

SUBCHAPTER 7. DISTRICT BUDGET AND
REQUEST FOR ADDITIONAL STATE AID

6A:24-7.1 Application for additional State aid

(a) The board shall submit to the Department for approval, pursuant to N.J.S.A. 18A:7F-5(c) and 6(c), a balanced, zero-based budget consistent with N.J.S.A. 18A:4-14 and 18A:22-8. When necessary, for the application for additional State aid pursuant to the requirements of this subchapter, a board shall submit an application for additional *Abbott v. Burke* State aid in a format prescribed by the Commissioner as part of the original district-wide budget to be submitted pursuant to N.J.S.A. 18A:7F-5(c) and 6(c).

(b) A board shall submit an application for additional *Abbott v. Burke* State aid in a format prescribed by the Commissioner as part of the original district-wide budget to be submitted pursuant to N.J.S.A. 18A:7F-5(c) and 6(c). The application shall include a demonstration that resources are insufficient to support all programs required by Abbott V or Abbott VI, and further reallocation would weaken the district's foundational education programs; and/or the board has determined that resources are insufficient to support Department-approved supplemental program(s) or service(s) and further reallocation would weaken the district's foundational education programs.

(c) As part of an application for additional *Abbott v. Burke* State aid the board shall provide an itemized accounting of priorities in reverse priority order in an amount equal to the additional *Abbott v. Burke* State aid requested. The reverse prioritization ensures elimination of potential duplicative and ineffective programs or services and demonstrates that additional State aid is needed for those programs or services to comply with Abbott V or Abbott VI or to maintain the district's underlying foundational education program prior to the Commissioner seeking new appropriations. Requests for additional *Abbott v. Burke* State aid shall be approved by the Commissioner when reallocation or elimination of all or part of such requests will undermine or weaken the district's foundational education program or Court-ordered requirements. The reverse prioritization shall not result in elimination of Court-ordered requirements, but ensures that all funding and concomitant programs and services effectively and efficiently improve student achievement.

(d) The board shall consider all available resources, reallocations and other factors before submitting an application for additional *Abbott v. Burke* State aid as follows:

1. Undesignated general fund balances in excess of three percent;
2. Salary appropriations for vacant positions in excess of the district's average salary for the position title;
3. Salary breakage for replacement of retiring staff during the upcoming budget year;

4. Positions or other expenditures not approved by the Commissioner as part of the school-based budget during the review of WSR school-based budgets;

5. All new programs and services not approved by the Department as required for WSR, early childhood education, required secondary programs or local particularized needs. Nothing shall preclude the board from seeking additional local school taxes or other local funding over and above the minimum school tax levy for such purposes;

6. Capital expenditures that should be amortized over several years or that can be deferred without jeopardizing the health or safety of the occupants of the building; and

7. Appropriations in excess of actual documented need.

(e) The Department shall review the itemized accounting of priorities submitted as required in (b) above, as well as the district wide budget, to determine that consideration has been given to all available resources, reallocations and other factors. The Department shall review the materials submitted and other district records and supporting documentation as considered necessary. In making the determination as to whether an existing program, service or expenditure should be exempt from reallocation, in whole or part, the Department shall consider whether:

1. The existing program, service or other expenditure is school-based and directly serving the students in the school;

2. The existing program, service or other expenditure has demonstrated measurable results in enhancing the achievement levels of students in the school;

3. Elimination of the existing program, service or other expenditure would undermine the foundational education program of the school; and

4. The existing program, service or other expenditure is being delivered in the most efficient possible manner.

(f) If during a school year the board determines the need for additional resources to implement the Department-approved programs, services and other expenditures due to unanticipated expenditures or unforeseen circumstances, a separate application for additional *Abbott v. Burke* State aid shall be filed consistent with the provisions of this subchapter. The separate application shall also document the nature of the unanticipated expenditures or unforeseen circumstances and the impact on the current approved budget. The Department's review of the separate application shall be consistent with the provisions of (e) above and will consider the current status of the approved budget. Amounts approved by the Commissioner in response to the district's separate application will be available for expenditure during the school year. The revenue shall be recognized through the establishment of an accounts receivable subject to appropriation in the subsequent year's Appropriations Act.

(g) Any board requesting additional State aid shall ensure that all spending is necessary and aligned with the objectives and strategies for achieving the Core Curriculum Content Standards for the budgeted school year. The board shall prioritize all programs, services and other expenditures. Expenditures related to Department-approved early childhood education plans, WSR school-based budgets, required secondary programs and local particularized needs, shall be given the highest priority. School level programs and services and other direct services to students shall be given priority over central office, other noninstructional and indirect costs. The cost of maintaining existing effective programs and services shall be accounted for separately from the expansion of existing programs and services unless required by Abbott V or Abbott VI. Maintenance of an existing program or service shall be given higher priority than expansion of that program or service. Nothing shall preclude a board from giving higher priority to an expanded program or service over the maintenance of another existing program or service.

Amended by R.2000 d.278, effective July 3, 2000.
See: 32 N.J.R. 1329(a), 32 N.J.R. 2470(a).
Rewrote section.

SUBCHAPTER 8. FACILITIES

6A:24-8.1 Long-range facilities plan

(a) Each district shall prepare and submit to the Commissioner a long-range facilities plan that details the district's school facilities needs and the district's plan to address those needs for the ensuing five years. This long-range facilities plan shall incorporate the facilities efficiency standards and demonstrations of local particularized needs established pursuant to N.J.A.C. 6A:24-5 and may include any other space to be funded locally.

(b) No school facilities project approval pursuant to this subchapter shall be granted unless and until the district has filed a long-range facilities plan and the plan has been approved by the Commissioner.

(c) Notwithstanding (b) above, where a district has filed a long-range facilities plan, the Commissioner may grant approval for specific priority projects that meet the following standards:

1. The project is necessary to protect the health and safety of students, including upgrading of the electrical system, or to serve preschool students, and the project involves a building which will continue its existing use, and the district agrees that the project should be approved separate from the long-range facilities plan; or

2. The project was submitted to the Department for review prior to the submission of the long-range facilities plan, and the project is consistent with the long-range facilities plan, and the district agrees that the project should be approved separate from the long-range facilities plan.

(d) An amendment to a long-range facilities plan may be submitted at any time to the Commissioner for review and approval.

(e) Each long-range facilities plan shall include an enrollment projection utilizing a cohort survival methodology, or other methodology approved by the Commissioner, accompanied by a certification of a qualified demographer retained by the district that serves as the basis for identifying the capacity and program needs detailed in the long-range facilities plan. The resume and any other professional credentials relied upon by the district to demonstrate that the person who prepared the enrollment projection had adequate qualifications and experience to be considered a qualified demographer shall be submitted as part of a district's long-range facilities plan.

(f) The long-range facilities plan shall include an educational adequacy inventory of all existing school facilities in the district, the identification of all deficiencies in the district's current inventory of school facilities which includes the identification of those deficiencies that involve emergent health and safety concerns, and the district's proposed plan for future construction and renovation. The long-range facilities plan submissions shall conform to the guidelines, criteria and format prescribed by the Commissioner.

(g) Each district shall determine the number of "unhoused students" for the ensuing five-year period calculated pursuant to the provisions of this subchapter.

(h) The Commissioner shall review each proposed school facilities project to determine whether it is consistent with the district's long-range facilities plan and whether it complies with the facilities efficiency standards and the area allowances per FTE student derived from those standards.

(i) If the Commissioner determines that the school facilities project complies with the facilities efficiency standards and the district's long-range facilities plan and does not exceed the area allowance per FTE student derived from those standards, the Commissioner shall calculate the preliminary eligible costs of the project pursuant to the formulas set forth in this subchapter.

(j) If the Commissioner determines that the school facilities project is inconsistent with the facilities efficiency standards or exceeds the area allowances per FTE student derived from those standards, the Commissioner shall notify the district.

1. The Commissioner shall approve area allowances in excess of the area allowances per FTE student derived from the facilities efficiency standards if the board of education or State district superintendent, as appropriate, demonstrates that school facilities needs related to required programs cannot be addressed within the facilities efficiency standards and that all other proposed spaces are consistent with those standards.

2. The Commissioner may grant an exception to a facilities efficiency standard if the board of education or State district superintendent, as appropriate, demonstrates to the Commissioner's satisfaction that the exception will not adversely affect the educational adequacy of the school facility, including the ability to deliver the programs and services necessary to enable all students to achieve the Core Curriculum Content Standards.

3. The Commissioner shall approve spaces in excess of or inconsistent with the facilities efficiency standards (nonconforming spaces) upon a demonstration by the district that such spaces are necessary to comply with Federal or State laws concerning individuals with disabilities. A district may apply for approval to include in preliminary eligible costs nonconforming spaces that will permit pupils with disabilities to be educated to the greatest extent possible in the same buildings or classes with their nondisabled peers. Such nonconforming spaces may:

- i. Allow for the return of pupils with disabilities from private facilities;
- ii. Permit the retention of pupils with disabilities that would otherwise be placed in private facilities;
- iii. Provide space for regional programs in a host school building that houses both disabled and nondisabled pupils; or
- iv. Provide space for the coordination of regional programs by a county special services school district, educational services commission, jointure commission or other agency authorized by law to provide regional special education services in a school building that houses both disabled and nondisabled pupils.

4. To house the district's central administration, a district may request an adjustment to the approved areas for unhoused students of 2.17 square feet for each FTE student in the projected total district school enrollment, if the proposed administrative offices will be housed in a school facility and the district demonstrates either that the existing central administrative offices are obsolete or that it is more practical to convert those offices to instructional space. These square footage figures shall be adjusted to coincide with any statute passed after adoption of this chapter. To the extent that existing administrative space will continue to be used for administrative purposes, the space shall be included in the formula set forth in this subchapter. If the Commissioner approves excess facilities efficiency standards or additional area allowances

pursuant to this paragraph and (i)1 and 2 above, the Commissioner shall calculate the preliminary eligible costs based upon the excess area allowances or facilities efficiency standards pursuant to the formulas set forth in this subchapter. In the event that the Commissioner does not approve the excess facilities efficiency standards or additional area allowances, the district may either modify its submission so that the school facilities project meets the facilities efficiency standards, or pay for the unapproved costs.

(k) The Commissioner shall establish, in consultation with the districts, a priority ranking of all school facilities projects in the districts based upon his determination of critical need. School facilities projects in the districts involving health and safety factors including upgrading of the electrical systems, or preschool and other projects as necessary shall be given the highest priority among all district projects.

(l) Preliminary eligible costs for construction of new school facilities and additions to school facilities, characterized by an increase in the square footage of the school facility, shall be approved only if necessary for reasons of unhoused students and shall be calculated as follows:

$$\text{Preliminary eligible costs} = AU \times C$$

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

(m) Preliminary eligible costs shall be the actual costs for reconstruction, remodeling, alteration, modernization, renovation or repair of school facilities that were originally constructed by the district or that the district purchased more than five years prior to the date of approval by the Commissioner. Costs shall be reimbursed only when necessary for compliance with the Uniform Construction Code, health and safety, conformances with the Facilities Efficiencies Standards or other spaces approved pursuant to (j)1 above. Notwithstanding the provisions of this subchapter, all school facilities shall be deemed suitable for rehabilitation unless a pre-construction evaluation undertaken by the district demonstrates to the satisfaction of the Commissioner that the structure might pose a risk to the safety of the occupants even after rehabilitation, or that rehabilitation is not cost-effective.

(n) Preliminary eligible costs for new construction done in lieu of renovations shall be determined in accordance with the methodology for new construction, with preliminary eligible costs determined pursuant to (l) above, only when the decision to replace a school facility is supported by a feasibility study conducted by the district, and either the age of the building being replaced is 41 years or greater or the Commissioner determines that extraordinary circumstances apply. When new construction done in lieu of renovations qualifies as new construction, the approved area for unhoused students shall be determined by the Commissioner, with consideration of the existing school facilities in the district.

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

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

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

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

SEC, SE, SM, SH are the area allowances per FTE student in preschool through grade five, grades six through eight, and grades nine through 12, respectively. Area allowances shall be determined based on the grade level of a student regardless of the grade configurations used in the school buildings of the district.

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

Preschool through grade five	125 square feet
Grades six through eight	131 square feet
Grades nine through 12	151 square feet

(q) The facilities efficiency standards for determining spaces requiring a demonstration of particularized need established pursuant to N.J.A.C. 6A:24-5.1 and excess cost areas shall be the school building space assumptions used to calculate the area allowances per FTE student in (p) above. The Commissioner shall provide each district with a copy of the facilities efficiency standards and shall publish them in the New Jersey Register.

Public Notice: Facilities Efficiency Standards.
See: 31 N.J.R. 2984(a).
Amended by R.2000 d.278, effective July 3, 2000.
See: 32 N.J.R. 1329(a), 32 N.J.R. 2470(a).
Rewrote section.

SUBCHAPTER 9. APPEALS

6A:24-9.1 Applicability of subchapter

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

6A:24-9.2 Filing, service and documentation of petition

(a) Any appeal filed pursuant to this subchapter shall, except as noted in (a)1 below, meet the filing, service and format requirements for petitions of appeal as set forth in N.J.A.C. 6A:3, and shall generally proceed as a contested case except as noted in this subchapter. Service of the petition is required on the Attorney General of the State of New Jersey, and should be directed to Department of Law and Public Safety, Division of Law, PO Box 112, Trenton, New Jersey 08625-0112; Attention: Education Section.

1. Any appeal filed pursuant to this subchapter shall be filed within 30 days of the date of the decision which is the subject of the requested contested case hearing.

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

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

Amended by R.2000 d.137, effective April 3, 2000.
See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

In (a), changed N.J.A.C. reference in the introductory paragraph.
Amended by R.2000 d.278, effective July 3, 2000.
See: 32 N.J.R. 1329(a), 32 N.J.R. 2470(a).

In (a)1, substituted a reference to 30 days for a reference to 45 days.

6A:24-9.3 Filing, service and documentation of answer

(a) Answers to petitions of appeal filed pursuant to this subchapter shall meet the filing, service and format requirements for answers as set forth in N.J.A.C. 6A:3. Nothing herein shall preclude the filing of a motion to dismiss in lieu of an answer.

1. Any answer filed pursuant to this subchapter shall be filed within 20 days of the date of receipt of the petition.

Amended by R.2000 d.137, effective April 3, 2000.
 See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).
 Changed N.J.A.C. reference.
 Amended by R.2000 d.278, effective July 3, 2000.
 See: 32 N.J.R. 1329(a), 32 N.J.R. 2470(a).
 Added (a) designation, and added 1.

6A:24-9.4 Review of pleadings

Upon review of the petition, answer and supporting documentation, the Commissioner may use the procedure set forth in N.J.A.C. 6A:24-9.5 to decide the matter. If so, he or she shall notify the parties and they shall be provided the opportunity to submit any additional documents submitted to the Department or considered by the Department in rendering the decision.

Amended by R.2000 d.278, effective July 3, 2000.
 See: 32 N.J.R. 1329(a), 32 N.J.R. 2470(a).
 Changed N.J.A.C. reference.

6A:24-9.5 Submission of position statements and replies

If the Commissioner requires the submission of position statements and replies, within 20 days after receipt of the notice from the Commissioner pursuant to N.J.A.C. 6A:24-9.4, the petitioner shall file a letter memorandum setting forth with particularity the basis for its position, referencing the criteria established for the application process and the materials submitted in conjunction with it. Within 10 days of receipt of petitioner's memorandum, each respondent shall file such reply as it may wish to make. Within five days of receipt of any reply, petitioner may file a final response thereto. All submissions shall be filed in triplicate (original and two copies) and served upon all

other parties to the appeal at the same time they are filed with the Commissioner.

Amended by R.2000 d.278, effective July 3, 2000.
 See: 32 N.J.R. 1329(a), 32 N.J.R. 2470(a).
 Changed N.J.A.C. reference.

6A:24-9.6 Commissioner review and decision

(a) If the Commissioner retains the matter pursuant to N.J.A.C. 6A:24-9.5, upon receipt of the filings set forth above, or expiration of the time for their submission, the Commissioner shall review the total record before him or her and render a written decision. If the Commissioner transmits the matter to the Office of Administrative Law, such transmission shall be done on an expedited basis to resolve material factual disputes.

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

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

Amended by R.2000 d.278, effective July 3, 2000.
 See: 32 N.J.R. 1329(a), 32 N.J.R. 2470(a).
 In (a) changed N.J.A.C. reference, and added a second sentence; and deleted a former (d).