

**CHAPTER 20**

**BUSINESS SERVICES**

**Authority**

N.J.S.A. 18A:1-1, 18A:4-14, 18A:4-14.1, 18A:4-15, 18A:7A-19, 18A:7A-25, 18A:7A-26, 18A:7B-12, 18A:17-45, 18A:18A-4, 18A:18A-5, 18A:18A-7, 18A:18A-27, 18A:18A-37, 18A:18A-40, 18A:18A-42, 18A:19-13, 18A:22-8, 18A:29-3, 18A:29-5, 18A:29-5.1, 18A:29-5.3, 18A:29-5.6, 18A:29-5.12, 18A:33-3, 18A:38-5, 18A:38-19, 18A:38-25, 18A:44-2, 18A:46-6.1, 18A:46-21, 18A:58-7.1, 18A:58-33.39, 18A:58-37.1, 18A:58-68, 18A:58-72, 18A:58-74, 18A:58-75, 18A:58-76, 40A:11-11, 52:14-15.9(e), 52:14B-4(c), Chapter 154, Laws of 1987; and Executive Order No. 34(1976).

**Source and Effective Date**

R.1990 d.393, effective July 16, 1990.  
See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

**Chapter Expiration Date**

Pursuant to Executive Order No. 22(1994), Chapter 20, Business Services, expires on January 16, 1997. See: 26 N.J.R. 3783(a) and 3942(a).

**Chapter Historical Note**

Chapter 20, Business Services, was readopted pursuant to Executive Order No. 66(1978) by R.1990 d.393. See: Source and Effective Date.

Subchapter 9, Child Nutrition Programs, was recodified from N.J.A.C. 6:79, Bureau of Child Nutrition Programs and was readopted with amendments pursuant to Executive Order No. 66(1978) as R.1992 d.202, effective May 4, 1992. See: 24 N.J.R. 324(a), 24 N.J.R. 1791(c). The following is a history of prior rulemakings pertaining to the former Chapter 79:

All provisions of this chapter were adopted pursuant to authority of N.J.S.A. 18A:58-7.1 and 18A:33-4 and were filed and became effective August 31, 1971 as R.1971 d.151. See: 3 N.J.R. 199(a).

1973 Revisions: Amendments became effective July 19, 1974 d.198. See: 6 N.J.R. 302(e).

1975 Revisions: Revisions were filed and became effective June 12, 1975 d.161. See: 7 N.J.R. 201(c), 7 N.J.R. 307(a).

1983 Revisions: Amendments became effective March 21, 1983 as R.1983 d.171. See: 14 N.J.R. 1248(b), 15 N.J.R. 440(a).

1978 Revisions: This chapter was readopted pursuant to Executive Order No. 66(1978) effective November 25, 1987, with adoptions effective December 21, 1987 as R.1987 d.524. See: 19 N.J.R. 1599(a), 19 N.J.R. 2399(a).

Public Notice: Public testimony session.

See: 24 N.J.R. 303(b).

See subchapter and section annotations for specific rulemaking activity.

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#### SUBCHAPTER 1. ATTENDANCE AND PUPIL ACCOUNTING

##### 6:20-1.1 School register

(a) The Commissioner shall prepare and distribute a school register which shall be known as the New Jersey School Register, for recording pupil attendance in all public schools of the State operated by district boards of education, except adult high schools.

(b) Pupil attendance shall be recorded in the school register during school hours on each day the school is in session.

(c) Separate school registers shall be kept for pupils attending A.M. kindergarten, P.M. kindergarten, full-day kindergarten, grades 1 through 6, grades 7 and 8, grades 9 through 12, each pre-school handicapped class, each handicapped class, shared-time classes for regular pupils, shared-time classes for handicapped pupils, full-time bilingual education programs and vocational day programs, and summer schools operated by district boards of education.

(d) The attendance record of all pupils furnished individual instruction or training shall be recorded in a separate official record of home instruction provided by the district board of education. Pupils on roll in home instruction shall not be regarded as enrolled for purposes of average daily enrollment and average daily attendance.

Amended by R.1990 d.393, effective August 6, 1990.  
 See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

More clearly delineated the use of separate school registers.  
 Amended by R.1990 d.610, effective December 17, 1990.  
 See: 22 N.J.R. 2633(a), 22 N.J.R. 3736(a).

Deleted reference to "annual" distribution of school register.

##### 6:20-1.2 School enrollment

(a) The enrollment in a class, a school or a school district shall be the total number of original entries plus the number of re-entries, less the number of transfers, withdrawals or dropouts in any such unit during a school year. The total number of original entries and re-entries, less the number of transfers, withdrawals or dropouts, in all the classes and schools of a school district shall constitute the school enrollment for that district board of education during any school year.

(b) No pupil attending a school operated by a district board of education shall be enrolled in more than one school register in any school district during a school year. All pupils shall be enrolled as of the first day of attendance for that year.

(c) No pupil shall be enrolled in a school register until the pupil has reached the following legal school age:

1. Kindergarten—over four years and less than six years;
2. Day school—over five years;
3. Pre-school handicapped—over three years and less than five years.

(d) Within 10 days of the start of the school year, a school district must determine whether any re-entering student who has not attended school that year has an excused absence or has transferred, withdrawn or dropped out of the school district.

(e) Any pupil enrolled in a school register in a school district who moves to another school district in the same school year shall be enrolled in one register in the new school district upon entering school in that district.

(f) The average daily enrollment in a school district for a school year shall be the sum of the days present and absent of all enrolled pupils when schools were in session during the year, divided by the number of days schools were actually in session. The average daily enrollment for the classes or schools of a district having varying lengths of terms shall be the sum of the average daily enrollments obtained for the individual classes or schools.

(g) The average daily attendance in a school district for a school year shall be the sum of the days present of all enrolled pupils when schools were in session during the year, divided by the number of days schools were actually in session. The average daily attendance for the classes or schools of a district having varying lengths of terms shall be the sum of the average daily attendance obtained for the individual classes or schools.

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

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

Added (f) defining calculation of the "average daily attendance".

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

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

Added new (d) requiring school make determination of status absent reentering students within 10 days of start of school year.

#### Case Notes

Family illegally living year-round at campsite; domicile; right to free education. Board of Education of Township of Middle v. K.K. and P.K., 93 N.J.A.R.2d (EDU) 461.

Neither domicile nor temporary residence in district established; student ineligible for free public education. I.P. v. Board of Education of Borough of Leonia, 93 N.J.A.R.2d (EDU) 128.

Incarcerated pupils; proof of residence. Board of Education of City of Atlantic City v. New Jersey Department of Education, 92 N.J.A.R.2d (EDU) 545.

Domicile; multiple residences. Fort Lee Board of Education v. Kintos, 92 N.J.A.R.2d (EDU) 96.

Enrollment status. Parents on behalf of "G.S." v. Bd. of Ed., Rockaway, Morris Cty., 1974 S.L.D. 637.

#### 6:20-1.3 School attendance

(a) For purposes of school attendance a day in session shall be a day on which the school is open and pupils are under the guidance and direction of a teacher or teachers engaged in the teaching process. Days on which school is closed for such reasons as holidays, teachers' institutes and inclement weather shall not be considered as days in session.

(b) A school day shall consist of not less than four hours of actual school work, except that in an approved kindergarten one continuous session of 2½ hours may be considered as a full day.

(c) An approved kindergarten shall meet the following requirements:

1. Every kindergarten teacher shall be properly certified.

2. A balanced program in an approved facility with adequate equipment, materials and supplies shall be provided each child. This program is to be designed to meet the individual needs of every child and may include instruction in reading and other subjects when it has been determined that a child is ready for such instruction by the teacher of the class.

3. The maximum enrollment for any kindergarten class shall be 25 pupils per teacher. The county superintendent of schools may give permission to increase the number in a room to any number he chooses provided another teacher, an auxiliary teacher, or a teacher aide is employed full-time to provide for the increased size.

(d) A day of attendance shall be one in which a pupil is present for the full day under the guidance and direction of a teacher while school is in session. Whenever over-crowded conditions make it necessary to hold two separate sessions with a different group of pupils in each session a pupil attending for all of either session shall be regarded as having attended for the full day. An excused absence for any reason shall not be counted as a day of attendance in the school register.

(e) A half-day class shall be considered the equivalent of a full day's attendance only if in session for four hours or more, exclusive of recess periods or lunch periods.

(f) A record of the attendance of all pupils on roll in a school register shall be kept each day that school is in session by a teacher or other authorized person. It shall be the duty of this person to keep the attendance records according to these rules and the specific instructions printed in the school register, and if necessary, according to supplementary instructions issued from time to time by the Commissioner.

(g) No pupil shall be recorded as present unless the school is in session and the pupil or pupils so recorded are under the guidance and direction of a teacher in the teaching process.

(h) A pupil shall be recorded as absent in the school register when not in attendance at a session of the school while a member of the school, except pupils excused due to religious holidays who shall be recorded as excused.

(i) A pupil shall be recorded as either present, absent, or excused for religious observance, every day the school is in session after the pupil enters until the date the pupil is transferred to another school, transferred to an individual home instruction record, or officially leaves the school system.

(j) The Commissioner shall annually prescribe a list of religious holidays on which it shall be mandatory to excuse pupils for religious observance upon the written request signed by the parent or person standing in loco parentis.

(k) The mere presence of a pupil at roll call shall not be regarded as sufficient attendance for compliance with these rules. In a school which is in session during both the forenoon and the afternoon, a pupil shall be present at least one hour during both the forenoon and the afternoon in order to be recorded as present for the full day. In a school which is in session during either the forenoon or the afternoon, a pupil shall be present at least two hours in the session in order to be recorded as present for the full day.

Amended by R.1990 d.393, effective August 6, 1990.  
See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

Deleted (f), (m) and (n); recodified with editorial changes.

#### Case Notes

State Board of Education regulations applying to institutionalized children adopted. *New Jersey Assn. for Retarded Citizens, Inc. v. State Dept. of Human Services*, 89 N.J. 234, 445 A.2d 704 (1982).

Pupils not shown not to be residents of school district; incarceration. *Board of Education of City of Atlantic City v. New Jersey Department of Education*, 93 N.J.A.R.2d (EDU) 336.

Speculative impact of rule does not justify rescission of Board resolution allowing early enrollment. *McDowell v. Bd. of Ed., Island Heights, Ocean Cty.*, 1974 S.L.D. 1316.

## SUBCHAPTER 2. BOOKKEEPING AND ACCOUNTING IN LOCAL SCHOOL DISTRICTS

#### Authority

N.J.S.A. 18A:4-14, 18A:4-15, 18A:7A-19, 18A:7A-26, 18A:18A-4, 18A:18A-5, 18A:19-13, 18A:22-8, 18A:29-3, 18A:33-3 and 52:14-15.9(e).

#### Source and Effective Date

R.1990 d.21, effective January 16, 1990.  
See: 21 N.J.R. 2919(a), 22 N.J.R. 176(a).

#### Subchapter Historical Note

See Historical Note at Subchapter 2A.

### 6:20-2.1 Prescribed system of single entry bookkeeping

(a) It shall be the purpose of the bookkeeping and accounting system prescribed in this subchapter to provide a sound plan of general accounts that will serve to safeguard the expenditure of public funds; effect proper budgetary control; establish uniformity in the classification of expenditures; and furnish adequate financial information for use of the public, the district board of education administration and the Commissioner of Education.

(b) This subchapter is comprised of three major parts: records of cash receipt and cash expenditure accounts in accordance with recognized governmental accounting procedures; detailed budget and cost distribution records; and a schedule of physical property.

(c) A district board of education may operate a system of double entry bookkeeping consistent with the rules in this subchapter and accounting principles prescribed by the Commissioner.

(d) This subchapter shall expire on July 1, 1993 upon implementation of the double entry, GAAP accounting rules contained in N.J.A.C. 6:20-2A pursuant to N.J.S.A. 18A:4-14.1.

Amended by R.1990 d.393, effective August 6, 1990.  
See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

Added (d) establishing an expiration date of July 1, 1993 for the subchapter.

### 6:20-2.2 Records of cash receipt and cash expenditure accounts

(a) The records of receipt and expenditure accounts shall be set forth in sufficient detail to determine the financial condition of the district board of education at any time.

(b) The major accounts shall be designated as follows:

1. Current expenses;
2. Capital outlay (sites, buildings and equipment); and
3. Debt service (bonds, authorized notes and interest on same).

(c) The necessary supplementary accounts shall be provided for non-revenue receipts and expenditures as follows:

1. Reserve for unpaid orders;
2. Sale of permanent bonds to redeem temporary loan bonds;
3. Temporary loans;
4. Sinking funds to pay term bonds; and
5. Clearing accounts.

(d) The forms to be prepared by the Commissioner for use in district boards of education shall include, but not be limited to, the following classifications:

1. Appropriations;
2. Cash receipts;
3. Cash expenditures;
4. Contractual orders;
5. Tuition ledger;
6. Bond register;
7. Extra-curricular activities; and
8. Food services.

**6:20-2A.4 Accounting and reporting directives**

The Commissioner shall prepare accounting and reporting directives to be used by school officials in keeping the double entry bookkeeping and accounting system mandated in this subchapter and shall from time to time prepare, publish and distribute books, materials or bulletins for the guidance of school officials.

Amended by R.1989 d.86, effective February 6, 1989.  
See: 20 N.J.R. 2502(a), 21 N.J.R. 292(a).

Added "accounting and reporting directives" and "mandated". Repealed old section 2.4 Physical property records.

**6:20-2A.5 Supplies and equipment**

(a) Criteria to distinguish between supplies and equipment for accounting purposes as prescribed by GAAP pursuant to N.J.A.C. 6:20-2A.1 and contained in the Financial Accounting for Local and State School Systems (presently referred to as Handbook 2R2) which is established by the National Center for Education Statistics, is herein adopted by reference and on file and may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, CN 049, Trenton, New Jersey and the Department of Education, 225 West State Street, CN 500, Trenton, New Jersey.

(b) For the purpose of this section, "food supplies" shall include only those supplies which are to be eaten or drunk and those substances which may enter into the composition of a food in the operation of a school cafeteria or in a home economics class.

**(c) Public notification of method of purchase:**

1. Whenever any district board of education elects to purchase food supplies pursuant to this section, it shall adopt a policy stating what food supplies will be purchased without advertising for bids, designating a person or persons authorized to purchase food supplies, describing the procedure by which interested vendors may become eligible to submit quotations, and outlining the method by which the district board of education will solicit and accept quotations.

2. This policy shall be adopted before the opening of schools in September and shall be made known to the public.

**(d) Specifications and quotations shall be as follows:**

1. Definite and uniform specifications governing standards of quality shall be given to each eligible vendor from whom quotations are solicited.

2. Each time a purchase of food supplies is to be made, the person designated by the district board of education to purchase food supplies shall solicit quotations from interested, eligible vendors in the manner prescribed in the adopted district board of education policy. Quotations for fresh or frozen fruits, vegetables and meats need not be solicited more than once in any two-week period.

3. The food supplies on which quotations are obtained shall be purchased from the vendor giving the lowest quotation unless the person or persons designated by the district board of education to purchase food supplies can justify the purchase from one of the other vendors submitting a quotation; such justification, together with all quotations received, shall be in permanent record form, available to school officials, the district board of education and the Department of Education for review and for audit for a minimum of three years.

4. Contingent upon approval of the district board of education in its adopted policy, the person or persons designated by the district board of education to purchase food supplies may purchase food supplies for any school cafeteria or home economics class to the extent of not more than \$250.00 in any month without soliciting quotations, provided a statement signed by the purchaser is filed with the invoice indicating the reason why quotations could not be obtained; such record shall also be retained for review and for audit.

(e) Paragraphs (d)1, 2 and 3 above shall not apply to food supplies purchased by advertising for bids.

As amended, R.1980 d.381, effective September 5, 1980.  
See: 12 N.J.R. 453(a), 12 N.J.R. 569(d).

(d)4 was \$100.00.

Amended by R.1985 d.452, effective September 3, 1985.  
See: 17 N.J.R. 1361(a), 17 N.J.R. 2105(b).

Added "district board of education".

Amended by R.1989 d.86, effective February 6, 1989.  
See: 20 N.J.R. 2502(a), 21 N.J.R. 292(a).

Substituted "this section" for "these rules".

Amended by R.1990 d.393, effective August 6, 1990.  
See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

"Handbook 2R2" adopted by reference at (a).

**6:20-2A.6 Mechanical bookkeeping systems**

District boards of education which contract for electronic data processing bookkeeping services shall annually have an audit prepared or obtain a copy of an audit of the internal controls of the service company or agency as prescribed by Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants and maintain a copy of such audit on file.

Amended by R.1985 d.452, effective September 3, 1985.  
See: 17 N.J.R. 1361(a), 17 N.J.R. 2105(b).

(b) added.

Amended by R.1989 d.86, effective February 6, 1989.  
See: 20 N.J.R. 2502(a), 21 N.J.R. 292(a).

Added text "or obtain a copy of an audit" and "as prescribed by Certified Public Accountant".

Amended by R.1990 d.393, effective August 6, 1990.  
See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

Deleted (a), prior approval by Commissioner for use of electronic and mechanical systems deleted.

**6:20-2A.7 Employee organizational dues**

(a) Pursuant to provisions of N.J.S.A. 52:14-15.9(e), any person holding employment with a district board of education in this State may have deductions made from this

compensation for the purpose of paying dues to a bona fide employee organization.

(b) Employees desiring payroll deductions of organizational dues should indicate, in writing, their choice of employee organization. Any such written authorization may be withdrawn at any time by filing a notice with the secretary of the district board of education, according to directions promulgated by the Commissioner.

(c) Any secretary of a district board of education making organizational payroll deductions shall submit to the designated employee organization all deductions made for such purposes.

Amended by R.1985 d.452, effective September 3, 1985.  
See: 17 N.J.R. 1361(a), 17 N.J.R. 2105(b).

Added "district".  
Amended by R.1989 d.86, effective February 6, 1989.  
See: 20 N.J.R. 2502(a), 21 N.J.R. 292(a).

Old section 2.7 was "Bookkeeping and accounting forms" and was repealed.

#### 6:20-2A.8 Petty cash fund

(a) Pursuant to the provisions of N.J.S.A. 18A:19-13, a district board of education may establish on July 1 of each year, or as needed, a petty cash fund or funds for the purpose of making immediate payments of comparatively small amounts.

(b) A district board of education establishing a petty cash fund shall:

1. Indicate the amount or amounts authorized for each fund;
2. Set the maximum expenditure which may be made from each fund;
3. Designate an individual who will be responsible for the proper disposition of each fund;
4. Establish the minimum time period in which the designated person shall report to the district board of education on amounts disbursed from each fund; and
5. Approve a voucher prepared by the board secretary to replenish each fund.

(c) All unused petty cash funds are to be returned to the depository at the close of each fiscal year.

As amended, R.1983 d.491, effective November 7, 1983.  
See: 15 N.J.R. 982(a), 15 N.J.R. 1861(a).

Added to (b), 1-5 and (c).  
Amended by R.1985 d.452, effective September 3, 1985.  
See: 17 N.J.R. 1361(a), 17 N.J.R. 2105(b).

Added "district".  
Amended by R.1990 d.21, effective January 16, 1990.  
See: 21 N.J.R. 2919(a), 22 N.J.R. 176(a).

Deleted the word "imprest" before petty cash fund.

#### 6:20-2A.9 Summer payment plan

Funds withheld from employees' salaries for the summer payment plan prescribed by N.J.S.A. 18A:29-3 shall be deposited in a separate account in a depository designated by the district board of education, said account to be known as Board of Education of \_\_\_\_\_ Summer Payment Plan Account. Withdrawals from this account shall be made by individual checks payable to the order of employees for the amount withheld from their salaries during the school year. A payment list shall be certified by the president and secretary of the district board of education and delivered to the treasurer of school moneys of the district board of education.

Amended by R.1985 d.452, effective September 3, 1985.  
See: 17 N.J.R. 1361(a), 17 N.J.R. 2105(b).

Substituted "treasurer" for "custodian"; added "district".

#### 6:20-2A.10 Overexpenditure of funds

(a) A district board of education shall implement controls over budgeted appropriations as follows:

1. No encumbrance or expenditure (liability or payment) shall be approved which when added to the total of existing encumbrances and expenditures exceeds the amount appropriated by the district board of education in the applicable line item account established pursuant to the minimum chart of accounts referenced in N.J.A.C. 6:20-2A.2(m)1. A line item account is defined as the lowest (most specific) level of detail in the appropriation/expenditure classification.

2. When a district board of education adopts an expanded chart of accounts pursuant to N.J.A.C. 6:20-2A.2(m)2, such district board of education shall adopt a policy concerning the controls over appropriations for line item accounts which exceed the minimum level of detail established pursuant to N.J.A.C. 6:20-2A.2(m)1. If a district board of education fails to adopt such a policy, the restrictions contained in (a)1 above shall apply to line item accounts which exceed the minimum level of detail.

3. A district board of education may transfer amounts necessary to effectuate the approval of encumbrances or expenditures prohibited in (a)1 and 2 above from line item accounts with available appropriation balances. These transfers shall be made prior to the approval of such encumbrances or expenditures and shall be made in accordance with N.J.S.A. 18A:22-8.1 and 18A:22-8.2.

(b) A district board of education anticipating an overexpenditure in either the current expense, capital outlay or debt service funds as designated in N.J.A.C. 6:20-2A.2(c)1 shall proceed in the following manner:

1. The district board of education shall direct the chief school administrator to immediately notify the county superintendent of schools, of the following:

- i. The projected amount of the overexpenditure;

4. The capital reserve account shall be increased by the earnings attributable to the investment of the account's assets pursuant to N.J.S.A. 18A:21-3. Anticipated investment income shall be included in the original annual capital outlay budget which is certified for taxes as miscellaneous income.

5. Additions to the capital reserve account from foundation aid for capital outlay, amounts approved by the voters or board of school estimate and investment income are included in the annual budget statement's appropriation section in the line item "Increase in Capital Reserve."

6. Funds placed in the capital reserve account are restricted to the capital outlay major account/fund and transfers of such funds to other major accounts/funds are prohibited pursuant to N.J.S.A. 18A:22-8.2.

7. Funds in the capital reserve account may be appropriated as revenue only in the annual budget which is certified for taxes pursuant to N.J.S.A. 18A:21-4 in the line item "Withdrawal from Capital Reserve" subject to the following restrictions:

i. Funds withdrawn from the capital reserve account and included in the annual budget shall not be transferred for current expenses or debt service payments pursuant to N.J.S.A. 18A:21-4. In any year that capital reserve account funds are appropriated in the annual budget along with unrestricted fund sources, no transfers from capital outlay to current expense which are permitted by N.J.S.A. 18A:22-8.2 shall be made which reduce the capital outlay appropriation to an amount less than the appropriated capital reserve account funds;

ii. Funds in the capital reserve account which are not appropriated in the original annual capital outlay budget which is certified for taxes shall not be appropriated during the year;

iii. In any year that capital reserve account funds are appropriated in the annual budget, unexpended capital outlay appropriations up to the amount of capital reserve account funds appropriated shall be restored to the capital reserve account. Expenditures are deemed as being charged first to unrestricted capital outlay fund sources with capital reserve account appropriations expended last; and

iv. In any year that capital reserve account funds are appropriated in the annual budget, earnings attributable to the investment of unexpended capital outlay funds up to the amount of capital reserve account funds appropriated (lesser of unexpended capital outlay funds or capital reserve account funds appropriated) shall be placed in the capital reserve account along with earnings attributable to the investment of funds remaining in the capital reserve account.

8. A separate fund shall be established in the capital outlay major account/fund for bookkeeping purposes only in order to account for increases to and withdrawals from the capital reserve account and its balance. The capital reserve account shall be reflected on the annual audit's balance sheet in the capital outlay major account/fund as follows:

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

New Rule, R.1991 d.459, effective September 3, 1991.  
See: 23 N.J.R. 1733(a), 23 N.J.R. 2634(a).

Former section 6:20-2A.12 "Appropriation of free balance" was recodified to 6:20-2A.11.

**6:20-2A.13 (Reserved)**

New Rule, R.1989 d.86, effective February 6, 1989.  
See: 20 N.J.R. 2502(a), 21 N.J.R. 292(a).  
Repealed by R.1990 d.21, effective January 16, 1990.  
See: 21 N.J.R. 2919(a), 22 N.J.R. 176(a).

**SUBCHAPTER 3. TUITION PUBLIC SCHOOLS**

**Authority**

N.J.S.A. 18A:4-15 and 18A:38-19.

**Source and Effective Date**

R.1985 d.157, effective March 11, 1985.  
See: 17 N.J.R. 144(a), 17 N.J.R. 811(c).

**Subchapter Historical Note**

All provisions of this subchapter were filed and became effective prior to September 1, 1969. An emergency adoption and concurrent proposal became effective December 10, 1984, to expire February 8, 1984 as R.1984 d.589. See: 17 N.J.R. 119(a). A re adoption of this subchapter became effective February 8, 1985 as R.1985 d.91. See: 17 N.J.R. 119(a), 17 N.J.R. 583(a). A re adoption of this subchapter became effective March 11, 1985 with amendments effective April 1, 1985 as R.1985 d.157. See: 17 N.J.R. 144(a), 17 N.J.R. 811(c). See chapter and section levels for further amendments.

**6:20-3.1 Method of determining tuition rates for regular public schools**

(a) The term "actual cost per pupil" for determining the tuition rate or rates for a given year referred to in N.J.S.A. 18A:38-19 and 18A:46-21 shall mean the local cost per pupil in average daily enrollment, based upon audited expenditures for that year for the purpose for which the tuition rate is being determined and consistent with the grade/program categories in N.J.S.A. 18A:7D-6 and 18A:7D-16 that is, regular education classes: pre-school/kindergarten, grades one through five, grades six through eight, and grades nine through 12; and special education classes by handicap classification.

1. All expenditures for each purpose except Federal and State special project expenditures and those specifically excluded in (d)5 below shall be included.

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

3. The "actual cost per pupil" for all grade and program categories shall be reduced as appropriate by State aid for programs for at-risk pupils and bilingual pupils received pursuant to N.J.S.A. 18A:7D-20 and 21, respectively, for both resident and nonresident pupils and State aid for minimum teacher salaries received pursuant to N.J.S.A. 18A:29-5. Such reductions shall be made in accordance with the option selected in (b) below for certification of the "actual cost per pupil" for each tuition category.

(b) The Commissioner shall certify the "actual cost per pupil" for each tuition category for a given year for each receiving district board of education based upon either:

1. A report prepared and submitted annually by the receiving district board of education indicating the actual amounts of expenditures and adjustments whenever practicable or amounts equitably allocated and supported by documentation for each applicable item in the grade/program category for which the tuition rate is required, according to the prescribed bookkeeping and accounting system; or

2. A report prepared annually by the Commissioner for each receiving district board of education. This report shall determine the "actual cost per pupil" for each tuition category utilizing the following:

i. Expenditures reflected in the receiving district's annual independent audit;

ii. Supplemental data for average daily enrollment and items of expenditure detailed in (d)2 below submitted by category by the receiving district on a form prescribed by the Commissioner;

iii. Data contained on the receiving district's application for State aid for minimum teachers' salaries; and

iv. Criteria contained in (d) below.

(c) Once having determined to annually submit the report pursuant to (b)1 above to the Commissioner, a receiving district must submit a written request to the Commissioner in order to change to the certification method in (b)2 above. The request must indicate reason(s) for the change and shall be subject to the Commissioner's approval.

(d) The share of each item of expenditure for each grade/program category on the report in (b)2 above shall be determined on a pro rata or actual basis as follows:

1. The actual expenditures for each category as reflected in the receiving district's annual independent audit will be used for the following items:

i. Teachers' salaries for regular education classes; and

ii. Direct instructional expenditures for salaries, equipment and other expenses for special education classes.

2. Expenditures submitted by category on the supplemental data report and determined on either an actual basis or an equitable basis of allocation, such as square footage or average daily enrollment, selected by the receiving district and supported by documentation will be used for the following items:

i. Rental of land and buildings;

ii. Interest on lease purchase agreements;

iii. Student body activity expenditures of the general fund;

iv. Salaries and other expenses for local special projects;

v. Capital outlay; and

vi. Building use charges as defined in (d)6 and 7 below.

3. Expenditures for regular education class categories as reflected in the receiving district's annual independent audit will be allocated in proportion to the average daily enrollment in the grade categories for regular education classes for the following items:

i. Other salaries for instruction such as teaching assistants and aides as well as others providing or assisting directly in the instructional program;

ii. Textbooks;

iii. School library and audio/visual materials;

iv. Teaching supplies;

v. Purchased professional educational services;

vi. Purchased technical educational services;

vii. Equipment other than that specifically designated for special education or bilingual classes;

viii. Other direct expenses of regular education classes; and

ix. Direct instructional expenditures for salaries and other expenses for basic skills/remedial programs.

4. Expenditures as reflected in the receiving district's annual independent audit will be allocated in proportion to the average daily enrollment in each category for all categories listed in (a) above for the following items:

i. System-wide administration;

- ii. Principals' and assistant principals' salaries;
  - iii. Salaries of supervisors of instruction;
  - iv. Salaries of other instructional staff for guidance counseling, psychological services, child study team services, school libraries and other professional services which support the instructional program;
  - v. Salaries of secretaries and clerical personnel which support the instructional program;
  - vi. Attendance and health;
  - vii. Contracted transportation or transportation provided by district owned vehicles for curricular activities such as field trips, athletic trips and other trips which are part of the instructional program;
  - viii. Operation and maintenance of plant expenditures except those for equipment;
  - ix. Fixed charges: Employee retirement and social security contributions except T.P.A.F. contributions, insurance and judgments including unemployment compensation (U.C.C.), interest on current loans, and other fixed charges except rental of land and buildings and interest on lease purchase agreements which are determined pursuant to (d)2 above and principal on lease purchase agreements and tuition which are excluded pursuant to (d)5 below;
  - x. Food service expenditures of the general fund; and
  - xi. Direct instructional expenditures for salaries, equipment and other expenses for bilingual education programs.
5. Expenditures will be excluded from the actual cost per pupil for tuition purposes for the following items:
- i. Transportation to and from school which is paid by the resident district;
  - ii. Employee retirement and social security contributions for T.P.A.F. members which are fully funded by the State;
  - iii. Principal on lease purchase agreements;
  - iv. Tuition;
  - v. Community services;
  - vi. Supplemental instruction, speech instruction and home instruction pursuant to N.J.S.A. 18A:7D-16 and which are funded for both resident and nonresident pupils;
  - vii. Resource room which is determined pursuant to (d)9 below and permitted as a separate charge over and above tuition for regular education classes; and
  - viii. Accredited adult education programs and non-accredited adult and evening programs.
6. Building use charge is determined as follows:
- i. Divide the amount of debt service State support received by the debt service paid for the school year to determine the ratio of State support;

- ii. Multiply the debt service interest charges paid on debt for the buildings in which the program is located by the ratio of State support obtained in (d)6i above;
  - iii. Subtract the amount obtained in (d)6ii above from the debt service interest charge paid on debt for the buildings in which the program is located;
  - iv. Distribute the amount obtained in (d)6iii above in accordance with (d)2 above.
7. Special building use charge is determined as follows:
- i. Whenever a receiving district receives more than 50 percent of the average daily enrollment in a program for which a tuition rate is being determined, except for special education programs, the receiving district may include in accordance with (d)2 above the amount expended for principal and interest on major repairs and major renewals of furniture, equipment and apparatus for the building in which the program is located, provided that:
    - (1) Such major repairs or major renewals were funded by the issuance of bonds as provided in N.J.S.A. 18A:21-1;
    - (2) The receiving district consulted with each sending district having more than 10 percent of the average daily enrollment in the program for which the tuition rate is being determined prior to taking any action in accordance with N.J.S.A. 18A:24-10 to authorize the issuance of such bonds; and
    - (3) The majority of districts with more than 10 percent of the enrollment in the program has passed a resolution in support of the receiving district's determination to issue such bonds or the Commissioner, after a conference, has approved the proposal for the issuance of such bonds.
  - ii. Receiving districts for which this section is applicable may include in accordance with (d)2 above the entire rental on a site or school building acquired by a lease purchase agreement pursuant to N.J.S.A. 18A:20-4.2 provided that:
    - (1) The receiving district consulted with each sending district having more than 10 percent of the average daily enrollment in the program for which the tuition rate is being determined prior to entering into the lease purchase agreement; and
    - (2) Each sending district with more than 10 percent of the enrollment in the program has passed a resolution in support of the receiving district's determination to enter into a lease purchase agreement or the Commissioner, after a conference, has approved the proposal to enter into a lease purchase agreement.
8. The actual and prorated expenditures for all grade/program categories shall be adjusted to determine the "actual cost per pupil" for tuition purposes as follows:

i. State aid for programs for at-risk pupils received pursuant to N.J.S.A. 18A:7D-20 for both resident and nonresident pupils shall be deducted in proportion to the average daily enrollment for each category weighted on a basis consistent with N.J.S.A. 18A:7D-20. For this purpose the average weight for the grade categories in N.J.S.A. 18A:7D-20 shall be used to determine the weighted average daily enrollments for special education classes;

ii. State aid for programs for bilingual pupils received pursuant to N.J.S.A. 18A:7D-21 for both resident and nonresident pupils shall be deducted in proportion to the average daily enrollment for each category; and

iii. State aid for minimum teacher salaries received pursuant to N.J.S.A. 18A:29-5 shall be deducted for teachers on an actual basis and for other teaching staff members in proportion to the average daily enrollment for each category.

9. In addition to the tuition charged for each grade category, receiving district boards of education may charge for pupils receiving services in a resource room an additional amount up to the actual direct instructional cost per pupil 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, 225 West State Street, CN 500, Trenton, New Jersey 08625).

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

1. 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 pupil 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. Such contractual agreement shall require the sending district board of education 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 pupil 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 pupils 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.

2. The sending district board of education shall notify in writing the receiving district board of education of the estimated average daily enrollment of pupils 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 pupil in each tuition category for the ensuing school year and the tentative tuition charge no later than January 15 preceding the beginning of the ensuing school year. The receiving district board of education shall submit to the sending district board of education a copy of its calculations to determine the estimated cost per pupil in each tuition category for the ensuing school year no later than January 15 preceding the beginning of the ensuing school year. Such calculations shall be on a form prepared by the Commissioner.

3. If the Commissioner later determines that the tentative tuition charge established by written contractual agreement, except for a contractual agreement for a pupil enrolled in a special education class, was greater than the actual cost per pupil 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. Such adjustment for a contractual agreement for a pupil enrolled in a special education class shall be made no later than the end of the third school year, following the contract year.

4. If the Commissioner later determines that the tentative charge established by written contractual agreement, except for a contractual agreement for a pupil enrolled in a special education class, was less than the actual cost per pupil 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 pupil 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.

(f) The Commissioner shall prepare the necessary forms to certify the "actual cost per pupil" for each tuition category according to the rules in this section. The Commissioner shall also prepare the contract forms and the forms to be used by the receiving district board of education to establish the estimated cost per pupil for each tuition category for the ensuing school year.

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

As amended, R.1970 d.145, effective December 7, 1970.

See: 2 N.J.R. 89(c), 3 N.J.R. 3(b).

As amended, R.1980 d.165, effective April 17, 1980.

See: 12 N.J.R. 251(c).

As amended, R.1980 d.225, effective May 15, 1980.

See: 12 N.J.R. 308(a).

As amended, R.1982 d.270, effective August 16, 1982, operative July 1, 1983.

See: 14 N.J.R. 458(a), 14 N.J.R. 914(b), 14 N.J.R. 978(b).

Added paragraph (c)12.

As amended, R.1984 d.205, effective June 4, 1984 (operative July 1, 1984).

See: 15 N.J.R. 2089(a), 16 N.J.R. 1345(a).

Section substantially amended.

Emergency amendment, R.1984 d.589, effective December 10, 1984 (expires February 8, 1985).

See: 17 N.J.R. 119(a).

Amended by R.1985 d.91, effective March 18, 1985.

See: 17 N.J.R. 119(a), 17 N.J.R. 583(a).

Amended by R.1985 d.157, effective April 1, 1985.

See: 17 N.J.R. 144(a), 17 N.J.R. 811(c).

Substantially amended.

Amended by R.1988 d.147, effective April 4, 1988.

See: 19 N.J.R. 1598(a), 20 N.J.R. 787(b).

Substantially amended.

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

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

Amended language throughout clarifying procedures and formulas.

Amended by R.1991 d.590, effective December 16, 1991.

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

Revised to comport with the grade and program categories, State-aid distribution, and other aspects of the QEA.

#### Case Notes

No tuition reimbursement allowed for students not properly domiciled in district. *Pascack Valley Regional High School District v. Kwon*, 93 N.J.A.R.2d (EDU) 897.

Parents domiciled in another district required to reimburse board for children's education. *Fort Lee Board of Education v. Kintos*, 93 N.J.A.R.2d (EDU) 837.

Rules to be construed consistently with statute. *Bd. of Ed., N. Bergen v. Bd. of Ed., Guttenberg, Hudson Cty.*, 1973 S.L.D. 18, 1973 S.L.D. 28, 1974 S.L.D. 1415, 1975 S.L.D. 1111, 1975 S.L.D. 1115, 1975 S.L.D. 1015, 1976 S.L.D. 1152.

Policy behind methods of determining costs. *Bd. of Education, Burlington v. Bd. of Ed., Edgewater Pk., Burlington Cty.*, 1974 S.L.D. 692, 1975 S.L.D. 1074, 1976 S.L.D. 1123.

Application of permissive language. *Bd. of Ed. of Hackensack v. Bd. of Ed., Rochelle Pk., Bergen Cty.*, 1970 S.L.D. 292.

#### 6:20-3.2. 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 which is to receive pupils, the estimated cost per pupil in each program for which the tuition rate is required shall be set by the receiving district board of education and shall be based on budgeted costs; the estimated cost or costs per pupil so established shall be submitted 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 pupil each sending district board of education shall pay tentative tuition charges based upon these estimated costs per pupil 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 pupil 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 payment or credit for a pupil who was enrolled in a special education class shall be made 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 pupil who was enrolled in a special education class, during the third school year following the first year of operation. The amount owed for a pupil who was enrolled in a special education class shall be paid no later than the end of the third school year following the first year of operation.

Amended by R.1985 d.157, effective April 1, 1985.

See: 17 N.J.R. 144(a), 17 N.J.R. 811(a).

Recodified with substantial amendments from 6:20-3.3.

#### 6:20-3.3 Method of determining tuition rates for county vocational schools

(a) The term "actual cost per pupil" 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 shall mean the adjusted net cost per pupil in average daily enrollment, based upon audited expenditures for that year for the purpose for which the tuition rate is being determined and consistent with N.J.S.A. 18A:7D-14 and 18A:7D-16.

1. Tuition rates shall be determined for the following categories:

i. Regular vocational classes:

- (1) Low cost;
- (2) Moderate cost; and
- (3) High cost;

ii. Special vocational classes:

- (1) Low cost;
- (2) Moderate cost; and
- (3) High cost; and

iii. Special education classes by handicap classification.

2. All expenditures for each purpose except Federal and State grant project expenditures shall be included.

3. "Average daily enrollment" for the purpose of determining the "actual cost per pupil" shall be the sum of the days present and absent of all pupils 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 shall the divisor be less than 180 days.

4. The "actual cost per pupil" for all tuition categories shall be adjusted to reflect net costs plus a reasonable surplus.

(b) The Commissioner shall certify the "actual cost per pupil" for each tuition category for a given year for each county vocational school district board of education 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 share of each item of expenditure for each tuition category shall be determined on a pro rata or actual basis as follows:

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

2. Direct instructional expenditures for salaries, textbooks, teaching supplies, purchased services, equipment and other expenses for basic skills/remedial programs shall be allocated amongst regular vocational class categories listed in (a)1i above in proportion to the average daily enrollment for such categories;

3. Direct instructional expenditures for salaries, textbooks, teaching supplies, purchased services, equipment and other expenses for other unrestricted instructional programs indirectly related to the regular and special vocational classes listed in (a)1i and ii above shall be allocated amongst those categories in proportion to the average daily enrollment for such categories;

4. Expenditures indirectly related to all tuition categories listed in (a)1 above shall be allocated amongst all categories in proportion to the average daily enrollment for such categories for the following items:

i. System-wide administration;

ii. Undistributed instructional support services;

iii. Bilingual education programs;

iv. Attendance and health;

v. Transportation;

vi. Operation and maintenance of plant;

vii. Fixed charges except for retirement and social security contributions for T.P.A.F. members which are fully funded by the State;

viii. Food service expenditures of the general fund;

ix. Student body activity expenditures of the general fund;

x. Community services; and

xi. Capital outlay.

(d) The total direct and indirect expenditures determined for each tuition category in (c) above shall be adjusted 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 expenditures for supplementary, speech, and home instruction and post-secondary programs for which no tuition may be charged pursuant to N.J.S.A. 18A:7D-16 and 18A:54-20.1, respectively, and expenditures for resource room, special schools and evening schools.

1. Whenever funds have been appropriated by the county, the county vocational school district may charge the non-resident fee mentioned in (d) above in addition to tuition for any pupils who are not residents of the county. The fee per non-resident pupil shall not exceed the amount obtained by dividing the county appropriation by the number of pupils who are residents of the county pursuant to N.J.S.A. 18A:54-20.1.

**Subchapter Historical Note**

This subchapter formerly contained rules concerning tuition for nonpublic schools. The subchapter was effective prior to August 19, 1969, on which date they were filed with the Secretary of State. Subsequent amendments were effective August 29, 1974 as R.1974 d.241. See: 6 N.J.R. 390(a). Further amendments were effective July 2, 1975 as R.1975 d.196. See: 7 N.J.R. 140(a), 7 N.J.R. 358(b). The subchapter was subsequently repealed and replaced with new rules concerning tuition for private schools for the handicapped, effective September 6, 1983, as R.1983 d.369. See: 15 N.J.R. 730(a), 15 N.J.R. 1469(a). The sections 4.1 and 4.2 in this subchapter were repealed and new sections 4.1 through 4.8 were filed and became effective September 4, 1989 as R.1989 d.398. See: 16 N.J.R. 1298(a), 16 N.J.R. 2358(a). The subchapter was completely amended effective May 4, 1987 as R.1987 d.210. See: 19 N.J.R. 336(a), 19 N.J.R. 751(a). See chapter and section levels for further amendments.

**6:20-4.1 Tuition rate procedures**

(a) The term "actual cost per pupil" referred to in N.J.S.A. 18A:46-21, for the purpose of this subchapter shall be defined as the certified actual cost per pupil. For determining the tuition rate(s) for a 10 month school year or an extended school year for approved private schools for the handicapped located in New Jersey, the certified actual cost(s) per pupil shall mean the actual allowable cost for the year plus the applicable maximum surcharge/working capital fund divided by the average daily enrollment for a 10 month school year or total per diem days for an extended school year. Based on the certified actual cost(s) per pupil, the school's management shall determine the actual tuition rate(s) charged which is an amount less than or equal to the certified actual cost(s) per pupil. The certified actual cost(s) per pupil and actual tuition rate(s) charged shall be identified in the certified audit submitted pursuant to N.J.A.C. 6:20-4.8.

1. Actual allowable costs for the 10 month school year program shall be based on a minimum of 180 days of pupil instruction between September 1 and June 30 and for the extended school year program on the days of pupil instruction between July 1 and August 30. Such costs shall be consistent with the individualized education program of a handicapped pupil 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.

2. "Average daily enrollment" for the purpose of determining the actual cost per pupil shall be the sum of the days present and absent of all school pupils enrolled in the register(s) of the school divided by the number of days the approved private school for the handicapped was actually in session rounded to the nearest four decimal places, except in no event shall the divisor be less than 180 days. A pupil enrolled in a preschool program (10 hours per week of pupil instruction), a half-day program or enrolled in a full day program on a shared time basis shall not have a maximum average daily enrollment in excess of 0.5.

(b) Whenever possible, direct costs which can be identified specifically with an approved private school facility, 10 month school year program or extended school year pro-

gram shall be recorded in the prescribed bookkeeping and accounting system and used in determining the respective actual cost per pupil.

(c) Indirect costs are costs which are incurred for a common or joint purpose and not readily assignable to an approved private school facility, 10 month school year program or extended school year program. Indirect cost pools may be established as appropriate for allocation between common or joint purposes at the end of the fiscal year. Indirect costs shall be included on a consistent basis in the respective actual cost per pupil in accordance with an equitable allocation plan approved by the Commissioner or in accordance with either of the following ratios:

1. Direct costs for each program determined pursuant to (b) above to total direct costs; or
2. Average daily enrollment for each program to total average daily enrollment.

(d) Whenever a facility used by an approved private school for the handicapped 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 accordingly to the associated activities and/or enterprises which they benefit. Indirect cost pools may be established as appropriate for allocation between common or joint purposes at the end of the fiscal year. Indirect costs shall be distributed in accordance with an equitable allocation plan approved by the Commissioner or as follows:

1. For joint activities and enterprises which have a common purpose of educating pupils, the indirect costs shall be allocated consistent with the methods contained in (c) above.
2. For joint activities and enterprises which do not have a common purpose of educating pupils, indirect costs for the approved private school for the handicapped shall be based on the ratio of the revenues for the approved private school to the total of all revenues for all purposes.

(e) A tentative tuition rate shall be established by written contractual agreement between the approved private school for the handicapped and the sending district board of education. The tentative tuition rate shall be an amount not in excess of the approved private school's estimated actual cost per pupil for the ensuing school year. The written contract shall be on a form prepared by the Commissioner and shall be executed prior to the enrollment of a pupil.

1. The contractual agreement shall require the sending district board of education to pay a tentative tuition charge based upon a per diem rate for the total number of days the pupil was enrolled during the month for each month the pupil is enrolled. The per diem rate shall be determined by dividing the estimated actual cost per pupil for the school year by the estimated number of days school will be in session and rounding to the nearest two decimal places.

2. The contractual agreement for an extended school year program shall require the sending district board of education to pay a tentative tuition charge based upon a per diem rate which shall not exceed the per diem rate determined for the 10 month school program.

3. The contractual agreement shall require the sending district board of education to pay the approved private school for the handicapped the tentative tuition charge on a mutually agreed upon date but not later than 60 days after receipt of the monthly tuition bill and attendance report.

(f) The Commissioner shall determine the estimated actual cost per pupil for each approved private school for the handicapped for the ensuing school year and its tentative tuition rate no later than January 1 preceding the beginning of the ensuing school year. Upon request, the approved private school for the handicapped shall submit to the sending district board of education a copy of the Commissioner's calculation to determine the estimated actual cost per pupil for the ensuing school year.

1. The estimated actual cost per pupil shall equal the product of the audited actual cost per pupil for the school year prior to the current school year and the sum of 1.0 and twice the PCI as defined and calculated pursuant to N.J.S.A. 18A:7D-3.

2. The tentative tuition rate shall include:

- i. For profit-making schools, the annual surcharge permitted in accordance with N.J.A.C. 6:20-4.5; and
- ii. For non-profit schools, a working capital amount in accordance with N.J.A.C. 6:20-4.6.

(g) The Commissioner may approve a higher tentative tuition rate for any year in which the approved private school for the handicapped can prove to the satisfaction of the Commissioner that the 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, the approved private school for the handicapped shall be required to submit its request for a higher tentative tuition rate for the entire school no later than January 31 preceding the beginning of the ensuing school year. The request shall be forwarded to the Assistant Commissioner, Division of Finance and include, but not be limited to, the following information:

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

ii. A detailed explanation, by major account category, 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 ended December 31 immediately preceding the school year for such request. This report format is available at the Division of Finance, 225 West State Street, CN 500, Trenton, New Jersey.

2. Whenever a district board of education agrees to pay for a pupil's extraordinary services, the board shall notify the Commissioner within 30 days of such agreement. The notification shall include the pupil's initials, the private school, the type of extraordinary service(s) and the cost of the additional service(s).

(h) The Commissioner shall certify the actual tuition rate(s) charged according to these rules.

(i) If the Commissioner determines that the tentative tuition rate(s) for a 10 month school year or an extended school year established by written contractual agreement is greater than the actual tuition rate(s) charged for the school year, the private school for the handicapped shall pay each sending district board of education the difference no later than June 30 of the school year in which the actual tuition rate(s) charged is received from the Commissioner or not more than 30 days after an appeal on a certified amount is finally resolved.

(j) If the Commissioner determines that the tentative tuition rate(s) for a 10 month school year or an extended school year established by written contractual agreement is less than the actual tuition rate(s) charged for the school year, the approved private school for the handicapped may charge each sending district board of education all or part of the difference owed. The district board of education shall pay the difference on a mutually agreed upon date but not later than the end of the second school year following the year for which the actual cost per pupil is certified.

(k) The Commissioner shall prepare the contract and the form to establish the tentative tuition rate for the ensuing school year.

(l) The Commissioner shall calculate and publish a list of maximum salaries by job title and county. Maximum salaries shall be based on the highest contracted salaries of certified staff in local public school districts for any prior year indexed by the Statewide average increase in salary between the two preceding school years for each job title. Under no circumstances shall the maximum salary calculated be less than the corresponding salary in the prior year for the same job title and county. For the purpose of this list, the maximum salary of the private school director shall be based on the title, chief school administrator/district superintendent. Other unrecognized job titles shall be correlated to similar job titles in public schools based on their functional activities.

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

Substantially amended in response to Pineland Learning Center, Inc. v. New Jersey Department of Education, Division of Finance, OAL Docket Number 0788-88, Decided February 3, 1990.  
Amended by R.1991 d.459, effective September 3, 1991.

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

Calculation at (f)1 revised; (f)2 deleted.

Administrative correction to (g)1.ii.

See: 24 N.J.R. 245(a).

#### Case Notes

Regulations valid as authorized by statute. Council of Private Schools for Children with Special Needs, Inc. v. Cooperman, 205 N.J.Super. 544, 501 A.2d 575 (App.Div.1985), certification denied 103 N.J. 490, 511 A.2d 665.

Private school failed to comply with 180-day school year. Somerset Hills School, Inc. v. Ellis, 94 N.J.A.R.2d (EDU) 501.

#### 6:20-4.2 New private schools for the handicapped

(a) For the first two years of operation of an approved private school for the handicapped which was first in operation after the 1985-86 school year, the estimated actual cost per pupil and per diem rate at each site or in each program shall be established annually and be based on budgeted allowable costs. These estimated cost(s) shall be submitted to the Commissioner for approval or disapproval no later than 90 days preceding the beginning of each school year. The proposed budget shall be on a form prepared by the Commissioner which shall provide for, but not be limited to, the following:

1. Identifying data;
2. Projected allowable cost items and the projected enrollments;
3. An income schedule for the budget year;
4. A report of all funding resources;
5. An affidavit of compliance; and
6. A statement of assurance.

(b) If the Commissioner approves the estimated actual cost(s) per pupil, each sending district board of education shall pay tentative tuition charges based upon the approved estimated costs per pupil for the first two years of operation.

(c) If, after each year of operation, the Commissioner determines that the actual cost per pupil or per diem rate differs from the estimated cost per pupil or per diem rate, the tentative tuition charges shall be adjusted in accordance with the provisions of N.J.A.C. 6:20-4.1.

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

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

Stylistic changes only.

#### 6:20-4.3 Bookkeeping and accounting

(a) An approved private school for the handicapped shall maintain accounting and bookkeeping systems as prescribed

in a publication issued by the Department of Education in accordance with the following standards:

1. Accounts shall be kept in accordance with generally accepted accounting principles (G.A.A.P.) as defined by the American Institute of Certified Public Accountants, except as already modified in these rules.
2. Accrual accounting shall be used.
3. Fixed asset expenditures of \$1,000 or more shall be capitalized and depreciated using the straight line method and a useful life consistent with current Federal tax law 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. Asset, liability and fund balance accounts, as well as expenditure and revenue accounts, shall be maintained.
5. Non-profit organizations shall maintain financial records on a fund basis, and profit-making organizations shall maintain financial records on a modified fund basis.
6. A chart of accounts issued by the Commissioner shall be maintained by each approved private school for the handicapped. Each expenditure or revenue account utilized shall be reflected on the approved private school's general ledger. The approved private school shall be restricted to those account categories listed in the chart of accounts.
7. If multiple facilities for a private school have been approved, financial information shall be segregated by facility in the bookkeeping records. If both a 10 month school year program and extended school year program have been approved, financial information shall be segregated by program in the bookkeeping records. Bookkeeping records shall include, but not be limited to:
  - i. Cash receipts journal;
  - ii. Cash disbursement journal;
  - iii. General ledger;
  - iv. Tuition ledger;
  - v. Payroll journal;
  - vi. Fixed asset inventory.
8. Documentation to verify postings shall be maintained. Purchase orders shall be prepared in detail to document all payments for goods and services. Invoices or cash register receipts shall be attached to their related purchase orders to support all purchases of goods. Detailed vouchers signed by the payee shall be attached to their related purchase orders to support all payments for personal services, employee mileage reimbursements or any payment for which invoices or cash register receipts are not utilized.
9. A payroll shall be prepared and supported by the employee time record in a format prescribed or approved

by the Commissioner, signed by the employee and supervisor, prepared in the time period in which the work was done and completed at least semi-monthly.

10. A financial report prescribed by the Commissioner shall be prepared at a minimum each quarter for the 10 month program and once at the end of the session for the extended school year program. This report shall be submitted to the school's governing body. Acceptance of the financial report shall be documented in the minutes of the meetings.

11. Good internal control practices shall be maintained which include the separation of duties such as the recording and authorizing of checks and purchase approvals.

12. An approved private school shall use the contract prescribed by the Commissioner for each pupil received from a local school district.

13. An approved private school which incurs contingent pay increases shall have in place an employee contract which contains the criteria by which the increase shall be paid. The payment of such increase must be paid if the contractual contingencies are met. The contract shall contain at least the following items:

- i. The date and signature of both the staff member and authorized school representative;
- ii. The specific performance or contingency which shall be met to generate the increase;
- iii. The specific dollar amount or percentage of original contracted salary to be paid.

14. An approved private school for the handicapped which incurs merit pay increases shall have adopted a formal board policy which outlines the criteria of the merit pay plan(s). The plan(s) shall be filed with the Commissioner who may exclude from tuition any merit award(s) if the sole purpose of the award(s) is to avoid returning unexpended tuition funds to public schools. The plan(s) shall include the following:

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

15. A petty cash fund shall be approved by the governing body and supported by documentation. The fund shall not exceed \$1,500 and, except in the case of an emergency, no disbursement shall exceed \$150.00.

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

17. An inventory of non-depreciable, non-consumable equipment and materials shall be maintained.

18. A mileage record shall be maintained for each school-owned vehicle, leased vehicle or vehicle contained in a related party transaction involving the purchase of transportation services in a format prescribed by the Commissioner.

19. Upon request from the Commissioner, a profit-making approved private school shall provide a copy of the Internal Revenue Service (I.R.S.) corporate tax return to the Department of Education. A non-profit approved private school shall provide a copy of I.R.S. form 990.

20. An approved private school shall maintain all pertinent financial record(s) for a period of seven years.

21. A non-profit approved private school for the handicapped shall file a copy of its corporation dissolution papers with the Commissioner within 90 days of dissolution. Such papers shall include the total dollar amount transfer of the working capital fund (public school placement restricted fund balance) and the name of the recipient non-profit corporation.

(b) An approved private school for the handicapped which receives a refund(s) from a current or prior year expenditure or cancels an accounts payable shall apply such refund or accounts payable as a reduction to the general expenditure account charged, which will reduce the current year expenditure account. If the original expenditure account charged is not charged in the current school year, such amount(s) shall be used to reduce total expenditures in the current year.

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

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

Added provisions which include procedures for merit or contingent pay increases.

Administrative Corrections to (a)10 and 11.

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

#### 6:20-4.4 Non-allowable costs

(a) A cost which is not allowable in the calculation of the certified actual cost per pupil includes the following:

1. The cost of maintaining an administrative office in a private home or other residence;
2. Advertising cost(s) associated with public relations and lobbying, except for the printing of descriptive brochures;
3. Costs 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.
4. The salary of a professional staff member who is not certified but is functioning in a position requiring certification in accordance with N.J.A.C. 6:11;
  5. The salary or fringe benefits of a staff member for time not expended and/or services not performed;
  6. A salary or consultant fee paid to an individual functioning in a conflict of interest position;
  7. A salary in excess of the associated maximum salary determined in N.J.A.C. 6:20-4.1(1) for a certified employee. Part-time or split-time positions shall be prorated;
  8. The salary of the director of an approved private school in excess of the maximum salary determined in N.J.A.C. 6:20-4.1(1);
  9. A salary of an employee not covered by (a)7 or 8 above, who does not hold a professional license or certificate or a bachelor's degree from an accredited institution commensurate with the job function, in excess of the lowest maximum salary in the same county according to the list of maximum salaries determined in N.J.A.C. 6:20-4.1(1) when such employee is in a position which does not require certification or such employee, pursuant to a "save harmless" provision, is serving in a position requiring certification without such certification. The Bureau of Teacher Certification will determine if the individual meets the requirements;
  10. A salary of an employee in a position covered by (a) 9 above, who holds a professional license, or certificate or bachelor's degree from an accredited institution commensurate with the job function, in excess of the maximum salary in the same or similar job title in the same county according to the list of maximum salaries determined in N.J.A.C. 6:20-4.1(1). The Bureau of Teacher Certification will determine if the individual meets the requirements;
  11. The cost of fringe benefits which are based on a non-allowable salary;
  12. A legal, accounting or consultant fee resulting from a frivolous challenge to a State audit or financial review or the prosecution of a claim against the State. The Commissioner shall determine whether the challenge is frivolous by considering at least the following factors:
    - i. Overall merit of the claim; and
    - ii. Whether the challenge serves the public interest.
  13. A consultant fee for professional services which does not include at least a detailed list of the nature of the professional services provided, the number of days worked, the charge per day and the product or outcome of the consultation. Professional services are services rendered or performed by a person authorized by law to practice a recognized profession and whose practice is regulated by law and the performance of which requires knowledge of an advanced type in a field of learning and is acquired by a prolonged, formalized course of specialized instruction and study. The consultant shall hold the appropriate school certification when such certification exists;
  14. Total contributions, donations, awards and scholarships in excess of \$750.00;
  15. Depreciation unacceptable under N.J.A.C. 6:20-4.3(a)3 and depreciation on:
    - i. Donated goods;
    - ii. That which is not based on estimated straightline method;
    - iii. A single item costing below \$1,000; and
    - iv. Autos in excess of the dollar or percentage limitation contained under Internal Revenue Service Code Section 280F;
  16. An investment expense associated with the purchase/sale of stock, securities, other investment instruments or other investments not associated with the education of handicapped children;
  17. Total annual costs in excess of \$500.00 incurred for the entertainment of school employees, school officers, consultants and/or individuals providing professional services;
  18. All personal expenses, such as a personal travel expense, holiday party or repair on a personal vehicle;
  19. The cost of a fine or penalty which results from a violation of or failure by the school to comply with a Federal, State and/or local law or rule;
  20. The cost for meals, unless the meals meet the nutritional requirements of the Child Nutrition Program;
  21. Fringe benefits when the benefits are determined in an arbitrary or capricious manner rather than on an existing written uniform policy based on an equitable standard of distribution, such as years of service or education or when the benefits are not an initial inducement for employment;
  22. The cost of organized fund raising, such as a financial campaign, an endowment drive or solicitation of a gift and bequest which is done to raise capital or obtain a contribution;
  23. Goodwill;
  24. Interest costs on loans when:

- i. Interest is in excess of the general prevailing rate at the time the loan was taken;
  - ii. The loan is a less-than-arm's length/related party transaction which has not been previously approved by the department;
  - iii. The loan is not exclusively used to meet program needs.
25. Interest costs on long-term loans or mortgages when:
- i. The loan is used for other than financing of fixed assets;
  - ii. The loan is not secured by the fixed asset being financed;
  - iii. The interest costs are on the portion of the loan term which exceeds the recovery period for depreciation of the fixed asset securing the loan.
26. A loan to an employee or officer of the corporation;
27. A loss incurred on the sale or exchange of fixed assets between related parties;
28. The write-off of uncollected accounts receivable (bad debts) before three years have elapsed and before a reasonable effort has been made to collect such accounts receivable;
29. An ordinary living expense for a pupil that is normally assumed by the parent of a pupil attending a public day school;
30. Pension costs which are not in conformance with the Employee Retirement Income Security Act of 1974 and its successor legislation;
31. A payment made to a school employee in lieu of a pension;
32. The cost associated with a professional conference and/or meeting held in countries not contiguous to the United States;
33. The cost associated with a professional conference and/or meeting for a non-employee or employee whose position would not warrant attendance at the event;
34. The cost of travel involving the difference between first-class air accommodations and less than first-class air accommodations, except when less than first-class accommodations are not reasonably available which shall be documented by the airline or travel agent;
35. A payment or benefit to an employee in lieu of salary (bonus);
36. A profit or loss on an investment;
37. The cost of staff salary, supplies or printing and reproduction of a material for a research activity;
38. Payment of Federal, State and local income taxes on income other than tuition;
39. Any cost associated with travel to and from the officer's or employee's home and the school or agency;
40. Transportation costs for a pupil to and from school;
41. 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;
42. Personal use of a school-owned or leased vehicle;
43. 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;
44. Rental costs for buildings and equipment when owned by a parent organization not separately incorporated;
45. 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 not be limited to:
- i. Rental costs for buildings and equipment in excess of the actual allocated costs of ownership (such as straight line depreciation, 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 lease agreement shall include 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. No profit, return on investment or windfall of any kind shall 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 buildings, equipment or other goods from related parties in excess of the original cost to the related party less depreciation calculated using the straight line method;

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

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

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

i. The related parties' tax returns; and

ii. The related parties' paid bills and cancelled checks concerning the transaction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Added more detailed listings of non-allowable costs.

Administrative Correction to (a)41.

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

#### Case Notes

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

#### 6:20-4.5 Surcharge

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

#### 6:20-4.6 Working capital fund

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

#### 6:20-4.7 Calculation of pupil attendance

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

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

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

#### 6:20-4.8 Audit requirements

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

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

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

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

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

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

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

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

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

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

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

#### 6:20-4.9 Appeals

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

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

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

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

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

(a) Out-of-State private schools for the handicapped shall be approved to provide special education programs by the department of education of the state in which they are located. Exceptions to this requirement may be made only at the discretion of the Division of Special Education, the New Jersey Department of Education in accordance with N.J.A.C. 6:28-7.1(f).

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

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

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

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

3. If a tuition rate cannot be mutually agreed upon in accordance with (c)1 or 2 above, the approved private school shall file a budget in a format prescribed by the Commissioner to determine a tentative tuition rate and shall comply with the provisions of this subchapter in order to collect tuition from a New Jersey school or agency. The cost of the audit contained in N.J.A.C. 6:20-4.8 may be charged to the sending school district(s) or agency which did not mutually agree to the tuition rate.

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

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

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

#### 6:20-4.11 Inspection of records

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

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

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

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

## SUBCHAPTER 5. STATE AID

### Authority

N.J.S.A. 18A:4-15, 18A:17-45 and 18A:58-33.39.

### Source and Effective Date

R.1984 d.546, effective November 15, 1984.  
See: 16 N.J.R. 2392(a), 16 N.J.R. 3429(a).

### Subchapter Historical Note

All provisions of this subchapter were originally filed and became effective prior to December 7, 1976, as R.1976 d.388. See: 8 N.J.R. 501(c), 9 N.J.R. 13(a). Amendments were filed and became effective October 2, 1980 as R.1980 d.426. See: 12 N.J.R. 504(b), 12 N.J.R. 638(b). Readoption was filed and became effective November 15, 1984 with amendments December 17, 1984 as R.1984 d.546. See: 16 N.J.R. 2392(a), 16 N.J.R. 3492(a). See chapter and section levels for further amendments.

### 6:20-5.1 Law enforcement officer

(a) Each district board of education intending to employ a public school law enforcement officer shall submit an application for approval to employ school law enforcement officers to the county superintendent of schools.

(b) Such application shall set forth the reasons for the request, the name of the school or schools with enrollments for which officers are requested, the hours during which protection is required, a job description, the salary range to be used, the qualifications or training required, and the number of officers to be assigned to each school.

(c) If the district board of education is also requesting State aid, the district board of education shall file the name or names of the law enforcement officer or officers, the school assignment or assignments and the wages or salaries paid.

(d) The county superintendent of schools shall review and approve the application from the district board of education if there is a need for such law enforcement officer or officers. The approved application shall be forwarded to the Commissioner of Education.

(e) The Commissioner of Education shall review and approve the application if the appointment of such law enforcement officer or officers is necessary and may authorize a State aid reimbursement within the limits of available appropriations.

(f) If the district board of education has requested State aid reimbursement such reimbursement shall not exceed 75 percent of the cost.

(g) No district board of education shall be authorized to employ more than one public school law enforcement officer for every 500 pupils or fraction thereof enrolled in any school building, for duty at a given time.

(h) School law enforcement officers shall not be assigned any other duties while carrying out the responsibilities of a law enforcement officer. They shall not be permitted to carry any firearms.

(i) All appointments of law enforcement officers shall be made subject to the provisions of N.J.S.A. 11A:1-1 et seq.

As amended, R.1980 d.426, effective October 2, 1980.

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

Repeal special State aid for children resident in institutions.

As amended, R.1984 d.546, effective December 17, 1984.

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

Recodified with substantive changes from 5.1.

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

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

Terms and sentence structure changes.

#### 6:20-5.2 Additional State school building aid

(a) District boards of education receiving entitlements in accordance with the provisions of N.J.S.A. 18A:58-33.22 et seq., shall establish a separate bank account to disburse moneys for projects approved. All proceeds of financing shall be deposited initially in the account established for this purpose. Monthly bank statements shall be submitted to the Division of Finance.

(b) If temporary financing is used for additional vocational facilities for the handicapped, State aid will be paid based upon a pro rata share of the debt service in accordance with N.J.S.A. 18A:58-33.24.

(c) District boards of education shall expend the district's portion of the cost of approved projects first, except for additional vocational facilities for the handicapped.

(d) District boards of education shall use temporary financing, only as required in accordance with N.J.S.A. 18A:24-3, after a request to temporarily finance the funds has been submitted to and approved by the Commissioner of Education.

(e) Proceeds of bonds sold subject to the provisions of N.J.S.A. 18A:58-33.22 et seq., which are not immediately required, shall be invested and the earnings returned to the State on or before January 10 of each year. Investments shall be made in the State of New Jersey Cash Management Fund in accordance with N.J.S.A. 52:18A-90.4.

(f) District boards of education shall submit a report to the Division of Finance by July 10 of each year listing any additional temporary financing, bonds sold, investments, and interest earned from investments during the preceding six months.

(g) District boards of education shall submit a report to the Division of Finance on or before January 10 of each year showing a schedule by month of anticipated cash requirements for the following year and listing any additional temporary financing, bonds sold, investments, and interest earned from investments during the preceding six months. District boards of education shall refund interest earned from the investment of funds during the preceding year when such report is filed.

(h) District boards of education shall submit annual reports concerning construction progress until such time as the facilities are completed and occupied and shall comply with the requirements of the Department of Education concerning educational adequacy.

(i) District boards of education shall return all balances remaining after the completion of the approved project, if such project was funded exclusively with State funds. District boards of education shall return a pro rata share of all balances remaining after the completion of the approved project, if such project was funded with State and local funds.

As amended, R.1984 d.546, effective December 17, 1984.

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

Recodified with substantive changes from 5.4.

#### Case Notes

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

#### 6:20-5.3 Method of determining the district of residence

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

1. The "present district of residence" of a child in a residential State facility defined in N.J.S.A. 18A:7D-3 and referred to in paragraph one of N.J.S.A. 18A:7B-12(b) shall mean the New Jersey district of residence of the child's parent(s) or guardian(s) as of the last school day prior to October 16.

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

3. Subtract the amount obtained in (g)1 and 2 above from \$18,500. In the event the amount thus obtained is negative, the amount of funds replaced by State aid shall be zero.

(h) Any part of the funds replaced by State aid as determined in (g) above which remains unexpended at the completion of any school year, shall be held as a special balance appropriated which shall only be used in subsequent school years for the payment of full-time teaching staff member salaries for duties which are part of the teaching staff members' regular contractual responsibilities.

(i) The audited expenditures for the purposes of determining the "actual cost per pupil" in accordance with N.J.A.C. 6:20-3.1 shall be reduced by the amount of State aid received pursuant to the Teacher Quality Employment Act.

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

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

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

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

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

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

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

Citations corrected.

#### **6:20-5.7 Nonpublic school asbestos removal and encapsulation State aid**

(a) For the purpose of the State aid program for asbestos removal and encapsulation for nonpublic schools, the following words and terms shall have the following meanings, unless the context indicates otherwise:

"Completed project" means a project on which all of the work has been finished and for which all of the cost of the project has been incurred.

"Currently planned project" means a project for which no funds have been expended and no work has been undertaken.

"Nonpublic school" means an elementary or secondary school within the State other than a public school, offering education for grades kindergarten through 12, or any combination thereof, wherein any child may legally fulfill compulsory school attendance requirements and which complies with the requirements of Title VI of the Civil Rights Act of 1964. Nonpublic school shall not mean a nursery school or child care center.

"Project undertaken" means a project on which work was begun which is not substantially completed.

"Substantially completed project" means a project on which work has begun and for which more than 50 percent of the work is completed.

(b) A State aid entitlement for asbestos removal and encapsulation projects under this aid program shall equal 75 percent of the cost of the removal and encapsulation work as shown on the application submitted by the nonpublic school and is subject to the availability of funds.

(c) A nonpublic school shall be reimbursed under the State aid program only for asbestos removal and encapsulation projects in buildings operated for direct education and educational support purposes. No reimbursement shall be made for the repair of roofs, the repair of exterior walls, the repair of windows and window frames and for work in buildings rented by a nonpublic school.

(d) Reimbursement shall only be made to a nonpublic school upon a finding by an accredited assessor recognized by the Department of Health that a current or potential hazard exists or existed, and upon receipt of an application and approval by the State Board of Education.

(e) Reimbursements to nonpublic schools for asbestos removal and encapsulation projects will be made in the order in which applications are received by the Commissioner, of the Department of Education. Applications of nonpublic schools currently planning or undertaking asbestos removal or encapsulation shall be granted priority over applications of nonpublic schools that have completed or substantially completed projects.

(f) A nonpublic school shall only be reimbursed for asbestos removal or encapsulation for 75 percent of the expenditures actually incurred. State aid payments for projects currently planned, undertaken, and substantially completed shall be adjusted when actual expenditures are known. Adjustments to payments in excess of the State aid entitlement shall be made only to the extent State aid funds are available.

(g) A nonpublic school shall not be reimbursed for more than the actual expenditures for an asbestos removal or encapsulation project under both the State program and the Federal Asbestos School Hazard Abatement Program.

(h) A nonpublic school which recovers funds expended for asbestos removal or encapsulation through a legal action shall have its State aid reimbursement adjusted for any such funds recovered.

(i) A nonpublic school shall maintain accounting records which identify all expenditures for which reimbursement is approved.

(j) A nonpublic school receiving a State aid reimbursement shall submit reports as required concerning work progress, expenditures or any other factors which the Commissioner shall deem necessary.

(k) A nonpublic school shall comply with all applicable Federal and State statutes and regulations concerning asbes-

tos removal or encapsulation. State aid funds may be withheld for noncompliance.

(l) A nonpublic school receiving State aid reimbursement for asbestos removal and encapsulation which is a private school for the handicapped, referred to in N.J.S.A. 18A:46-21, shall have its allowable costs for the purpose of determining the "actual cost per pupil" in accordance with N.J.A.C. 6:20-4 reduced by the amount of reimbursement received under this or any other State aid program.

(m) A nonpublic school receiving a State aid entitlement for asbestos removal or encapsulation projects currently planned, undertaken and substantially completed shall complete all work on the asbestos removal or encapsulation project within two years from the date the entitlement is approved. State aid funds shall not be paid when there is noncompliance with this section.

New Rule, R.1989 d.93, effective March 6, 1989.  
See: 20 N.J.R. 2505(a), 21 N.J.R. 635(b).  
Amended by R.1990 d.393, effective August 6, 1990.  
See: 22 N.J.R. 1246(a), 22 N.J.R. 2345(a).

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

#### 6:20-5.8 Excess surplus calculation

(a) Beginning in fiscal year 1992-93, a district board of education without an approved surplus reduction plan shall have its foundation aid reduced pursuant to N.J.S.A. 18A:7D-4 by the amount of excess surplus, equal to any beginning general fund free balance for the prebudget year which exceeds 7.5 percent of the district's net budget for the prebudget year, after deducting from the balance any Federal funds provided to a district pursuant to P.L. 81-874, 20 U.S.C. 236 (impact aid). The terms, net budget and prebudget year, are defined in N.J.S.A. 18A:7D-3. The Division of Finance shall calculate excess surplus as follows:

1. For the purpose of this calculation the beginning general fund free balance for the prebudget year shall equal the ending general fund free balance for the fiscal year prior to the prebudget year as reflected in the district board of education's annual independent audit less any portion of that free balance appropriated in the prebudget year in the budget certified for taxes;

i. The general fund free balance shall be exclusive of funds held in the capital reserve account; and

ii. The general fund free balance shall be exclusive of reserves not available for expenditure or segregated legally for a specific future use;

2. For district boards of education which receive Federal impact aid, the beginning general fund free balance obtained in (a)1 above shall be multiplied by the inverse percentage of impact aid to all general fund revenues for the prebudget year in order to determine the portion of beginning general fund free balance not associated with impact aid; and

3. Any beginning general fund free balance of the prebudget year calculated in (a)1 or 2 above, as applicable, which exceeds 7.5 percent of the net budget for the prebudget year shall be considered excess surplus and deducted from foundation aid for the budget year.

(b) A district board of education that has an approved surplus reduction plan in accordance with the provisions of N.J.S.A. 18A:7D-29 shall have its foundation aid reduced pursuant to N.J.S.A. 18A:7D-4 in a manner consistent with the calculation in (a) above except as follows:

1. In fiscal year 1992-93, excess surplus shall equal any beginning general fund free balance for the budget year which exceeds the percentage of the district's net budget for the prebudget year as stipulated in the approved surplus reduction plan, after deducting from the balance any Federal funds provided to a district pursuant to P.L. 81-874, 20 U.S.C. 236 (impact aid). The associated reduction in foundation aid shall be made in fiscal year 1993-94 because the beginning general fund free balance for the budget year will not be available until after the calculation of foundation aid for fiscal year 1992-93 and the approval of the budget for that year.

2. In fiscal year 1993-94, excess surplus shall equal any beginning general fund free balance for the budget year which exceeds 7.5 percent of the district's net budget for the prebudget year, after deducting from the balance any Federal funds provided to a district pursuant to P.L. 81-874, 20 U.S.C. 236 (impact aid). The associated reduction in foundation aid shall be made in fiscal year 1994-95 for the same reason stated in (b)1 above.

3. Beginning in fiscal year 1994-95, excess surplus shall be calculated and foundation aid reduced for all districts in strict accordance with (a) above.

(c) District boards of education which do not receive foundation aid are not subject to the excess surplus deduction.

(d) District boards of education will be notified of the amount of excess surplus and the corresponding reduction in foundation aid as part of the annual State aid notice.

New Rule, R.1991 d.590, effective December 16, 1991.  
See: 23 N.J.R. 2818(a), 23 N.J.R. 3746(a).

#### SUBCHAPTER 6. PURCHASE AND LOAN OF TEXTBOOKS

##### Authority

N.J.S.A. 18A:4-15 and 18A:58-37.1 et seq.

##### Source and Effective Date

R.1985 d.150, effective March 8, 1985.  
See: 17 N.J.R. 148(a), 17 N.J.R. 814(a).

As amended, R.1984 d.545, effective December 17, 1984.

See: 16 N.J.R. 2394(a), 16 N.J.R. 3430(a).

Added "district" to section.

#### Case Notes

Unsuccessful bidder's omission of prequalification affidavit in bid for contract to add to and alter a school was a waivable, immaterial defect. *Tec Elec., Inc. v. Franklin Lakes Bd. of Educ.*, 284 N.J.Super. 480, 665 A.2d 803 (L.1995).

State Board of Education delegated authority to qualify bidders to the Department of the Treasury; responsibility for determining contractor qualifications absent appropriate Treasury regulations rested with the County Educational Services Commission governed by statutory requirements. *New Jersey Education Assn. v. Essex Cty. Educational Services Commission*, 5 N.J.A.R. 29 (1981).

#### 6:20-7.3 Debarment, suspension and disqualification of person(s)

Debarment, suspension and disqualification of person(s) from district board of education contracting or Department of Education contracting is delegated to the Department of Treasury. Such action shall be taken in accordance with rules adopted by the Department of Treasury for such purpose.

As amended, R.1984 d.545, effective December 17, 1984.

See: 16 N.J.R. 2394(a), 16 N.J.R. 3430(a).

Added "district" throughout section.

#### Case Notes

State Board of Education delegated authority to debar, suspend and disqualify persons from contracting to the Department of the Treasury. *New Jersey Education Assn. v. Essex Cty. Educational Services Commission*, 5 N.J.A.R. 29 (1981).

## SUBCHAPTER 8. PUBLIC SCHOOL CONTRACTS

#### Authority

N.J.S.A. 18A:4-15, 18A:18A-5, 18A:18A-7, 18A:18A-37, 18A:18A-40, 18A:18A-42, 40A:11-11 and Chapter 281, Laws of 1983.

#### Source and Effective Date

R.1985 d.88, effective March 4, 1985.  
See: 16 N.J.R. 3372(b), 17 N.J.R. 584(a).

#### Subchapter Historical Note

All provisions of this subchapter were filed and became effective February 8, 1980 as R.1980 d.69. See: 11 N.J.R. 499(a), 12 N.J.R. 107(a). This subchapter was readopted effective March 4, 1985 with amendments effective March 4, 1985 as R.1985 d.88. See: 16 N.J.R. 3372(b), 17 N.J.R. 584(a). See chapter and section levels for further amendments.

#### 6:20-8.1 Restricting the avoidance of competitive bidding for extraordinary, unspecifiable services

(a) Extraordinary, unspecifiable services (hereinafter referred to as "EUS") are those services which are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor.

(b) Any purchase, contract or agreement of the character described in N.J.S.A. 18A:18A-4, may be made, negotiated or awarded by a district board of education by resolution at a public meeting without public advertising for bids and bidding if the subject matter thereof consists of EUS. This exception shall be construed narrowly in favor of open competitive bidding where possible and in each instance of such exception, the district board of education is required to state the supporting reasons for its action in the resolution awarding the contract. The use of such exception shall be further limited by the following conditions:

1. The assertion that the service can only be provided by a single contractor ("sole source") shall not be sufficient alone to justify avoidance of competitive bidding as an EUS;

2. The fact that the service is in the nature of a personal, human, social or training services contract, or includes within its description such terms as "engineering," "technical," "management," "consultant," or similar descriptions suggesting some special nature shall not in itself be sufficient to utilize this exception. The need for expertise, extensive training and proven reputation in the field of endeavor must be critical and essential to the project, and not merely a desire to have a reliable job performed;

3. Avoidance of bids where any precedent exists (in the school district or elsewhere) demonstrating the feasibility of bidding would be an unacceptable use of this provision. Services previously bid shall be subject to the presumption that such services may not be classified as an EUS, unless the board of education can demonstrate the lack of feasibility of bidding such services;

4. If specifications can reasonably be written covering the services, then they must be bid, notwithstanding that the other criteria of the definition may be met. In cases which may appear too technical for local school officials to prepare detailed specifications two criteria must be addressed and found to be not possible before it may be concluded that the services cannot reasonably be described by written specifications:

i. If the local school officials do not possess the technical skill to prepare specifications, they should engage consultant assistance to do so;

ii. If the services are of such a technical or massive nature as to make a description of all actions to be taken unfeasible, or if there are available various (optional or unknown) technical methodologies for achieving the desired end, then the specifications should be written in terms of required end-products and/or standards of performance rather than (or in concert with) descriptions of all technical steps to be taken;

5. Services rendered as EUS must generally be characterized as not being of a continuous ongoing nature. Services which are continued or regularly repetitive shall be subject to a presumption that specifications can be

written to describe what has been done. Where this is not the case, the district board of education must specifically address this question;

6. Before awarding a contract under the EUS provisions, a designated school official of the district board of education must file a certificate with the district board of education clearly describing the nature of the work to be done, stating it is not reasonably possible to write specifications, describing the informal solicitation of quotations (if quotes not sought, or lowest responsible price is not observed explain this also) and describing in detail why the contract meets the provisions of the statute and these rules. A mere recitation of the language in the statute shall not be sufficient for this purpose. The certification must be kept with the resolution awarding the contract in the district board of education office;

7. If the estimated cost or price exceeds the minimum amount, which is calculated semi-annually, quotations as to the cost or price must be solicited by the district board of education whenever practicable, and the contract shall be made on the basis of the lowest responsible quotation, which quotation is most advantageous to the district board of education, price and other factors considered;

8. Services that meet the requirements of EUS may not be combined with other work in a contract, which is predominantly characterized as being a biddable activity, so as to avoid the necessity of bidding for the work which in its own right is subject to competitive bidding;

9. No firm, having been previously retained to study, survey, or prepare specifications for a given system, function or equipment may be selected as an EUS without competitive bidding to operate, implement or provide any material or services on the basis of intimate or specialized knowledge acquired as a result thereof. Appropriate care should be taken so that such a firm is not authorized to participate in bidding if its earlier participation in studies, and so forth, would give it unfair advantage.

As amended, R.1984 d.204, effective June 4, 1984.

See: 16 N.J.R. 299(b), 16 N.J.R. 1347(a).

Amended by R.1985 d.88, effective March 4, 1985.

See: 16 N.J.R. 3372(b), 17 N.J.R. 584(a).

Deleted (c) and (d).

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

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

Explained use of acronym EUS.

#### Case Notes

Board did not exceed its authority; requiring contract bidders to provide qualification information. *Michael T. Gavin, Inc., v. Lakewood Township Board of Education*, 94 N.J.A.R.2d (EDU) 307.

Contract had to be awarded to the lowest possible bidder. *Krantz & List Electric, Inc. v. Elizabeth City Board of Education*, 94 N.J.A.R.2d (EDU) 39.

Evidence established security company's responsibility; responsible low bidder. *Consec Security Group, Inc. v. Board of Education of Township of Lakewood*, 93 N.J.A.R.2d (EDU) 228.

Contractor could not recover claimed lost profit on basis of alleged wrongful rejection of bid. *Bokey, Inc. v. Board of Education of Borough of Frenchtown*, 93 N.J.A.R.2d (EDU) 117.

Contract specifications did not require specific brand name computers; successful bid was conforming. *Katinsky v. Board of Education of Township of Pennsauken*, 93 N.J.A.R.2d (EDU) 1.

Board of Education was not required to bid roof repair work on basis of separate and combined bids. *Quality Roofing Co. v. Tenafly Bd. of Educ.*, 91 N.J.A.R.2d 24 (EDU).

School board violated procedures on initiation of contract agreement for extraordinary, unspecifiable services in employment of lobbyist/consultant. (Commissioner's Final Decision). *Gibson v. Newark Bd. of Ed.*, 6 N.J.A.R. 304 (1984), affirmed 205 N.J.Super. 48 (App.Div.1985).

#### 6:20-8.2 Certain leases of equipment and service agreements beyond the fiscal year

(a) Leases (which term includes rental agreements) and service agreements for automobiles, motor vehicles, electronic communications equipment and machinery and equipment of every nature and kind may not be renewed or extended beyond five years. Rebidding after five years should not require that the equipment be in the service of the district board of education.

(b) Such leases and service agreements may be written for any period of time not to exceed five years, or for shorter periods with provision for renewal at the option of the district board of education provided that such renewal shall not cause the cumulative length to exceed five years. Such renewals may be authorized only by resolution of the district board of education.

(c) In addition to providing for the use of equipment during the period of the lease, the lease may provide for rental payments to be credited towards the purchase price for purpose of acquisition of the equipment if the district board of education, at its sole option, decides to buy the equipment, and said option was included in the original specifications and in the original contract. Leases may not, however, provide for the acquisition of ownership at the beginning of the lease term, with installment payments to be made thereafter.

(d) All leases or service agreements authorized under this section of the law shall be subject to competitive bidding.

(e) Equipment leased may not be expanded, upgraded or otherwise materially changed or increased in cost during the term of the lease without competitive bidding, except as follows:

1. Equipment changes which were specifically described, either by itemization or by performance standards, in the original bidding specifications and for which all bidders were requested to submit proposals, when in accordance with a formal written plan of time-phased expansion, prepared prior to solicitation of bids, and when the proposals for such changes were considered in the determination of the successful bidder; or