrolled in a special education class, shall require that all adjustments which shall be made because of a difference in cost or in the number of students sent shall only be made during the third school year following the contract year. All contractual agreements shall contain a payment schedule for all adjustments, which may be necessary.

4. The sending district board of education shall notify in writing the receiving district board of education of the estimated average daily enrollment of students in each tuition category expected to be sent during the ensuing school year no later than December 15 preceding the beginning of the ensuing school year. The receiving district board of education shall notify in writing the sending district board of education of the estimated cost per student in each tuition category for the ensuing school year and the tentative tuition charge no later than February 4 preceding the beginning of the ensuing school year. The receiving district board of education shall submit to the sending district board of education, on a form prepared by the Commissioner, a copy of its calculations to determine the estimated cost per student in each tuition category for the ensuing school year no later than February 4 preceding the beginning of the ensuing school year.

5. The county superintendent in the county in which the receiving district board of education is located shall review any unique circumstances or variations in methodology and mediate all disputes that arise from the determination of tentative tuition charges, including challenges to the estimated average daily enrollment counts generated using the formula in (f)2 above. Such a review shall include examination of the following documents:

i. Annual budgets including supporting documents;

- ii. Application for State School Aid (ASSA) reports;
- iii. School register summary reports;
- iv. Tuition contracts; and
- v. Any other information deemed necessary.

6. If the Commissioner later determines that the tentative tuition charge established by written contractual agreement, except for a contractual agreement for a student enrolled in a special education class, was greater than the actual cost per student during the school year multiplied by the actual average daily enrollment received, the receiving district board of education shall return to the sending district board of education in the third school year following the contract year the amount by which the tentative charge exceeded the actual charge as determined above, or, at the option of the receiving district board of education, shall credit the sending district board of education with the excess amount. The receiving district board of education shall make such adjustment for a contractual agreement for a student enrolled in a special education class no later than the end of the third school year, following the contract year.

7. If the Commissioner later determines that the tentative charge established by written contractual agreement, except for a contractual agreement for a student enrolled in a special education class, was less than the actual cost per student during the school year multiplied by the actual average daily enrollment received, the receiving district board of education may charge the sending district board of education all or part of the amount owed by the sending district board of education, to be paid during the third school year following the school year for which the tentative charge was paid. Such adjustment for a contractual agreement for a student enrolled in a special education class shall be made no later than the end of the third school year following the contract year. The county superintendent of schools of the county in which the sending district board of education is located may approve the payment of the additional charge over another period, if the sending district board of education can demonstrate that payment during the third school year following the school year for which the tentative charge was paid would cause a hardship.

8. If at the end of the contract year a district board of education anticipates that a tuition adjustment will be required in the third year following the contract year, the district board of education can restrict fund balance of up to 10 percent of the estimated tuition cost in the contract year in a legal reserve for tuition adjustments established by resolution at June 30. In such case, the district board of education shall:

- i. Make full appropriation of the legal reserve for the tuition adjustment in the third year following the contract year;

ii. Exclude from the net budget cap calculation the budgeted fund balance and appropriation of the legal reserve in the third year following the contract year for such tuition adjustments; and

iii. Transfer to the general fund, by board resolution, any interest earned on the investments in a tuition reserve account on an annual basis. Such transfer may be made on a more frequent basis at the discretion of the district board of education.

(g) The receiving district board of education shall use forms prepared by the Commissioner for certification of the "actual cost per student" for each tuition category according to the rules in this section, for contracts, and for establishing the estimated cost per student for each tuition category for the ensuing school year.

(h) In any year in which the receiving district board of education can prove to the satisfaction of the Commissioner that the charge for the use of the school facilities pursuant to (e)6 above is not adequate, the Commissioner may approve an additional charge for the use of such school facilities.

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

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

In (f)2ii, inserted " , where G shall not exceed +/-10 percent," following "G = 0.5x(Y1-Y3)/Y3".

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

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

Rewrote the section.

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

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

In the introductory paragraph of (e), substituted "1" for "2"; in (e)4i, inserted " , central services, administrative information technology,"; in (e)6ii, substituted "State" for "state"; in (e)9, substituted "100-1" for "1001"; rewrote (f)1; in (f)2ii, substituted "Y1-Y3" for "Y1Y3"; in (f)6, substituted "The receiving district board of education shall make such" for "Such", and deleted "shall be made" following "education class", in the last sentence; and rewrote (f)8.

#### 6A:23-3.2 Method of determining tuition rate in a new district board of education

(a) During the first year of operation of a district board of education program that is to receive students, the receiving district board of education shall set the estimated cost per student in each program for which the tuition rate is required and shall base the estimate on budgeted costs. The receiving district board of education shall submit the established estimated cost or costs per student to the Commissioner for approval or disapproval no later than January 1 preceding the beginning of the first year of operation.

(b) If the Commissioner approves the estimated cost or costs per student, each sending district board of education shall pay tentative tuition charges based upon these estimated costs per student during the first year of operation.

(c) If, after the first year of operation, the Commissioner determines that the tentative tuition charge was greater than the actual cost, the receiving district board of education shall return, except if the tentative tuition charge was for a student

who was enrolled in a special education class, in the third school year following the first year of operation to each sending district board of education the amount by which the tentative charge exceeded the actual cost, or, at the option of the receiving district board of education, shall credit each sending district board of education with the amount by which the tentative tuition charge exceeded the actual cost. The receiving district board of education shall remit payment or credit for a student who was enrolled in a special education class no later than the end of the third school year, following the first year of operation.

(d) If, after the first year of operation, the Commissioner determines that the tentative tuition charge was less than the actual cost, the receiving district board of education may charge the sending district board of education all or part of the amount owed by the sending district board of education, to be paid, except if the amount owed is for a student who was enrolled in a special education class, during the third school year following the first year of operation. The sending district board of education shall pay the amount owed for a student who was enrolled in a special education class no later than the end of the third school year following the first year of operation.

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

In (a), inserted "receiving district board of education shall submit the" and deleted "shall be submitted" in the second sentence; in (c), inserted "receiving district board of education shall remit" and deleted "shall be made" in the second sentence; in (d), inserted "sending district board of education shall pay the" and deleted "shall be paid" in the second sentence.

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

In (a), substituted "that" for "which".

### **6A:23-3.3 Method of determining tuition rates for county vocational schools**

(a) The term "actual cost per student" for determining the tuition rate or rates for a given year referred to in N.J.S.A. 18A:46-21 and 18A:54-20.1 means the adjusted net cost per student in average daily enrollment, based upon audited expenditures for that year for the purpose for which the tuition rate is being determined.

1. The county vocational district board of education shall determine tuition rates for the following categories:

- i. General vocational classes; and
- ii. Special vocational classes.

2. The county vocational district board of education shall include in its calculation all expenditures for each purpose except Federal and State grant project expenditures.

3. "Average daily enrollment" for the purpose of determining the "actual cost per student" means the sum of the days present and absent of all students enrolled during the year in the register or registers of the program for which

the rate is being determined, divided by the number of days school was actually in session, but in no event will the divisor be less than 180 days.

4. The county vocational district board of education shall adjust the "actual cost per student" for all tuition categories to reflect net costs plus a reasonable surplus.

(b) Each county vocational district board of education will receive from the Commissioner certification of the "actual cost per student" for each tuition category for a given year utilizing the following:

1. Revenues, expenditures and fund balances reflected in the county vocational school's annual independent audit;
2. Average daily enrollment data by category submitted by the county vocational school on a form prescribed by the Commissioner; and
3. Criteria contained in (c) below.

(c) The county vocational district board of education shall determine the share of each item of expenditure for each tuition category on a pro rata or actual basis as follows:

1. Direct instructional expenditures for salaries and related benefits, textbooks, teaching supplies, purchased services, equipment, and other expenses for the tuition categories listed in (a)1 above allocated on an actual basis;

2. Direct instructional expenditures for salaries and related benefits, textbooks, teaching supplies, purchased services, equipment and other expenses for basic skills/remedial programs and other support services, regular students allocated to the regular vocational classes category listed in (a)1i above on an actual basis;

3. Direct instructional expenditures for salaries and related benefits, textbooks, teaching supplies, purchased services, equipment and other expenses for other support services, special education students indirectly related to the special vocational classes listed in (a)1ii above allocated to the special vocational classes category on an actual basis; and

4. Expenditures for all other general fund items, except for Teachers' Pension and Annuity Fund (TPAF) pension and social security and special schools, indirectly related to all tuition categories listed in (a)1 above allocated between regular vocational classes and special vocational classes categories in proportion to the average daily enrollment for such categories.

(d) The county vocational district board of education shall adjust the total direct and indirect expenditures determined for each tuition category in (c) above to reflect the net cost by deducting in proportion to the average daily enrollment for each tuition category the amount obtained from the sum of all State aid (except State grants), county appropriations pursuant to N.J.S.A. 18A:54-29.2, non-resident fees pursuant to N.J.S.A. 18A:54-20.1 and miscellaneous income less expen-

ditures for postsecondary programs for which no tuition is charged pursuant to N.J.S.A. 18A:54-20.1, respectively, and expenditures for resource room, special schools and evening schools and extraordinary services.

1. Whenever funds have been appropriated by the county, the county vocational board of education may charge the nonresident fee in (d) above in addition to tuition for any students who are not residents of the county. The fee per nonresident student is not to exceed the amount obtained by dividing the county appropriation by the number of students, not including post-secondary education students, who are residents of the county pursuant to N.J.S.A. 18A:54-20.1.

(e) The county vocational district board of education shall adjust as appropriate its net cost determined for each tuition category in (d) above to include in the certified maximum tuition rate for each category an amount that will permit the county vocational district board of education to maintain at its discretion for the year the tuition rate applies an ending general fund free balance not to exceed six percent of the district board of education's net budget as defined in N.J.S.A. 18A:7F-3, which is consistent with the excess surplus provision of N.J.S.A. 18A:7F-7.

1. If the county vocational district board of education's ending general fund free balance is less than six percent of its net budget for the year the tuition rate applies, the county vocational district board of education shall allocate the difference amongst the tuition categories in proportion to the average daily enrollment for each category.

2. If the county vocational district board of education's ending general fund free balance is equal to or greater than six percent of its net budget for the year the tuition rate applies, the county vocational district board of education shall not add an amount to the net cost of any tuition category.

(f) The county vocational board of education shall determine the tuition for each program category at the same rate per student for each sending district board of education whether within or without the county pursuant to N.J.S.A. 18A:54-20.1.

(g) Calculation of tentative tuition rates, execution of written contractual agreements, payment of tuition (including the nonresident fee) and adjustments to tentative tuition charges upon certification of actual tuition rates by the Commissioner shall be made by the county vocational district board of education in accordance with N.J.A.C. 6A:23-3.1(e) except that the county vocational district board of education shall base the tentative tuition rates on the county vocational district board of education's estimated adjusted net cost per student consistent with the calculation in (c), (d) and (e) above.

(h) The county vocational board of education shall use the "actual cost per student" certification forms, contract forms

and tentative tuition rate forms as prepared and provided by the Commissioner.

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 introductory paragraph of (a)1; in (d)1, inserted ", not including post-secondary education students,".

#### **6A:23-3.4 Method of determining tuition rates for county special services schools**

(a) The term "actual cost per student" for determining the tuition rate or rates for a given year referred to in N.J.S.A. 18A:46-31 means the adjusted net cost per student in average daily enrollment for special education classes, based upon audited expenditures for that year.

1. The county special services district board of education shall include all expenditures for each purpose except Federal and State grant project expenditures.

2. "Average daily enrollment" for the purpose of determining the "actual cost per student" is the sum of the days present and absent of all students enrolled during the year in the register or registers of the program for which the rate is being determined divided by the number of days school was actually in session, but in no event is the divisor less than 180 days.

3. The "actual cost per student" for all tuition categories is adjusted to reflect net costs plus a surplus consistent with the provision in N.J.S.A. 18A:46-31.

(b) Each county special services district board of education shall obtain from the Commissioner certification of the "actual cost per student" for a given year either for the county special services district board of education or for each special education class by handicap classification based on the following:

1. Revenues, expenditures and fund balances reflected in the county special services school's annual independent audit;

2. Average daily enrollment data by category submitted by the county special services school on a form prescribed by the Commissioner; and

3. Criteria contained in (c) below.

(c) The county special services district board of education shall determine the share of each item of expenditure for each tuition category (special education classes by handicap program type) on a pro rata or actual basis as follows:

1. Direct instructional expenditures for salaries and related benefits, textbooks, teaching supplies, purchased services, equipment and other expenses for each tuition category allocated on an actual basis; and

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

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

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

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

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

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

Rewrote the section.

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

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

#### 6A:23-4.2 Tuition rate procedures

(a) The board of directors of an approved private school for students with disabilities located in New Jersey shall determine the final tuition rate charged to be an amount less than or equal to the certified actual cost per student. The board of directors shall identify the certified actual cost per student and final tuition rate charged in the audited financial statements submitted to the Department pursuant to N.J.A.C. 6A:23-4.9.

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

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

v. Based on goods actually received and placed in service in the fiscal year they are expensed.

2. If the approved private school for students with disabilities proposes to charge a final tuition rate in excess of 10 percent above the tentative tuition rate charged, the private school shall notify each sending district board of education and the Assistant Commissioner, Division of Finance that such an increase will be charged and the reason for the increase on or before the following dates: December 15th for the first quarter, March 15th for the second quarter, June 15th for the third quarter and September 15th for the fourth quarter, or the next business day when applicable. The determination of a final tuition rate in excess of 10 percent above the tentative tuition rate charged shall be based on the completion of the required quarterly financial report in accordance with N.J.A.C. 6A:23-4.4(a)11.

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

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

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

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

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

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

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

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

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

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

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

1. Maintain bookkeeping and accounting records by class type and school location for the school year;
2. Charge a separate tuition rate for each class type served;
3. Prepare in the Department-prescribed format the audited costs by class type for the first two years that tuition is charged by class type in order for the Commissioner to determine the tentative tuition rates in accordance with (i) below; and
4. Determine on a pro rata basis the individual share of a particular allowable cost item for a class type, when it is not possible to charge the actual amount expended, in accordance with the following ratios or an alternative method as approved by the Commissioner:
  - i. Ratio of average daily enrollment in each class type to the total average daily enrollment;
  - ii. Ratio of square feet of floor space in each class type to the total square feet of floor space used; and
  - iii. Direct costs.

(c) An approved private school for students with disabilities shall record direct costs that can be specifically attributed to a program and/or revenue source, in the prescribed bookkeeping and accounting system pursuant to N.J.A.C. 6A:23-4.4(a)8.

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

(e) An entity that operates only as an approved private school for students with disabilities and operates one or more

tuition programs at one or more locations shall charge their costs as follows:

1. Direct costs for each program as determined pursuant to (c) above; and
2. Indirect costs in accordance with an equitable allocation plan approved by the Commissioner, or in accordance with either of the following ratios:
  - i. Direct costs for each program determined pursuant to (c) above to total direct costs; or
  - ii. Average daily enrollment for each program to total average daily enrollment.

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

1. Direct costs for each program as determined pursuant to (c) above;
2. Indirect cost centers established as follows:
  - i. A cost center, which shall include indirect costs that are allowable costs in accordance with N.J.A.C. 6A:23-4; and
  - ii. A cost center, which shall include indirect non-allowable costs in accordance with N.J.A.C. 6A:23-4.
3. Allowable indirect costs shall be included on a consistent basis in the respective actual cost per student in accordance with an equitable allocation plan approved by the Commissioner or in accordance with either of the following ratios:
  - i. Direct costs for each program determined pursuant to (c) above to total direct costs; or
  - ii. Average daily enrollment for each program to total average daily enrollment.

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

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

on this list, or if such titles are unrecognized job titles that are approved annually in accordance with N.J.A.C. 6A:9-5.5. 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:23-4.5(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:23-4.2(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.

#### **6A:23-4.3 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:23-4.2(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:23-4.2.

(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.

#### 6A:23-4.4 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 supple-

students with disabilities shall include in the employee handbook an outline of all employee fringe benefits. All employee fringe benefits shall be adopted in a board of directors meeting and documented in the board minutes prior to implementing the fringe benefit. Employee fringe benefits that are consistent with N.J.A.C. 6A:23-4.5(a)23 for which costs are deemed allowable are as follows:

1. Health insurance coverage (including dental and vision);
2. Life insurance;
3. Type(s) and qualification for retirement plan(s);
4. Severance pay;
5. Vacation;
6. Long term disability;
7. Sick day and personal day benefits;
8. Premium-only plans;
9. Cafeteria plans;
10. Section 125 plans;
11. Tuition reimbursement; and
12. Other benefits for which an approved private school for students with disabilities has applied and received written approval from the Commissioner.

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

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

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

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

(k) An approved private school for students with disabilities shall issue compensation increases after the start of the fiscal year only in accordance with N.J.A.C. 6A:23-4.2(q), and when the increase:

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

(l) An approved private school for students with disabilities shall ensure that employees which are new to the positions listed below on or after July 1, 2006 possess the appropriate bachelor's degree as defined in N.J.A.C. 6A:23-4.1. In addition, approved private schools for students with disabilities shall ensure that employees functioning in the following positions on or before June 30, 2006 either currently possess the appropriate bachelor's degree as defined in N.J.A.C. 6A:23-4.1 or, will obtain the proper bachelor's degree no later than June 30, 2006, or will be removed from the position:

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

(m) An approved private school for students with disabilities that incurs costs for a retirement plan(s) in accordance with N.J.A.C. 6A:23-4.5(a)31 and/or medical benefits for retired employees in accordance with N.J.A.C. 6A:23-4.5(a)56 shall include these costs in the certified actual cost per student on the cash basis of accounting.

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

(o) An approved private school for students with disabilities shall comply with the maximum salaries determined in accordance with N.J.A.C. 6A:23-4.2(o) and (p) and restricted in accordance with N.J.A.C. 6A:23-4.5(a)6, 8 and 9 regardless of the job titles used and whether these job titles comply with the list of job titles published by the Commissioner.

(p) An approved private school for students with disabilities shall under no circumstances other than in accordance with N.J.A.C. 6A:23-4.4(k), provide compensation increases after the start of the fiscal year.

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

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

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

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

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

Rewrote the section.

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

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

Rewrote the section.

#### 6A:23-4.5 Non-allowable costs

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

1. An administrative cost in excess of and/or instructional cost less than the percentages indicated in N.J.A.C. 6A:23-4.2(a)3;

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

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

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

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

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

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

6. The salary of a professional staff member, consultant or subcontractor including a member of a management company who is not certified but is functioning in a position requiring certification in accordance with N.J.A.C.

6A:9 or bachelor's degree required in accordance with this subchapter;

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

8. A salary in excess of the associated maximum allowable salary determined in N.J.A.C. 6A:23-4.2(o), (p) and (q) for a staff member or consultant whose position requires certification, license or a bachelor's degree including a director, assistant director, executive director, and business manager.

i. An approved private school for students with disabilities shall prorate salaries for such part-time or split-time positions including salaries in entities described in N.J.A.C. 6A:23-4.2(e) and (f);

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

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

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

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

9. A salary of an employee not covered by (a)6 above in excess of the lowest maximum allowable salary in the same county according to the list of maximum allowable salaries determined in N.J.A.C. 6A:23-4.2(o), (p) and (q) whose position does not require certification, license or bachelor's degree, including an individual with the director, assistant director, executive director, or business manager job title whose job function(s) are not consistent with those functions described in N.J.A.C. 6A:23-4.1.

i. An approved private school for students with disabilities shall prorate salaries for such part-time or split-time positions including salaries in entities described in N.J.A.C. 6A:23-4.2(e) and (f).

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

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

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

contained in New Jersey Office of Management and Budget (OMB) Circular Letter 98-03 OMB as amended and supplemented;

36. A payment of a bonus;
37. A loss on an investment;
38. The cost of staff salaries, supplies or printing and reproduction of a material for a research activity;
39. Payment of Federal, State and local income taxes on income other than tuition;
40. Any cost associated with travel to and from the officer's or employee's home and the school or agency;
41. All personal expenses, such as a personal travel expense or repair on a personal vehicle;
42. Personal use of a school-owned or leased vehicle, which includes to/from work commutation as determined in accordance with N.J.A.C. 6A:23-4.4(a)18;
43. Any costs associated with a school-owned vehicle, leased vehicle or vehicle contained in a related party transaction involving the purchase of transportation services where a mileage log was not maintained;
44. A business-incurred charge for a privately owned vehicle in excess of the mileage rate allowed by the United States Internal Revenue Service for automobile travel;
45. Transportation costs for a student to and from school, except where the student's IEP requires after school activities;
46. Rental costs for buildings and equipment when the lessor is not a separate legal entity;
47. Costs related to transactions between related parties in which one party to the transaction is able to control or substantially influence the actions of the other. Such transactions are defined by the relationship of the parties and include, but are not limited to, those between divisions of an institution; institutions or organizations under common control through common officers, directors, or members; and an institution and a director, trustee, officer, or key employee of the institution or his or her immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. Such costs shall include, but are not limited to:
  - i. Rental costs for buildings and equipment in excess of the actual allocated costs of ownership (for example, straight line depreciation in accordance with N.J.A.C. 6A:23-4.4(a)3, mortgage interest, real estate taxes, property insurance and maintenance costs) incurred by the related property owner including a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The approved private school for students with disabilities shall include in the lease agreement a list of anticipated costs to be incurred

by the property owner, prepared in the format supplied by the Commissioner, signed by the property owner and notarized;

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

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

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

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

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

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

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

50. Indirect and direct costs associated with unrelated activities or enterprises as defined in N.J.A.C. 6A:23-4.2(g);

51. Cost of the year-end audited financial statements prepared by an individual who does not meet the requirements contained in N.J.A.C. 6A:23-4.9(a);

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

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

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

iii. Not an established annual rate charged to all members, but one which is periodically adjusted during the year; or

iv. Not supported by an annual affidavit signed by the organization's board of directors indicating that all legal and lobbying costs not directly associated with the educational instruction programs for disabled students were funded by sources other than dues from approved private schools for students with disabilities;

53. Salary of a staff member that is not properly supported by the employee's time record in a format prescribed or approved by the Commissioner in accordance with N.J.A.C. 6A:23-4.4(a)10;

54. A salary or payment made to a member(s) of the board of directors/trustees for services performed in their capacity as a member of the board of director/trustees;

55. Cost of a pension plan and/or medical benefits for current or retired members of the board of directors/trustees;

56. Cost of medical benefits for retired employees who have not reached the age of 55 and who were employed a combination of less than 25 years in a New Jersey public school, a New Jersey public agency or a New Jersey approved private school for students with disabilities and have less than 10 years of service in an approved private school for students with disabilities;

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

58. Cost of employee severance pay:

i. In excess of four weeks' salary; and

ii. If, in addition, the cost of a buyout of the employee's contract;

59. Cost of a buyout of an employee contract:

i. In excess of 90 days' salary; and

ii. If, in addition, the cost of the employee's severance pay;

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

61. Cost to purchase or rent in a related party transaction an administrative office or business office at a location other than at the approved private school for students with disabilities location that was not approved in accordance with N.J.A.C. 6A:23-4.4(d);

62. Cost of compensation increases paid after the start of the fiscal year not in accordance with N.J.A.C. 6A:23-4.4(k); and

63. Start-up costs in excess of those allowed in N.J.A.C. 6A:23-4.3(d);

64. Costs including salaries and fringe benefits of employees providing services not in compliance with N.J.A.C. 6A:23-4.4(e)2;

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

i. A criminal history clearance prior to starting employment or;

ii. An application for employment on an emergent basis in accordance with N.J.S.A. 18A:6-7.1c;

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

67. The salary in excess of the associated maximum salary identified in N.J.A.C. 6A:23-4.2(r) and determined in accordance with N.J.A.C. 6A:23-4.4(o) and (p); and

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

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

Rewrote the section.

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

Rewrote the section.

#### 6A:23-4.6 Surcharge

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

(b) For profit-making schools, interest earned in accordance with N.J.A.C. 6A:23-4.2(h) is an unrestricted revenue and is not part of the school's surcharge computation.

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

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

(d) The 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)li, inserted "school"; and rewrote (d).

#### **6A:23-5.2 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-3 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 initial placement by the State agency. In subsequent school years spent in the educational placement made by a State agency, the child's "present district of residence" shall be determined in the same manner as for a child in a residential State facility as set forth in (a)1 above.

The "district of residence" referred to in the second paragraph of N.J.S.A. 18A:7B-12b means the New Jersey district of residence in which the child resided immediately prior to his or her most recent admission to a State facility or most recent placement by a State agency.

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 guard-

ian(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".

### 6A:23-5.3 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 initial admission to a State facility or placement by a State agency shall be submitted. If the child resides in a foster home or with relatives, the present address of the foster parent(s) or relatives 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:23-5.2(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 one-half of the time, the present address of both the child's father and mother as of the date required by N.J.A.C. 6A:23-5.2(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 with a relative such as an aunt or grandmother for less than one year immediately prior to the child's initial admission to a State facility or initial placement by a State agency, the present address of the child's parent(s) or guardian(s) at the time this initial placement is submitted.

6. If the child resides with a relative such as an aunt or grandmother pursuant to N.J.S.A. 18A:38-1d for one or more years immediately prior to the child's initial admission to a State facility or initial placement by a State

agency, the present address of the child's relative(s) at the time of this initial 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:23-5.2(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.

### 6A:23-5.4 Early Childhood Program Aid

(a) For the purposes of this section and pursuant to N.J.S.A. 18A:7F-3, a district board of education means any local or regional school district established pursuant to Chapter 8 or Chapter 13 of Title 18A of the New Jersey Statutes, but shall not include county special services school districts, educational services commissions, or jointure commissions.

(b) A district board of education shall appropriate Early Childhood Program Aid (ECPA) in a special revenue fund and use the aid for preschool, full-day kindergarten, and other early childhood programs and services, except as allowed pursuant to N.J.A.C. 6A:10A.

1. Other early childhood programs and services include programs and services necessary for the delivery of the core curriculum content standards for grades one through three.

2. A district board of education shall use ECPA for other early childhood programs and services only if the district board of education has achieved full implementation of the required programs for full-day kindergarten and preschool pursuant to N.J.S.A. 18A:7F-16.

(c) A district board of education pursuant to (b) above which has fully implemented preschool and full-day kindergarten shall continue the full operation of such programs for as long as it receives ECPA.

(d) A district board of education pursuant to (b) above shall submit to the county superintendent fiscal and program operational plans for ECPA for review and approval and shall be subject to monitoring by the Department. The county superintendent shall review each line item in the school district's fiscal and program operational plans to determine if it is appropriate. The district board of education shall revise the fiscal and program operational plans annually to reflect changes in program and fiscal components.

(e) A district board of education pursuant to (b) above shall maintain separate accounts for pre-kindergarten, kindergarten and grades one through three in the special revenue section of the school district budget and financial records in accordance with GAAP and N.J.A.C. 6A:23-2.