

CHAPTER 26

EDUCATIONAL FACILITIES

Authority

N.J.S.A. 18A:7G-5k and 18A:7G-26.

Source and Effective Date

R.2007 d.81, effective February 9, 2007.
See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

Chapter Expiration Date

Chapter 26, Educational Facilities, expires on February 9, 2012.

Chapter Historical Note

Chapter 26, Educational Facilities, was adopted as R.2001 d.367, and Subchapter 2, Long-Range Facilities Plans, was recodified from N.J.A.C. 6:23-2, Subchapter 3, Capital Project Review, was recodified from N.J.A.C. 6:23A-2, Subchapter 11, County Vocational School District Facilities Rehabilitation Fund, was recodified from N.J.A.C. 6:23A-4, Subchapter 12, Operation and Maintenance of Facilities, was recodified from N.J.A.C. 6:22-9, Subchapter 13, Applications for Retro-active Funding of Projects, was recodified from N.J.A.C. 6:23A-3, Subchapter 15, State School Facilities Documents was recodified from N.J.A.C. 6:23A-6, and Subchapter 17, Appeals, was recodified from N.J.A.C. 6:23A-7 by R.2001 d.367, effective October 1, 2001. See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

Subchapter 9, Capital Reserve Accounts, was repealed by R.2006 d.361, effective October 2, 2006. See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Chapter 26, Educational Facilities, was readopted as R.2007 d.81, effective February 9, 2007. As a part of R.2007 d.81, Subchapter 11, County Vocational District Facilities Rehabilitation Fund, was renamed County Vocational School District Facilities Rehabilitation Fund, effective March 19, 2007. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

6A:26-1.1 Purpose and applicability of rules

These rules are adopted by the New Jersey State Board of Education to implement Sections 1 to 12, 57 and 58 of the Educational Facilities Construction and Financing Act

(EFCFA), P.L. 2000, c.72, and to implement P.L. 2000, c.43, as well as to consolidate, conform and update other rules relating to educational facilities in this State. These rules are adopted in order to ensure that the educational facilities in the State are safe, healthy and educationally adequate to support the delivery of the thorough and efficient education to which all students are entitled, as defined by the Core Curriculum Content Standards. These rules apply to all district boards of education "districts" in the State. To the extent these rules are inconsistent with any other rules in Titles 6 and 6A of the New Jersey Administrative Code, these rules shall take precedence.

Amended by R.2007 d.81, effective March 19, 2007.
See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).
Deleted second sentence.

6A:26-1.2 Definitions

As used in this chapter, unless the context clearly indicates otherwise, the following words and terms shall have the following meanings:

"Abbott school district" means an Abbott school district as defined in N.J.S.A. 18A:7F-3.

"Additional costs" means the additional construction costs beyond the area cost allowance for construction or the costs beyond reasonable estimated actual costs for rehabilitation if such costs are the result of factors outside the control of the school district, provided that either type of costs results from design factors that are required to meet the facilities efficiency standards and are approved or authorized pursuant to N.J.S.A. 18A:7G-5(g) or 18A:7G-6(c).

"Additional space" means space in excess of the facilities efficiency standards.

"Adjusted gross square footage" means the gross square footage of a facility less excluded spaces.

"Application for State School Aid" or "ASSA" means the application filed by a school district pursuant to N.J.S.A. 18A:7F-33, on a form issued by the Commissioner, pursuant to which the school district sets forth student enrollment by category and other pertinent information.

"Approved area for unhoused students" means the product of the area allowance per FTE student times the number of unhoused students.

"Approved LRFP" or "approved plan" means an LRFP that conforms to the requirements of N.J.A.C. 6A:26-2 and that has been determined by the Commissioner pursuant to a final determination, to ensure that, over the next five years, the school facilities are educationally adequate to support the achievement of the Core Curriculum Content Standards.

"Area allowance per FTE student" means, for the 2001-2002 and 2002-2003 school years, 125 square feet for pre-school through grade five, 134 square feet for grades six

iv. One year has passed from the date of approval of preliminary plans if no further activity is recorded on the school facilities project;

v. Six months has passed from the date of approval of final plans for the school facilities project; or

vi. Any subcode in the UCC governing the plan is amended; and

4. Construction of the school facilities project was not completed by July 18, 2000, unless short-term notes were issued. For purposes of this section, completed construction shall mean that the school facility has received all necessary approvals from the Department and the appropriate State or local construction official has issued a temporary or permanent certificate of occupancy pursuant to law for the school facility or a portion thereof.

(d) Debt service aid and grants obtained in accordance with EFCFA and this section shall be prospective and determined as follows:

1. The calculation of debt service payable shall be made pursuant to N.J.A.C. 6A:26-3.8;

2. No State debt service aid under N.J.S.A. 18A:7G-9 shall be provided for debt service payments made by a school district prior to a determination of final eligible costs and calculation of the amount of State debt service aid payable to the school district; and

3. Grant amounts shall be determined pursuant to N.J.S.A. 18A:7G-15 and these regulations, utilizing final eligible costs for the school facilities project as determined in this subchapter.

(e) The "issuance of debt" for the purpose of this subchapter shall include lease purchase agreements in excess of five years.

Amended by R.2001 d.367, effective October 1, 2001.
See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

Rewrote (a) and (b); in (c), inserted "for the school facilities project prior to July 18, 2000" following "issued debt" and substituted "subchapter" for "subsection" in the introductory paragraph; in (d)1, amended the N.J.A.C. reference.

Amended by R.2007 d.81, effective March 19, 2007.

See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

Inserted "school" preceding "district" throughout; and in (a), substituted "School districts" for "Districts".

SUBCHAPTER 14. WITHHOLDING OF STATE SUPPORT FOR NON-COMPLIANCE

6A:26-14.1 Withholding of State support for non-compliance

(a) Pursuant to N.J.S.A. 18A:55-2, the Commissioner shall direct the State Treasurer to withhold funds payable by the State from any school district that fails to obey the law or the rules or directions of the State Board of the Commissioner. "Funds payable by the State" include State support under

EFCFA. A failure to obey the rules includes non-compliance with this chapter. The non-compliance may:

1. Constitute an event of default under a grant agreement between the Authority and the school district for the school district receiving State support under N.J.S.A. 18A:7G-5 (pre-development activities), 13(a), or 15 and subject the school district to Authority remedies for the default, including the reimbursement or the withholding of State support under EFCFA, and if the Authority refers the matter to the Department in lieu of withholding State support under EFCFA, the Department may upon review of the matter direct the State Treasurer to withhold funds payable by the State from such school district;

2. In the case of a school district receiving debt service aid under N.J.S.A. 18A:7G-9 or 10, subject the school district to a withholding of State support under EFCFA; or

3. In the case of a school district for which the Authority constructs the school facilities project, subject the school district to a withholding of funds payable by the State, including State support under EFCFA.

(b) Pursuant to the supervisory authority vested in the Commissioner under N.J.S.A. 18A:4-23, the Commissioner shall enforce these rules by any means permitted by law, including, but not limited to, issuing an order to the school district to show cause under N.J.A.C. 6A:3-3.1 why the reimbursement or withholding of State support should not be imposed.

(c) A school district may appeal a final determination by the Commissioner of non-compliance with this chapter pursuant to N.J.A.C. 6A:26-16.1.

Amended by R.2004 d.214, effective June 7, 2004.

See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

Rewrote (a).

Amended by R.2007 d.81, effective March 19, 2007.

See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

Inserted "school" preceding "district" throughout.

SUBCHAPTER 15. STATE SCHOOL FACILITIES DOCUMENTS

6A:26-15.1 Right-to-know requests

(a) Government records or records in connection with EFCFA that are in the Department's possession are subject to disclosure pursuant to P.L. 1963, c.73, as amended and supplemented, and the common law right to know, unless excluded under (b) below. "EFCFA government records" or "EFCFA records" include any paper-, written or printed document, data processed or image processed document, information stored or maintained electronically or by sound recording or similar device, or any copy thereof, that has been made, maintained or kept on file by the Department.

(b) "EFCFA government records" or "EFCFA records" that are subject to production and disclosure in response to a

right to known request to the Department do not include the following material in its possession: interagency or intra-agency deliberative material in connection with EFCFA. Excluded EFCFA material may include, but not be limited to, drafts, notes, memoranda, correspondence, charts and other work product related to contracts, plans, regulations, reports, and determinations that arise under EFCFA. "Excluded EFCFA material" may be stored or maintained in any of the ways EFCFA government records are stored or maintained, as described in (a) above.

Amended by R.2001 d.367, effective October 1, 2001.
See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

SUBCHAPTER 16. CERTIFIED EDUCATIONAL FACILITIES MANAGER

6A:26-16.1 Certified educational facilities manager

(a) Effective September 1, 2002, no person shall be employed by a district board of education to supervise buildings and grounds unless, pursuant to N.J.S.A. 18A:17-49 et seq., the candidate meets one of the following criteria:

1. Has completed a minimum of two years experience in the field of buildings and grounds supervision and has graduated from the New Jersey Educational Facility Management Program at Rutgers, the State University, as a certified educational facilities manager, or has graduated from an equivalent program offered at either a regionally accredited institution of higher education or an approved post-secondary institution located within or outside the State;
2. Is a code enforcement official licensed by the Department of Community Affairs and was serving as a supervisor of buildings and grounds on January 10, 2000; or
3. Has served as a supervisor of buildings and grounds in a district continuously for five years prior to September 1, 2002.

(b) Any applicant for certification as an educational facilities manager shall submit documentation to the Division demonstrating compliance with one of the above criteria in (a) above. After verifying compliance with one of the criteria in (a) above, the Division will issue an authorization to serve as an educational facilities manager to the applicant and add the applicant to a master list of certified educational facilities managers to be maintained by the Division.

(c) When a vacancy occurs in a position in which the duties of a supervisor of buildings and grounds are performed, a board may select, for a period not to exceed two years, and commencing on the date of the vacancy, a person who is not a certified educational facilities manager to perform on an interim basis the duties of a supervisor of buildings and grounds. At the expiration of the two year period, the board shall employ a person certified by the Division as an educational facilities manager to supervise its buildings and grounds.

SUBCHAPTER 17. APPEALS

6A:26-17.1 Appeals of Commissioner's determinations

(a) All appeals of final determinations made by the Commissioner pursuant to EFCFA and this chapter shall be to the New Jersey State Board of Education pursuant to N.J.A.C. 6A:4, Appeals.

(b) Appeals arising from decisions of the Division of Finance of the Department of Education may be requested in writing, and an opportunity given for an informal hearing before the Assistant Commissioner or other designated official. Such written request for an informal hearing must be made within 30 days of the receipt of the Division's decision.

(c) In the event of an adverse decision after an informal hearing under (b) above, or if a school district determines not to seek an informal hearing, a school district may request, within 90 days of the decision of the Assistant Commissioner or the determination of the Division if an informal hearing is not sought, a formal hearing pursuant to N.J.S.A. 18A:6-9 and 18A:6-24 and N.J.A.C. 6A:3, Controversies and Disputes. Such hearings shall be governed by the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by N.J.A.C. 1:1.

Amended by R.2001 d.367, effective October 1, 2001.
See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

Rewrote (a).

Petition for Rulemaking.

See: 34 N.J.R. 3868(a), 34 N.J.R. 4474(a).

Amended by R.2004 d.214, effective June 7, 2004.

See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

In (b), substituted "Finance" for "Facilities and Transportation" following "the Division of".

Amended by R.2007 d.81, effective March 19, 2007.

See: 38 N.J.R. 4533(a), 39 N.J.R. 899(a).

In (a), inserted "; Appeals"; and in (c), inserted "school" preceding "district" two times and inserted "; Controversies and Disputes".